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October 29, 2021

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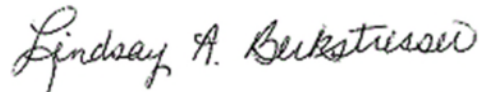
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Attached for filing are the Replies of Columbia Gas of Pennsylvania, Inc., to the Exceptions of Richard C. Culbertson in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Lindsay A. Berkstresser

LAB/kl

Attachment

cc: Honorable Mark A. Hoyer (*via email*)
Office of Special Assistants (*via email – ra-OSA@pa.gov*)
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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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	:	Docket No.	R-2021-3024296
Office of Consumer Advocate	:		C-2021-3025078
Office of Small Business Advocate	:		C-2021-3025257
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.	:		

**REPLIES OF COLUMBIA GAS OF PENNSYLVANIA, INC.
TO THE EXCEPTIONS OF RICHARD C. CULBERTSON**

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I. INTRODUCTION

Columbia Gas of Pennsylvania, Inc. (“Columbia” or the “Company”) hereby files these Replies to the Exceptions of Richard C. Culbertson to the Recommended Decision (“RD”) issued by Deputy Chief Administrative Law Judge Mark A. Hoyer (the “ALJ” or “ALJ Hoyer”). On October 5, 2021, the ALJ issued a RD recommending that the Pennsylvania Public Utility Commission (“Commission”) approve the Joint Petition for Settlement without modification and dismiss the claims raised by Mr. Culbertson in his Complaint for failure to meet the burden of proof. RD, pp. 62, 66-67. On October 19, 2021, Mr. Culbertson filed several Exceptions to the RD, none of which support overturning the ALJ’s well-reasoned RD. For reasons explained below, and in Columbia’s briefs, the Commission should reject the Exceptions of Mr. Culbertson and adopt the RD in its entirety.

II. REPLIES TO EXCEPTIONS

A. MR. CULBERTSON EXCEPTION NO. 1 SHOULD BE DENIED.

Mr. Culbertson excepts to the RD’s recommendation that the Commission adopt the Joint Petition for Settlement without modification because, according to Mr. Culbertson, an investigation of Columbia’s rate filing has not occurred. Culbertson Exec., pp. 4-7. As Columbia explained in its Reply Brief, Mr. Culbertson’s allegation that the Company’s rate filing was not sufficiently investigated is unfounded. Columbia RB, pp. 3-4. In fact, the eight other active parties to the Joint Petition for Settlement conducted a thorough examination of Columbia’s proposals. Columbia’s direct filing included thousands of pages of material supporting its claims in accordance with the Commission’s regulations and filing requirements for a proposed general rate increase in excess of \$1 million. 52 Pa. Code § 53.53. *See* Columbia Statement Nos. 1-14; Columbia Exhibit Nos. 1-17; 101-117 and 400-414; Columbia Standard Data Responses COS 1-

21, ROR 1-23 and RR 1-55. Columbia responded to over 800 formal interrogatories, including subparts, from the various parties. Multiple expert witnesses acting on behalf of the other active parties to this case reviewed Columbia's filing information and the testimony of Columbia's witnesses and submitted their own testimony analyzing Columbia's case. Several public input hearings and a technical evidentiary hearing were held to hear public opinion and to examine Columbia's case. The active parties engaged in settlement discussions that ultimately led to the Joint Petition for Settlement, which resolves all issues in this case, except for the issues raised in Mr. Culbertson's Complaint. The RD's recommendation to approve the Joint Petition for Settlement is based on an extensive evidentiary record, as well as the Statements in Support of the Settlement from each of the settling parties. *See* September 7, 2021 Joint Petition for Settlement, Appendices D-L.

Mr. Culbertson questions whether the eight other active parties in this case investigated Columbia's filing because, according to Mr. Culbertson: "Usually investigations and audits end with the opinion of the investigator or auditor." Culbertson Exec., p. 5. The multiple rounds of testimony submitted by these parties and the hundreds of interrogatories exchanged is evidence that the active parties have, indeed, investigated Columbia's rate filing. As far as Mr. Culbertson's view that investigations usually end in "opinions," the other active parties expressed their "opinions" through their testimony and litigation positions in this case, and ultimately concluded that the case should be resolved in accordance with terms in the Joint Petition for Settlement and that those terms are in the public interest. *See* September 7, 2021 Joint Petition for Settlement, Appendices D-L.

Mr. Culbertson states that he did not conduct a "detailed and extensive" investigation. Culbertson Exec., p. 5. However, he was certainly afforded ample opportunity to do so. In fact,

Mr. Culbertson has fully participated in all aspects of this proceeding. The RD accurately summarized Mr. Culbertson's participation in this proceeding as follows:

Complainant Richard C. Culbertson appeared in this proceeding *pro se* and participated fully. Mr. Culbertson participated in discovery. He attended public input hearings and cross-examined witnesses. He served and offered into evidence written direct and surrebuttal testimony that was stipulated into evidence by the parties to this proceeding at the evidentiary hearing on August 4, 2021. He cross-examined Columbia's witness, Mark Kempic, at the evidentiary hearing. Mr. Culbertson also filed a main brief and a reply brief in this proceeding raising issues of concern to him.

RD, p. 58. Mr. Culbertson's choice to focus on certain issues does not mean he was denied a full opportunity to participate in this proceeding. Mr. Culbertson also participated in settlement negotiations with Columbia's counsel and was given an opportunity to comment on the Joint Petition for Settlement. *See* 52 Pa. Code § 69.406; *Eleventh Interim Order Setting Deadline for Filing of Objections to Settlement* (September 8, 2021). Therefore, Mr. Culbertson's claim that he did not conduct an investigation of Columbia's rate filing does not negate the evidence that Columbia's claims were investigated in this case.

As support for his argument that an investigation was not undertaken, Mr. Culbertson alleges that Columbia's financials have not been audited in accordance with the "GAO [Government Accountability Office] Yellow Book." Culbertson Exec., p. 5. As Columbia explained in its Main Brief, Columbia is subject to regular audits by the Commission, and the GAO Yellow Book applies to audits of government agencies. Columbia MB, pp. 6-7. Columbia is not a government agency. Therefore, Mr. Culbertson's reference to the GAO Yellow Book is not relevant to this proceeding.

Mr. Culbertson also references the "Federal Acquisition Regulations." Culbertson Exec., pp. 7-8. Columbia does not engage in procurement for the federal government. The rules

governing federal government procurement are irrelevant to this base rate proceeding before the Commission.

The flaw in Mr. Culbertson's arguments is that he confuses the concept of an "audit" with a rate investigation. Nothing in the Public Utility Code or the Commission's regulations direct an "audit" as part of a Section 1308(d) rate filing and investigation. However, this does not mean that Columbia's current and proposed rates, policies and procedures have not been thoroughly examined by experts in the fields of accounting, fair return, rate design, low income programs and other relevant matters.

Mr. Culbertson's argument that an investigation did not occur in this case is simply not supported by the substantial evidence of record from the active parties to this case, including Mr. Culbertson himself. The active parties examined Columbia's current rates and proposed rates. The Settlement provides for certain changes to Columbia's current tariff terms, thus demonstrating that current rates have been investigated. *See Joint Petition for Settlement* (September 7, 2021). Moreover, it is axiomatic that an investigation of proposed rates involves an investigation of whether the utility has demonstrated the inadequacy of current rates. Therefore, the RD correctly concluded that "Mr. Culbertson is incorrect with respect to his assertion that there has been no investigation of Columbia's proposed rate increase," and Mr. Culbertson's Exception No. 1 should be denied.¹ RD, p. 60.

¹ Although numbered as a single exception, Culbertson Exception No. 1 raises two distinct issues: (1) Mr. Culbertson's issues with the investigation of this rate case and (2) Mr. Culbertson's separate Complaint against Columbia regarding his customer service line, which has been fully litigated in a separate complaint proceeding and is pending before the Commission. Mr. Culbertson also addresses his customer service line issue in a separate exception, Exception No. 6. Columbia will respond to Mr. Culbertson's arguments regarding his customer service line, *infra*, in response to Exception No. 6, and fully incorporates those arguments herein.

B. MR. CULBERTSON'S EXCEPTION NO. 2 SHOULD BE DENIED.

In Exception No. 2, Mr. Culbertson references a Motion that he filed on June 11, 2021, in which he requested that ALJ Hoyer be removed from presiding over this case. Culbertson Exec., p. 15. In his Exceptions, Mr. Culbertson reiterates his position that ALJ Hoyer should have been removed as the Presiding Officer. Culbertson Exec., p. 15. Mr. Culbertson's argument is inappropriate for Exceptions. Exceptions are permitted to challenge a finding or conclusion in the RD, not to re-argue motions. *See* 52 Pa. Code § 5.533. Moreover, Mr. Culbertson did not address this issue in his briefs, and therefore he has waived the right to present the argument in exceptions. *See Application of Apollo Gas*, Docket No. A-120450, 1994 Pa. PUC LEXIS 45, *7 (Order entered February 10, 1994).

In addition to the fact that Mr. Culbertson may not present this argument in exceptions, Mr. Culbertson's arguments regarding the Presiding Officer are mere speculation and unsupported theories that do not constitute evidence of bias. Mr. Culbertson failed to present any factual basis to support his accusations that ALJ Hoyer was incapable of impartially presiding over this case. There is absolutely no evidence to suggest that ALJ Hoyer was incapable of objectively evaluating the record and the parties' arguments in this proceeding and rendering an unbiased decision. *See* Columbia's July 1, 2021 Answer to the Motion of Richard C. Culbertson to Remove the Presiding Officer.

For these reasons, Mr. Culbertson's Exception No. 2 is inappropriate and should be denied.

C. MR. CULBERTSON'S EXCEPTION NO. 3 SHOULD BE DENIED.

In Exception No. 3, Mr. Culbertson argues that the Joint Petition for Settlement is illegal and not in the public interest because the terms are a "black box" settlement. Culbertson Exec., p. 17. Mr. Culbertson also presents various other criticisms of the RD's recommendation to approve the Settlement. As explained herein, Mr. Culbertson's arguments against the Joint Petition for

Settlement are unfounded and do not support rejection of RD's recommendation to approve the Settlement.

Mr. Culbertson argues that federal law does not permit black box settlements. Culbertson Exec., p. 17. As support for his argument, Mr. Culbertson cites to the Natural Gas Act. Culbertson Exec., p. 17. The Natural Gas Act is enforced by the Federal Energy Regulatory Commission ("FERC"). Columbia is a natural gas distribution company serving customers within Pennsylvania and is subject to the requirements of the Public Utility Code, 66 Pa. C.S. §§ 101, *et seq.*, and the Commission's regulations, 52 Pa. Code §§1.1, *et seq.*, and is not generally subject to FERC regulation.² *See* 15 U.S.C. § 717(a),(b) (Natural Gas Act regulates the transportation and sale of gas in interstate commerce) and 15 U.S.C. § 717(c) (reserving jurisdiction over intrastate sales to the state commissions). Thus, the Commission, not FERC, has jurisdiction over this base rate case.

The Commission has accepted black box settlements as satisfying the requirements of the Public Utility Code and the Commission's regulations and orders on numerous occasions. *See, e.g., Pa. PUC v. Aqua Pennsylvania, Inc.*, Docket Nos. R-2018-3003558 et al., 2019 Pa. PUC LEXIS 170 (Order entered May 9, 2019) (denying exceptions to recommended decision and approving black box settlement without modification); *Pa. PUC, et al. v. Pike County Light & Power Company – Electric*, Docket Nos. R-2020-3022135, et al., 2021 Pa. PUC LESIX 299, *15 (Order entered July 21, 2021). In *Pike County Light & Power Company*, the Commission stated as follows:

The Commission has recognized that "black box" settlements can serve an important purpose in reaching consensus in rate cases:

We have historically permitted the use of "black box" settlements as a means of promoting settlement among the parties in contentious base rate proceedings. Settlement of rate cases saves a significant amount of time and

² Columbia is subject to the FERC Uniform System of Accounts. *See* 18 C.F.R. § 201; 52 Pa. Code § 59.42. Also, by virtue of Pa. Code § 59.33(b), Columbia is subject to Federal pipeline safety laws and regulations that are enforced by this Commission.

expense for customers, companies, and the Commission and often results in alternatives that may not have been realized during the litigation process. Determining a company's revenue requirement is a calculation involving many complex and interrelated adjustments that affect expenses, depreciation, rate base, taxes and the company's cost of capital. Reaching an agreement between various parties on each component of a rate increase can be difficult and impractical in many cases.

Pike County Power & Light, 2021 Pa. PUC LEXIS 299, *15 quoting *Pa. PUC v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Order entered December 19, 2013).

Mr. Culbertson claims that settlements should be approved by all parties. Culbertson Exec., p. 25. However, the Commission has approved non-unanimous settlements as in the public interest when the due process rights of the non-settling parties are satisfied. *See, e.g., Pa. PUC, et al. v. City of Bethlehem – Water Department*, Docket Nos. R-2020-3020256, et al., 2021 Pa. PUC LEXIS 116 (Order entered April 15, 2021); *Pa. PUC, et al. v. Aqua Pennsylvania, Inc.*, Docket Nos. R-2011-2267958, 2021 Pa. PUC LEXIS 825 (Order entered May 18, 2012). The Commission has previously addressed what is required to satisfy a non-settling party's due process rights. *See City of Bethlehem – Water Department*, 2021 Pa. PUC LEXIS 116 (Commission will consider non-settling party's opportunity to object to the settlement, non-settling party's opportunity to fully litigate contested issues, and non-settling party's opportunity for fact-finding hearing on the terms of settlement and contested issues); *Aqua Pennsylvania, Inc.*, 2021 Pa. PUC LEXIS 825, *49 (providing parties with copies of settlement petition and an opportunity to provide comments on the settlement sustains the fundamental of notice and an opportunity to be heard) *citing City of Lancaster*, Opinion and Order, 2011 Pa. PUC LEXIS 1685, 26.

Mr. Culbertson's due process rights were satisfied through his participation in this case. Mr. Culbertson fully participated in this proceeding as explained in response to Exception No. 1, *supra*. Further, Mr. Culbertson was provided with an opportunity to comment on or object to the

Joint Petition for Settlement. *See* 52 Pa. Code § 69.406; *Eleventh Interim Order Setting Deadline for Filing of Objections to Settlement* (September 8, 2021). Mr. Culbertson did not file comments or objections to the Settlement. Mr. Culbertson fully litigated the issues presented in his Complaint through discovery, written testimony, an evidentiary hearing where he was given the opportunity to cross examine Columbia’s witness, and briefs. Mr. Culbertson claims he was excluded from settlement discussions in this case. Culbertson Exec., pp. 29, 32. Mr. Culbertson’s claim is not accurate. Counsel for Columbia engaged in settlement negotiations with Mr. Culbertson regarding his claims. However, Columbia and Mr. Culbertson were not able to resolve the issues presented in Mr. Culbertson’s Complaint through settlement.

Mr. Culbertson argues that the Settlement is not in the public interest because it does not take into account actual legitimate costs. Culbertson Exec., pp. 16-18. However, Mr. Culbertson failed to present substantial and legally credible evidence in this proceeding concerning Columbia’s rate base or expenses. On the other hand, Columbia and the other active parties to this case submitted extensive evidence concerning Columbia’s rate base and expenses, as well as detailed Statements in Support explaining why the settlement terms are in the public interest. The RD correctly concluded that Mr. Culbertson “has offered no factual evidence or arguments to rebut the substantial evidence of record presented by the Joint Petitioners that fully supports the Settlement.” RD, p. 61. Based on the evidence presented in this case, the RD correctly concluded that the Settlement is in the public interest and should be approved.

Mr. Culbertson cites to several authorities that are not relevant to this base rate case before the Commission. Specifically, Mr. Culbertson refers to the Securities and Exchange Act of 1934, Section 10 (Audits) of Article VIII (Taxation and Finance) of the Constitution of Pennsylvania, 2 CFR 200 (Audit Requirements for Federal Awards) and the Pennsylvania Management Directives.

Culbertson Exec., pp. 18-19. None of these authorities is relevant to this proceeding or provide support for his arguments.

Finally, Mr. Culbertson argues that the RD is flawed because the word “existing” does not appear in the RD. Culbertson Exec., pp. 21-22. According to Mr. Culbertson, this is a “glaring omission” because the RD should have determined why Columbia’s existing rate base is different than the rate bases of Columbia’s sister utilities in other states. Culbertson Exec., p. 21. As Columbia explained in its briefs, the rate bases of utilities in other states are irrelevant to evaluating the rate base of Columbia because there are many reasons why rate base per customer can differ from state to state and among different companies. Columbia MB, pp. 20-21; Columbia RB, p. 8. Moreover, the Commission has no jurisdiction to investigate the rate bases of utilities in other states. The RD correctly concluded that Culbertson failed to present substantial evidence to sustain his burden of proof on this issue. RD, p. 62.

D. MR. CULBERTSON’S EXCEPTION NO. 4 SHOULD BE DENIED³

Mr. Culbertson excepts to the RD’s conclusion that he did not present substantial and legally credible evidence to sustain his burden of proof. Culbertson Exec., p. 23. Mr. Culbertson contends that he was unable to present sufficient evidence because Columbia objected to certain interrogatories submitted by Mr. Culbertson. Mr. Culbertson quotes several Interim Orders ruling on his Motions to Compel. Culbertson Exec., pp. 23-29. The Commission’s regulations do not permit parties to re-argue interim discovery rulings in exceptions. *See* 52 Pa. Code § 5.533 (“Exceptions may not be filed with respect to an interlocutory decision.”). Mr. Culbertson’s Exception should be dismissed because it improperly attempts to re-argue discovery motions. Mr.

³ Mr. Culbertson labeled two of his Exceptions “Exception 3.” See Culbertson Exceptions pages 15 and 23. Columbia presumes that “Exception 3” on page 23 should be titled “Exception 4” and will address the arguments starting on page 23 of the Exceptions under this heading.

Culbertson also argues that the Protective Order entered in this proceeding was improper. Culbertson Exec., pp. 26-27. However, Mr. Culbertson failed to file an answer opposing Columbia's Motion for a Protective Order, which was unopposed by all of the other active parties to this proceeding.⁴

Moreover, Mr. Culbertson was afforded a full and fair opportunity to engage in discovery. Columbia answered Mr. Culbertson's non-objectionable interrogations and properly objected to the discovery that was impermissible under the Commission's discovery regulations. Columbia also complied with all of the ALJ's interim discovery orders. The outcomes of the interim discovery rulings in this case do not excuse Mr. Culbertson's failure to present substantial evidence to support his claims.

The record is clear that Mr. Culbertson presented no substantial evidence of record to support his claims in this case. Furthermore, issues not raised by Mr. Culbertson in his briefs and Exceptions are waived. Mr. Culbertson's Exception should be denied.

E. MR. CULBERTSON'S EXCEPTION NO. 5 SHOULD BE DENIED.⁵

Mr. Culbertson excepts to the following statement contained in the Joint Petition for Settlement: "The Joint Petitioners recognize that the proposed Settlement does not bind Formal Complainants that do not chose to join the Settlement." Culbertson Exec., pp. 31-32. He asserts that stating that he "chose" not to join is not true.

⁴ Columbia also notes that the vast majority of the evidence submitted for the record in this case is public, and not subject to the Protective Order. Tr. 155-200.

⁵ As noted above, Mr. Culbertson's Exceptions contain two exceptions labeled "Exception 3". There is an "Exception 4" beginning on page 31, followed by an "Exception 6". Columbia is addressing the Exception on page 31 as "Exception 5".

There is nothing untrue about the statement. The ALJ gave Mr. Culbertson the option to join the Settlement. Mr. Culbertson declined to join, and his due process rights in this case have been preserved. Mr. Culbertson's Exception should be denied.

F. MR. CULBERTSON'S EXCEPTION NO. 6 SHOULD BE DENIED.

In his Exceptions, Mr. Culbertson describes a Complaint that he filed against Columbia in a separate proceeding at Docket No. F-2017-2605797. Culbertson Exec., pp. 8-10, 32. That case concerns Mr. Culbertson's issues with respect to Columbia's treatment of Mr. Culbertson's inactive customer service line. As the RD correctly observed, the issues pertaining to Mr. Culbertson's inactive customer service line were fully litigated in the separate complaint proceeding, and the case is currently pending before the Commission for decision. RD, p. 62. Therefore, as fully explained in Columbia's Main Brief, pp. 8-13, the issues regarding Mr. Culbertson's inactive customer service line are not properly before the Commissions in this base rate case.

Mr. Culbertson accuses Columbia of engaging in a "scheme to abandon customer's [sic] service lines" for the purpose of "padding the rate base." Culbertson Exec., p. 10. There is absolutely no evidence in the record to suggest that Columbia has engaged in a scheme involving customer service lines, nor is there any evidence that Columbia has made unnecessary investments in rate base. Testimony consisting of guesses, conjecture, or speculation cannot prove a party's claims. See *Cuthbert v. City of Philadelphia*, 417 Pa. 610, 209 A.2d 261 (1965); *B & K Inc. v. Commonwealth Dep't of Highways*, 398 Pa. 518, 159 A.2d 206 (1960). Mr. Culbertson's claims should be rejected because they lack evidentiary support. See *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990) (requiring substantial and legally credible evidence to support a finding); *Met-Ed Indus. Users Group v. Pa. PUC*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704).

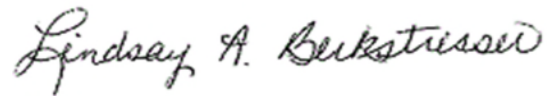
As part of his argument regarding service lines, Mr. Culbertson references an Interim Order from Columbia's 2020 rate case regarding the Company's objections to Mr. Culbertson's public input hearing testimony and the Recommended Decision from Columbia's 2020 rate case. Culbertson Exec., pp. 11-12. Rulings from a prior base rate proceeding are irrelevant to this proceeding and provide no support for Mr. Culbertson's arguments.

Finally, Mr. Culbertson argues that the issues with his service line were not the primary reason for his Complaint against this base rate proceeding, and his issues are with Columbia's proposal in this base rate proceeding. Culbertson Exec., pp. 32, 33. Nevertheless, Mr. Culbertson failed to present substantial evidence to support any of his claims against Columbia's rates and service. Therefore, the RD properly recommended that the Commission dismiss all of Mr. Culbertson's claims for failure to meet the burden of proof. RD, p. 62. Mr. Culbertson's Exception No. 6 should be denied.

III. CONCLUSION

For all the foregoing reasons, Columbia Gas of Pennsylvania, Inc. respectfully requests that the Pennsylvania Public Utility Commission deny the Exceptions of Richard C. Culbertson and adopt the RD in its entirety without modification.

Respectfully submitted,



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Date: October 29, 2021