

**Theodore J. Gallagher**  
Assistant General Counsel  
Legal Department



121 Champion Way, Ste. 100  
Canonsburg, PA 15317  
Office: 724.416.6355  
Mobile: 724.809.0525  
tjgallagher@nisource.com

August 28, 2023

VIA ELECTRONIC FILING

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

RE: Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement v.  
Columbia Gas of Pennsylvania, Inc  
Docket No. M-2022-3012079

Dear Secretary Chiavetta:

Enclosed for filing in the referenced matter please find Columbia Gas of Pennsylvania, **Inc.'s** Answer to the Petition for Reconsideration of Richard C. Culbertson.

If you have any questions regarding this filing, please do not hesitate to call me at 724-416-6355.

Very truly yours,

  
Theodore J. Gallagher

enclosure

cc (via e-mail):  
Office of Special Assistants  
Certificate of Service

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants, listed below, via E-mail:

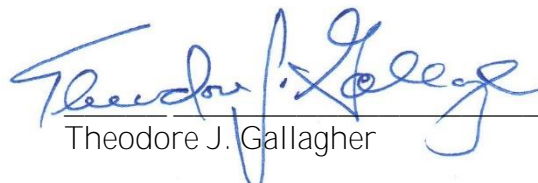
Michael L. Swindler, Esquire  
Pennsylvania Public Utility Commission  
Bureau of Investigation and  
Enforcement  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17120  
[mwindler@pa.gov](mailto:mwindler@pa.gov)

Richard C. Culbertson – Pro Se  
1430 Bower Hill Road  
Pittsburgh, PA 15343  
609-410-0108  
[Richard.c.culbertson@Gmail.com](mailto:Richard.c.culbertson@Gmail.com)

Darryl Lawrence, Esquire  
Office of Consumer Advocate  
555 Walnut Street 5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
[DLawrence@paoca.org](mailto:DLawrence@paoca.org)

Erin Dinch  
Director of Planning & Development  
North Franklin Township  
620 Franklin Farms Road  
Washington, PA 15301  
[e.dinch@nftwp.com](mailto:e.dinch@nftwp.com)

Date: August 28, 2023



Theodore J. Gallagher

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Richard C. Culbertson	:	
	:	
v.	:	Docket No. M-2022-3012079
	:	
Columbia Gas of Pennsylvania, Inc.	:	

---

**ANSWER OF COLUMBIA GAS OF PENNSYLVANIA, INC. TO  
THE PETITION FOR RECONSIDERATION OF RICHARD C. CULBERTSON**

---

Theodore J. Gallagher (Attorney ID 90842)  
Assistant General Counsel  
NiSource Corporate Services Company  
121 Champion Way, Suite 100  
Canonsburg, PA 15317  
Phone: 724-809-0525  
E-mail: [tjgallagher@nisource.com](mailto:tjgallagher@nisource.com)

Attorney for  
Columbia Gas of Pennsylvania, Inc.

Date: August 28, 2023

**TABLE OF CONTENTS**

I. INTRODUCTION .....1

II. BACKGROUND .....1

III. LEGAL STANDARDS .....2

IV. ARGUMENT.....3

    A. MR. CULBERTSON’S PETITION FOR RECONSIDERATION  
    SHOULD BE DENIED BECAUSE IT RAISES ISSUES THAT  
    SHOULD HAVE BEEN, BUT WERE NOT, PREVIOUSLY  
    RAISED. THOSE NEW ISSUES ALSO LACK LEGAL AND  
    FACTUAL MERIT.....3

    B. MR. CULBERTSON’S PETITION FOR RECONSIDERATION  
    SHOULD BE DENIED BECAUSE IT FAILS TO SATISFY THE  
    *DUICK* STANDARD. ....5

V. CONCLUSION.....6

## **I. INTRODUCTION**

Columbia Gas of Pennsylvania, Inc. (“Columbia”) pursuant to 52 Pa. Code §§ 5.61 and 5.572, hereby respectfully submits this Answer to the Petition of Richard C. Culbertson for Reconsideration (“Petition”) filed by on or about August 17, 2023. In his Petition, Mr. Culbertson seeks reconsideration of the Opinion and Order of the Pennsylvania Public Utility Commission (“Commission”) entered in the above-captioned proceeding on August 3, 2023 (“Order”).

As explained below, Mr. Culbertson’s Petition should be denied because it fails to comply with the Commission’s regulations regarding petitions for reconsideration, and fails to meet the well-established standard for granting reconsideration set forth in Section 703(f) and (g) of the Public Utility Code, 66 Pa.C.S. § 703(f)-(g), and *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (1982). For the most part, in the Petition Mr. Culbertson simply re-raises several of the same arguments that he already raised by Mr. Culbertson in three sets of comments that he filed in this matter, all of which were considered and rejected by the Commission. To the extent that the Petition raises new matters, Mr. Culbertson could have raised those issues in his various comments, but he failed to do so. For these reasons, and as more fully explained below, Columbia respectfully requests that the Commission deny Mr. Culbertson’s Petition for Reconsideration.

## **II. BACKGROUND**

1. The procedural history pertinent to this Answer is fully set forth in pages 2 through 5 of the Commission’s Order in this matter and need not be repeated here. Of particular significance regarding the Petition at issue is that Mr. Culbertson has filed three sets of comments in this matter on July 27, 2022, April 5, 2023, and April 13, 2023.

2. On or about August 17, 2023, Mr. Culbertson filed a Petition for Reconsideration of the Commission’s Order. For the reasons explained below, as well as those more fully explained in the Commission’s Order, Mr. Culbertson’s Petition for Reconsideration should be denied.

### III. LEGAL STANDARDS

3. The requirements for petitions for reconsideration of a Commission order are set forth in the Commission regulations at 52 Pa. Code § 5.572.

4. The Commission’s standard for granting reconsideration following final orders is set forth in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (1982) (emphasis added):

A petition for reconsideration, under the provisions of 66 Pa.C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was said that “[p]arties ..., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them...” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.

Consequently, to warrant the Commission’s reconsideration of a final order, a petition for reconsideration must demonstrate new and novel arguments that were raised by the petitioner, but not previously considered by the Commission. The Commission has cautioned that the last portion of the operative language of the *Duick* standard (*i.e.*, “by the Commission”) focuses on the deliberations of the Commission, not the arguments of the parties. *See Pa. PUC v. PPL Elec. Utils. Corp.*, Docket No. R-2012-2290597, p. 3 (Order entered May 22, 2014). Therefore, a

petition for reconsideration cannot be used to raise new arguments or issues that should have been, but were not, previously raised.

5. A petition seeking relief under the *Duick* standard may properly raise any matter designed to convince the Commission that it should exercise its discretion to rescind or amend a prior order in whole or part. Importantly, however, the *Duick* standard does not permit a petitioner to raise issues and arguments considered and decided below such that the petitioner obtains a second opportunity to argue properly resolved matters. *Id.* Further, as explained by the Pennsylvania Supreme Court, petitions for reconsideration of a final agency order may only be granted judiciously and under appropriate circumstances because such action results in the disturbance of final agency orders. *City of Pittsburgh v. Pa. Dep't of Transp.*, 490 Pa. 264, 416 A.2d 461 (1980).

6. As explained below, Mr. Culbertson's Petition clearly fails to satisfy the standards for granting reconsideration and also fails to meet the requirements of the Commission's regulations.

#### IV. ARGUMENT

##### A. **MR. CULBERTSON'S PETITION FOR RECONSIDERATION SHOULD BE DENIED BECAUSE IT RAISES ISSUES THAT SHOULD HAVE BEEN, BUT WERE NOT, PREVIOUSLY RAISED. THOSE NEW ISSUES ALSO LACK LEGAL AND FACTUAL MERIT.**

7. Mr. Culbertson raises new issues that he could have addressed in his prior comments, but he failed to do so. One such issue is his allegation that the Order violates 66 Pa.C.S. § 331 because the Commission issued the Order without conducting a hearing. Petition, pp. 5, 13-16. A second new issue that he raises is that the Order is the result of an informal investigation, which is not mentioned in Title 66 and, as such, the Order is "illegal". Petition, p. 5-7. In comments that Mr. Culbertson filed in this proceeding, he never requested that a hearing

be held. Nor did he argue that the informal investigation process is unlawful. Consequently, these are not issues that he raised but which the Commission ignored. Accordingly, his request for reconsideration based upon either on an alleged failure to comply with 66 Pa.C.S. § 331 or upon the legality of the informal investigation process should be denied.

8. Even if the issue of whether a hearing should have been held were properly raised in Mr. Culbertson's Petition, his argument is legally unsupported. In his citations to 66 Pa.C.S. § 331, Mr. Culbertson emphasizes the language that the Commission "shall make no order without affording the affected parties thereby a hearing." Petition, pp. 5, 13, 16. However, in its June 2022 Order and April 2023 Order, both of which were published in the *Pennsylvania Bulletin*, the Commission stated that "Subject to the Commission's review of any comments filed in this proceeding, at Docket No. M-2022-3012079, a final Opinion and Order will be issued by the Commission." Therefore, Mr. Culbertson was on notice that the Commission was proceeding without a hearing in this case. He was afforded the opportunity to seek a hearing and failed to do so. Moreover, neither Mr. Culbertson's Petition nor his three sets of comments demonstrate any dispute of material fact in this proceeding that would warrant a hearing. "Where there are no disputed question of fact and the issue to be decided is purely one of law or policy, a case may be disposed of without resort to an evidentiary hearing." *Dee-Dee Cab, Inc. v. Pa.PUC*, 817 A.2d 593, 598 (Pa. Cmnlth. 2003).

9. Even if Mr. Culbertson's challenge to the informal investigation process were properly raised in the Petition, the challenge is without merit. Mr. Culbertson incorrectly asserts that there is no statutory or regulatory authority for an informal investigation. However, Section 3.113 of the Commission's regulations clearly establishes that "The Commission staff may conduct informal investigations or informal proceedings in appropriate circumstances regarding



the condition and management of a public utility or other person subject to its jurisdiction.” 52 Pa. Code § 3.113(a). Mr. Culbertson’s argument that the Order is the illegal result of an unlawful informal investigation is baseless.

**B. MR. CULBERTSON’S PETITION FOR RECONSIDERATION SHOULD BE DENIED BECAUSE IT FAILS TO SATISFY THE *DUICK* STANDARD.**

10. Mr. Culbertson raises several arguments in his Petition that he previously raised before the Commission in this proceeding. For example, as he did in his Additional Comments filed on April 13, 2023 in this case, Mr. Culbertson again focuses at length upon the September 2018 over-pressurization incident that involved Columbia’s former affiliate, Columbia Gas of Massachusetts. Petition, pp. 8-10. Also repeating an issue from his April 13 Additional Comments, Mr. Culbertson refers to Columbia terminating the employment of an employee who provided testimony in Columbia’s 2022 Rate Case. Petition, p. 12. In its Order, the Commission stated that any argument that it did not specifically address shall be deemed to have been duly considered and denied without further discussion. Order, p. 13. Thus, these arguments are not new and were previously considered and rejected by the Commission in its Order. Therefore, the Petition fails to meet the *Duick* standard for reconsideration.

11. In Mr. Culbertson’s Formal Complaint at Docket No. F-2017-2605797, the Commission considered and specifically rejected Complainant’s arguments regarding Columbia’s abandonment of the inactive service line at a property that he owns on McFarland Road in Pittsburgh. However, in his Petition in this case, Mr. Culbertson attempts a collateral attack on the Commission’s decision in that case by referring to his recent experience at another property that he purchased in Upper St. Clair. Petition, p. 7. This attempt at a collateral attack on the Commission’s decision in Docket No. F-2017-2605797 cannot serve as the basis for reconsideration of the Order in the proceeding at hand.

12. Further issues that Mr. Culbertson raises in his Petition and which have been addressed in either this proceeding or other proceedings include the applicability of Federal Government Accountability Office standards to Commission proceedings (Petition, pp. 10-11), Columbia's adherence to ANSI/API 1173 Pipeline Safety Management System protocols (Petition, p. 11), and an alleged failure by this Commission's Administrative Law Judges and Bureau of Investigation and Enforcement to address concerns that Mr. Culbertson has raised at Public Input Hearings (Petition, pp. 12-13). For Mr. Culbertson to meet the *Duick* standard for granting reconsideration, he cannot simply re-raise the same arguments that were considered and rejected by the Commission. As explained herein, regarding the issues addressed in this Section IV.B of this Answer, the Commission previously considered and rejected all of the arguments raised in Mr. Culbertson's Petition. Thus, Mr. Culbertson's Petition fails to establish a basis for the Commission's reconsideration of its Order on those issues.

**V. CONCLUSION**

WHEREFORE, for all the foregoing reasons, Columbia Gas of Pennsylvania, Inc. respectfully requests that the Pennsylvania Public Utility Commission deny the Petition for Reconsideration filed by Richard C. Culbertson in its entirety.

Respectfully submitted,

COLUMBIA GAS OF PENNSYLVANIA, INC.



By:

Theodore J. Gallagher (Atty ID 90842)  
Assistant General Counsel  
NiSource Corporate Services Co.  
121 Champion Way, Suite 100  
Canonsburg, PA 15317  
Phone: 724-809-0525  
E-mail: tjgallagher@nisource.com

Dated: August 28, 2023