

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	R-2024-3046519
Office of Small Business Advocate	:	C-2024-3047905
Office of Consumer Advocate	:	C-2024-3047675
Ronald T. Bernick	:	C-2024-3048339
Linda Allison	:	C-2024-3048588
Philip Bloch	:	C-2024-3048478
Pennsylvania State University	:	C-2024-3048624
v.	:	
Columbia Gas of Pennsylvania, Inc.	:	

INTERIM ORDER RULING ON OBJECTIONS TO PUBLIC INPUT HEARING EVIDENCE

On May 1, 2024, a public input hearing notice was issued which scheduled in-person public input hearings for Tuesday, May 21, 2024, at 1 p.m. and 6 p.m. and telephone public input hearings for Wednesday, May 22, 2024, at 1 p.m. and 6 p.m.

On May 21, 2024, the undersigned presiding officer convened the initial in-person public input hearing at 1 p.m. Two individuals, Richard C. Culbertson (Mr. Culbertson or Culbertson) and Gordon Lowry provided testimony. Richard Culbertson provided the undersigned presiding officer with a thirty-six-page packet of information, including Appendices I, II and III, which was marked for identification purposes as Culbertson Exhibit 1. Richard Culbertson provided extensive testimony and requested that Culbertson Exhibit 1 be admitted into evidence. The document was provided by Mr. Culbertson to some of the parties and to the

undersigned presiding officer at approximately 10 a.m. by email transmission and to all of the parties prior to taking testimony from Mr. Culbertson. After providing the Parties with an opportunity to address the request by Mr. Culbertson and given the voluminous nature of the exhibit and the relatively short period of time that Parties may have had to review the exhibit, the undersigned presiding officer advised the Parties that an Order would be entered providing a deadline of May 29, 2024, to file and serve objections to Culbertson Exhibit 1 and June 5, 2024, to file and serve responses to the objections.

On May 23, 2024, an Interim Order was entered permitting the parties to file and serve objections to Culbertson Exhibit 1 and permitting the Parties and the witness, Richard Culbertson, to file and serve responses to the objections on or before June 5, 2024.

May 29, 2024, Columbia Gas of Pennsylvania, Inc. (Columbia) filed its Objections to the testimony and exhibit of Richard C. Culbertson.

On May 31, 2024, Mr. Culbertson filed Objections to the Objections of Columbia.

DISCUSSION

Relevance

At ¶ 6 of its Objections, Columbia objected to the following portions of Mr. Culbertson's testimony and Culbertson Exhibit 1 as being irrelevant to the rates and service of Columbia:

- Reference to the COSO Internal Control-Integrated Framework, the GAO Green Book, the GAO Yellow Book, article VIII, section 10 of the Pennsylvania Constitution, and other auditing authorities, statutes, and regulations. Tr. 53-54, 56; Culbertson Exhibit 1, pp. 3, 11-12, 14.
- Excerpts from the Commission's 2023 Rate Comparison Report, at <https://www.puc.pa.gov/filingresources/reports/rate-comparison-reports/>. Tr. 55-56; Culbertson Exhibit 1, pp. 3-5.

- Allegations related to the Commission’s process for investigating and evaluating rate cases and improper reliance on DOT regulations, the Uniform Construction Code, the Code of Federal Regulations and FAR. Culbertson Exhibit 1, pp. 7, 9-17
- Statements made alleging over-pressurization and OSHA violation. Culbertson Exhibit 1, p. 8
- References to Federal Acquisition Regulation 15.406-2 “Certificate of Current Cost or Pricing Data,” at <https://www.acquisition.gov/far/15.406-2>. Tr. 85-87, 92-93; Culbertson Exhibit 1, pp. 13-14.
- References to George Milligan and his testimony in a prior base rate case proceeding. Tr. 88-91; Culbertson Exhibit 1, pp. 15-17; Appendix II, pp. 28-29.
- Testimony referring to Columbia Gas of Massachusetts’ past conduct and settlement with the National Transportation Safety Board. Tr. 88.
- Allegations related to the Commission’s Law Bureau’s authority to initiate investigations or prosecutions based on customer allegations. Culbertson Exhibit 1, Appendix II.
- References to FERC’s investigation procedures and link to FERC’s Enforcement Hotline at <https://www.ferc.gov/enforcement-legal/enforcement/enforcementhotline/contact-hotline-staff-anonymously>. Culbertson Exhibit 1, Appendix II, pp. 24-25.
- Tr. 91; Culbertson Exhibit 1, Appendix II, p. 26: Allegations related to a UGI Utilities, Inc., gas explosion that occurred in Lancaster, Pennsylvania, on July 2, 2017. Tr. 91; Culbertson Exhibit 1, Appendix II, p. 26.
- References to the U.S. Sentencing Commission guidelines, Chapter Eight, at <https://www.ussc.gov/guidelines/2018-guidelines-manual/2018-chapter-8>. Culbertson Exhibit 1, Appendix II, p. 27.
- References to and quotes from the U.S. Department of Justice – Criminal Division’s Evaluation of Corporate Compliance Programs, at <https://www.justice.gov/criminal/criminalfraud/page/file/937501/dl>. Culbertson Exhibit 1, Appendix II, pp. 27-28.

- Quotes from Management Directive 310.14 Amended – Capital Asset Accounting and Reporting, at https://www.oa.pa.gov/Policies/md/Documents/310_14sap.pdf. Culbertson Exhibit 1, Appendix II, p. 30.
- Reference to article regarding WorldCom, at <https://www.investopedia.com/terms/w/worldcom.asp>. Culbertson Exhibit 1, Appendix II, p. 31.

Mr. Culbertson submits that the Commission offers tips on how to participate in a public input hearing, including preparing what you are going to say beforehand; and even though it is not required, you may want to write out your statement, which can be read; that any formal testimony that is offered during the hearing will become part of the record on which the PUC will issue its final decision; and understand that parties in the case may want to ask you a question to clarify something you said. Mr. Culbertson further submits that the Commission's Press Release and other PUC Documents including PA PUC PUBLIC INPUT HEARING TIPS are representations and promises to him that his public input testimony would be part of the record of and would be considered in the Commission's final order of this rate case.

Mr. Culbertson averred that his sworn public testimony was a reaction to his negative experience and observations with Columbia Gas since 2016 and the Commission's Order of April 4, 2024. He further avers that consideration should be given to the reasonableness of Columbia Gas's existing rates, rules, and regulations and that the investigation in this proceeding should include consideration of the lawfulness, justness, and reasonableness of the Columbia Gas of Pennsylvania, Inc.'s existing rates, rules, and regulations. Mr. Culbertson also avers that Columbia has been abusive toward Mr. Culbertson.

Mr. Culbertson concluded that his opinions are admissible and relevant as the statements of an interested member of the public at a public input hearing involving a base rate request from a public utility. Mr. Culbertson further averred that Columbia took a strong position with a witness at a public input hearing before the presiding officer even started the opening statement or mentioned swearing in Mr. Culbertson as a witness. Mr. Culbertson

submits that a member of public, whether familiar or unfamiliar with testifying publicly, might have been cowed or considered the exchange to be confrontational and combative.

Mr. Culbertson submits that the primary purpose of all public input hearings is to secure the testimony of what ratepayers and interested parties, i.e., the public, think. Mr. Culbertson argued that, to limit the opportunity for an interested member of the public to tell the Commission what the witness thinks about a \$100 million base rate increase, would be to expose members of the public to intense cross examination and potentially public ridicule by a public utility, and that the end result would be the opposite of the Commission's stated intention for why public input hearings are conducted.

Mr. Culbertson averred that while some evidence is repetitive on the circumstances surrounding the natural gas explosion in Massachusetts in 2018 involving Columbia Gas of Massachusetts, Inc., Mr. Culbertson submits, those same exhibits contain statements from Columbia Gas' parent company, NiSource, about costs NiSource expected to spend or promised to spend on infrastructure and safety equipment/practices through its subsidiary, Columbia Gas of Pennsylvania, Inc.

Mr. Culbertson argues that all costs which a public utility uses to compute its base rate, including improvements to infrastructure and to safety, are relevant in a base rate proceeding. In addition, he asserts safety is always a relevant issue in a base rate proceeding. Therefore, Mr. Culbertson submits that evidence which tends to show that Columbia Gas may be obligated through its parent company to expend sums for improvements to infrastructure and safety is relevant and may well be pertinent to the discussion at hand.

Relevant evidence is that evidence which tends to establish some fact material to the case, or which tends to make a fact, which is at issue, more or less probable.¹ Generally speaking, evidence which is irrelevant or immaterial will not be admissible before the

¹ *Com. v. Scott*, 389 A.2d 79 (1978).

Commission.² In addition, evidence which is relevant should still be excluded if its probative value is outweighed by the danger there will be unfair prejudice, a confusion of the issues, misleading of the fact finder, creating undue delay, wasting time or needlessly presenting cumulative evidence.³

Pursuant to Pennsylvania Rule of Evidence § 401, evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence; and if the fact is of consequence in disposing of the action, as determined by the court in the light of reason, experience, scientific principles and the other testimony offered in the case. The evidence can be relevant even if the relevance of the proposed evidence may be dependent on evidence not yet of record.⁴

The primary purpose of public input hearings is to secure the testimony of what ratepayers and interested parties, i.e., the public, think and the public was informed at the start of the hearing that the Commission wants to hear from the public what the public thinks about the utility's request. Although some of the material presented by Mr. Culbertson, which was objected to by Columbia, involved Companies other than Columbia and materials and standards that Columbia asserts are not relevant to this proceeding, the references and materials identified in ¶ 6 of Columbia's Objections contained Mr. Culbertson's views and statements of opinion. These stated views and opinions of Mr. Culbertson appear to be relevant as the statements of an interest member of the public at a public input hearing involving a base rate request from a public utility. Moreover, Columbia had the opportunity to cross-examine Mr. Culbertson about his testimony and exhibits and will be afforded the ability to rebut this evidence. Accordingly, the objections set forth in ¶ 6 of Columbia's Objections will be denied, consistent with the ordering paragraphs below. This evidence provided through Mr. Culbertson at the public input

² 66 Pa.C.S.A. § 332(b).

³ Pa. R.E. § 403; Parr v. Ford Motor Co., 109 A.3d 682 (Pa.Super. 2014).

⁴ Pa.R.E. § 401.

hearing will remain within the hearing record. The presiding officer will determine the weight, if any, which the evidence will carry.

Hearsay

At ¶ 7 of its objections, Columbia further objects to the following portions of Mr. Culbertson's testimony and Culbertson Exhibit 1, as hearsay:

- Culbertson Exhibit 1, p. 2: Quote from website containing Senator Bob Casey's report, "Greedflation: How Corporations are Making Record Profits on the Backs of American Families," at <https://www.casey.senate.gov/greedflation>. Tr. 49-50.
- Quote from article regarding federal funding for Pennsylvania's Low-Income Home Energy Assistance Program, at https://www.media.pa.gov/pages/dhs_details.aspx?newsid=997. Tr. 50, Culbertson Exhibit 1, p. 3
- Link to "inflation calculator" at <https://data.bls.gov/cgi-bin/cpicalc.pl>. Culbertson Exhibit 1, p. 5.
- Quotes from the Comments of I&E, filed in response to the Company's Petition for Approval of its Third LongTerm Infrastructure Improvement Plan at Docket No. P-2022-3037388. Tr. 66-68; Culbertson Exhibit 1, pp. 7-8
- Link to Commission's December 21, 2023, press release, "PUC Highlights 2023 Accomplishments," at <https://www.puc.pa.gov/press-release/2023/puc-highlights-2023-accomplishments>. Culbertson Exhibit 1, p. 10.
- Uncited quote related to the Upper St. Clair School District. Culbertson Exhibit 1, p. 32.

Columbia argues that Mr. Culbertson's testimony and Culbertson Exhibit 1 contain several hearsay statements, as identified above, which should be excluded from the record, because they include out of court statements, which Mr. Culbertson seeks to offer for the truth of the matters asserted therein. Columbia submits that many of the portions of Mr. Culbertson's testimony and Culbertson Exhibit 1 identified above cite or reference statements that were not written by Mr. Culbertson, and the authors of these various statements and

materials did not testify at the public input hearing. Therefore, Columbia submits, these are out of court statements being offered for the truth of the matters asserted, which should not be admitted into the record.

Mr. Culbertson submits that the Commission offers tips on how to participate in a public input hearing, including preparing what you are going to say beforehand; and even though it is not required, you may want to write out your statement, which can be read; that any formal testimony that is offered during the hearing will become part of the record on which the PUC will issue its final decision; and understand that parties in the case may want to ask you a question to clarify something you said. Mr. Culbertson further submits that the Commission's Press Release and other PUC Documents including PA PUC PUBLIC INPUT HEARING TIPS are representations and promises to him that his public input testimony would be part of the record of and would be considered in the Commission's final order of this rate case.

Mr. Culbertson further submits that the primary purpose of all public input hearings is to secure the testimony of what ratepayers and interested parties, i.e., the public, think. Mr. Culbertson argued that, to limit the opportunity for an interested member of the public to tell the Commission what the witness thinks about a \$100 million base rate increase, would be to expose members of the public to intense cross examination and potentially public ridicule by a public utility, and that the end result would be the opposite of the Commission's stated intention for why public input hearings are conducted.

Hearsay is generally defined as a statement made by an out-of-court declarant (i.e., the declarant is not testifying at the current trial or hearing) and a party attempts to offer the out-of-court statement into evidence in order to prove the truth of the matter asserted in the out-of-court statement.⁵ Pursuant to Pa.R.E. § 802, that hearsay statement generally is not admissible. There are, however, a number of exceptions to the hearsay rule.⁶

⁵ Pa.R.E. § 801.

⁶ Pa.R.E. § 803.

By statute, administrative agencies, which are part of the executive branch of the government, are not bound by the hearsay rule.⁷ However, the Commission follows the *Walker*⁸ rule, which provides that hearsay evidence, properly objected to, is not competent evidence to support a finding of the agency. Hearsay evidence, admitted without objection, will be given its natural probative effect and may support a finding of the agency if it is corroborated by any competent evidence in the record, but no finding of fact can stand if based solely on hearsay.

There are ample Commission cases discussing this issue: *Zapatka v. Columbia Gas of Pennsylvania, Inc*, 82 PA PUC 138, 143-144 (1994); *Re Duquesne Light Company*, 57 PA PUC 313, 317-318 (1983), *Nesbit v. Vandervort* 128 Pa Super Ct 58 (1937); *Bickling v. Unemployment Compensation Board of Review* 17 Pa Cmwlt 619 (1975); *Collins v. Peoples Natural Gas Company d/b/a Dominion Peoples*, Docket No. C-20042465, entered, June 1, 2005; *Palumbo v. Equitable Gas Company*, Docket No. F-01030117, entered July 15, 2003; and *Peckman v. Pennsylvania Electric Company*, Docket No. C-20078456 (Final Order entered January 15, 2009) at 8-9.

Although the hearsay rule is not a technical rule, the courts consider the hearsay rule to be a fundamental principle of law which must be followed by an agency at those points in a hearing where facts crucial to the issue are sought to be placed on the record. *Com., State Board of Medical Education & Licensure v. Contakos*, 21 Pa. Commw. Ct. 422, 346 A.2d 850, 852 (1975); *Bledevens v. Com., State Civil Service Commission*, 11 Pa. Commw. Ct. 1, 312 A.2d 109, 111 (1973). Furthermore, hearsay evidence has been rejected by the Commission using the Walker Rule.⁹

⁷ See 2 Pa.C.S.A. §§ 505, 554.

⁸ *Walker v. Unemployment Compensation Board of Review*, 367 A.2d 366, 370 (Pa. Cmwlt. 1976).

⁹ See, e.g., *Harold J. Harris v. Columbia Gas of Pa. Inc.*, 2011 Pa. PUC LEXIS 604 (2011) (uncorroborated statements of field technicians could not be aggregated and testified to by a single witness not present on site); *In Re Application of TrailCo*, 2008 Pa. PUC LEXIS 60 (2008) (notarized statements of two non-testifying landowners contending they refused to buy property on the basis of power line location were hearsay).

Based upon a review of the objections submitted, relevant law and the evidence offered, the evidence, as specifically identified by Columbia at ¶ 7 of Columbia's objections, constitutes hearsay. No exceptions were identified by any party or the witness. Under the circumstances, the objections to this evidence will be sustained and the evidence will be stricken from the record.

Issues and Claims Previously Decided

Columbia also objects to the following portions of Mr. Culbertson's testimony and Culbertson Exhibit 1, arguing they raise issues and claims that have previously been decided by the Commission and the Commonwealth Court:

- Link to GAO Yellow Book at <https://www.gao.gov/assets/gao-21-368g.pdf>. Culbertson Exhibit 1, p. 5.
- Quotes from the Comments of I&E, filed in response to the Company's Petition for Approval of its Third LongTerm Infrastructure Improvement Plan at Docket No. P-2022-3037388. Tr. 66-68; Culbertson Exhibit 1, pp. 7-8.
- Reference to the COSO Internal Control-Integrated Framework, the GAO Green Book, the GAO Yellow Book, article VIII, section 10 of the Pennsylvania Constitution, and other auditing authorities, statutes, and regulations. Tr. 53-54, 56; Culbertson Exhibit 1, pp. 3, 11-12, 14.
- Allegations related to the safety of the Company's facilities located at 1608 McFarland Road. Culbertson Exhibit 1, pp. 16-17; Appendix II, p. 26.

Columbia argues that portions of Mr. Culbertson's testimony and Culbertson Exhibit 1 should be excluded because they raise issues previously decided by the Commission and the Commonwealth Court. Columbia asserts Mr. Culbertson cannot reargue these previously litigated issues and claims in this proceeding.

Columbia submits the Commonwealth Court has previously considered and rejected Mr. Culbertson's arguments regarding audits and investigations in his appeal of the

Company's 2021 rate case. See 2021 Rate Case Appeal, pp. 9-11. Specifically, Columbia asserts the Court determined that Mr. Culbertson's references to the GAO Yellow Book and Article VIII, Section 10 of the Pennsylvania Constitution failed to support his argument that the Commission did not properly audit or investigate Columbia. See *id.* As such, Columbia submits, Mr. Culbertson's claims regarding whether the Commission is required to conduct an audit of Columbia in accordance with various accounting principles are barred by collateral estoppel because such claims and issues were or could have been raised and ruled on in the Company's 2021 rate case proceeding.

Collateral estoppel, or issue preclusion, prevents re-litigation of an issue of fact or law between the same parties upon a different claim or demand. See *Fiore v. Commonwealth*, 508 A.2d 371, 374 (Pa. Cmwlth. 1986). The doctrine of collateral estoppel, or issue preclusion, applies where: (1) "[a]n issue decided in a prior action is identical to the one presented in a later action"; (2) "[t]he prior action resulted in a final judgment on the merits"; (3) "[t]he party against whom collateral estoppel is asserted was a party to the prior action, or is in privity with a party to the prior action"; and (4) "[t]he party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior action." *Rue v. K-Mart Corp.*, 713 A.2d 82, 84 (Pa. 1998) (emphasis added) (citations omitted).

Columbia asserts Mr. Culbertson's allegations regarding the proper auditing authorities and methods of investigation in rate cases are barred by collateral estoppel because in the Company's 2021 base rate case and the instant proceeding: (1) the issues are related to whether the Commission conducted an audit of Columbia in accordance with various accounting principles, including the GAO Yellow book and Article VIII, Section 10 of the Pennsylvania Constitution; (2) Mr. Culbertson's auditing claims were adjudicated on the merits; (3) the parties in the prior action and the instant proceeding are the same (i.e., Mr. Culbertson and Columbia); and (4) in the prior action, Mr. Culbertson had a full and fair opportunity to raise claims and litigate issues regarding whether the Commission conducted an audit of Columbia in accordance with various accounting principles. Thus, Columbia concludes Mr. Culbertson's claims and issues related to the application of various accounting principles to Columbia in the instant rate case are barred by collateral estoppel.

Columbia further asserts that Mr. Culbertson has already fully litigated his claims alleging that the Company improperly abandoned the service line at 1608 McFarland Road, Pittsburgh, Pennsylvania, at Commission Docket No. F-2017-2605797. See *Culbertson v. Columbia Gas of Pa.*, 2022 Pa. PUC LEXIS 254, Docket No. F-2017-26505797 (Order entered Aug. 25, 2022) (denying Mr. Culbertson’s Petition for Reconsideration of the Commission’s Dec. 16, 2021, Opinion and Order dismissing the Complaint) (Formal Complaint Order).

Columbia submits, pursuant to 66 Pa. C.S. § 316, Mr. Culbertson is barred from raising previously litigated allegations related to 1608 McFarland Road, Pittsburgh, Pennsylvania, by the Order entered in his previous Formal Complaint proceeding (Formal Complaint). Section 316 states, in relevant part:

Whenever the [c]ommission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review.

66 Pa. C.S. § 316.

Under Section 316 of the Public Utility Code, a complainant is prohibited from raising issues that were previously decided. See *Moore, Jr. v. PECO Energy Co.*, Docket No. C2012-2309932, 2012 Pa. PUC LEXIS 1251, at *12 (Initial Decision dated July 18, 2019), adopted without modification, Docket No. C-2012-2309932 (Order entered Oct. 24, 2012); see also *Denlinger v. PPL Elec. Utils. Corp.*, Docket No. C-2019-3014786 (Initial Decision issued Feb. 24, 2020), adopted without modification, Docket No. C-2019-3014786 (Order entered May 21, 2020). Section 316 precludes a collateral attack upon a Commission order which has not been reversed upon appeal. See *Lehigh Valley Power Comm. v. Pa. PUC*, 563 A.2d 548, 556 (Pa. Cmwlth. 1989) (citing 66 Pa. C.S. § 316). Columbia submits the Order rejecting Mr. Culbertson’s allegations relating to 1608 McFarland Road, Pittsburgh, Pennsylvania, has not been set aside, annulled, or otherwise overturned. See Formal Complaint Order. As such,

Columbia concludes, Mr. Culbertson's arguments related to 1608 McFarland Road should be excluded from the record.

Columbia also argues that Mr. Culbertson's arguments related to 1608 McFarland Road are barred by the doctrine of collateral estoppel, asserting that in the Formal Complaint and the instant proceeding: (1) the issues are related to the Company's abandonment of facilities at 1608 McFarland Road and the safety of the Company's facilities at that location; (2) the Formal Complaint was adjudicated on the merits; (3) the parties in the prior action and the instant proceeding are the same (i.e., Mr. Culbertson and Columbia); and (4) in the prior action, Mr. Culbertson had a full and fair opportunity to raise claims and litigate issues regarding the Company's abandonment of facilities at 1608 McFarland Road and the safety of the Company's facilities at that location.

Columbia also argues Mr. Culbertson's issues and arguments related to the comments of I&E filed in response to the Company's Petition for Approval of its Third Long-Term Infrastructure Improvement Plan (Third LTIIIP) at Docket No. P-2022-3037388 are similarly estopped. See Petition of Columbia Gas of Pennsylvania, Inc. for Approval of its Third Long-Term Infrastructure Improvement Plan, Docket No. P-2022-3037388 (Order entered April 20, 2023). Columbia submits Mr. Culbertson participated in the Company's Third LTIIIP proceeding by submitting three rounds of comments at the Third LTIIIP docket and is currently appealing the Commission's Final Order in that proceeding before the Commonwealth Court at Docket No. 506 CD 2023. As such, Columbia asserts Mr. Culbertson cannot raise his claims related to the Company's Third LTIIIP in the instant proceeding while his appeal is pending before the Commonwealth Court.

Columbia requests that the Commission exclude the portions of Mr. Culbertson's testimony and Culbertson Exhibit 1 specifically identified in Paragraph 8 of its objections, from the record in this proceeding.

Mr. Culbertson averred he is a customer of and owner of real property serviced by Columbia. Mr. Culbertson submits that the Commission offers tips on how to participate in a

public input hearing, including preparing what you are going to say beforehand; and even though it is not required, you may want to write out your statement, which can be read; that any formal testimony that is offered during the hearing will become part of the record on which the PUC will issue its final decision. Mr. Culbertson averred that his sworn public testimony was a reaction to his negative experience and observations with Columbia Gas since 2016 and the Commission's Order of April 4, 2024. He further avers that consideration should be given to the reasonableness of Columbia Gas's existing rates, rules, and regulations and that the investigation in this proceeding should include consideration of the lawfulness, justness, and reasonableness of the Columbia Gas of Pennsylvania, Inc.'s existing rates, rules, and regulations.

Mr. Culbertson averred that his opinions are admissible and relevant as the statements of an interested member of the public at a public input hearing involving a base rate request from a public utility.

Mr. Culbertson submits that the primary purpose of all public input hearings is to secure the testimony of what ratepayers and interested parties, i.e., the public, think. Mr. Culbertson argued that, to limit the opportunity for an interested member of the public to tell the Commission what the witness thinks about a \$100 million base rate increase, would be to expose members of the public to intense cross examination and potentially public ridicule by a public utility, and that the end result would be the opposite of the Commission's stated intention for why public input hearings are conducted.

Mr. Culbertson argues that all costs which a public utility uses to compute its base rate, including improvements to infrastructure and to safety, are relevant in a base rate proceeding. In addition, he asserts safety is always a relevant issue in a base rate proceeding. Therefore, Mr. Culbertson submits that evidence which tends to show that Columbia Gas may be obligated through its parent company to expend sums for improvements to infrastructure and safety is relevant and may well be pertinent to the discussion at hand.

52 Pa. Code § 69.321 (e) provides that on-the-record testimony provided at a public input hearing, to the extent it is relevant, material, and competent, will be considered as evidence by the presiding officer and the Commission, subject to the customary rules of procedure and evidence.

With regard to the objection to the link to GAO Yellow Book at <https://www.gao.gov/assets/gao-21-368g.pdf>, at Culbertson Exhibit 1, p. 5, Mr. Culbertson testified, in part that the applicable auditing standard is the GAO Yellow Book and that the required audits in the manner required did not occur. Mr. Culbertson provided testimony regarding this issue as a lay witness at a public input hearing. These stated views and opinions of Mr. Culbertson appear to be relevant as the statements of an interest member of the public at a public input hearing involving a base rate request from a public utility. Moreover, Columbia had the opportunity to cross-examine Mr. Culbertson about his testimony and exhibits and will be afforded the ability to rebut this evidence. Accordingly, this objection set forth in ¶ 8 of Columbia's Objections will be denied, consistent with the ordering paragraphs below. This evidence provided through Mr. Culbertson at the public input hearing will remain within the hearing record. The presiding officer will determine the weight, if any, which the evidence will carry.

Columbia objected to the quotes from the Comments of I&E, filed in response to the Company's Petition for Approval of its Third LongTerm Infrastructure Improvement Plan at Docket No. P-2022-3037388, at Tr. 66-68; Culbertson Exhibit 1, pp. 7-8. Columbia argues Mr. Culbertson's issues and arguments related to the comments of I&E filed in response to the Company's Petition for Approval of its Third Long-Term Infrastructure Improvement Plan (Third LTIIP) at Docket No. P-2022-3037388 are estopped. See Petition of Columbia Gas of Pennsylvania, Inc. for Approval of its Third Long-Term Infrastructure Improvement Plan, Docket No. P-2022-3037388 (Order entered April 20, 2023). Columbia submits Mr. Culbertson participated in the Company's Third LTIIP proceeding by submitting three rounds of comments at the Third LTIIP docket and is currently appealing the Commission's Final Order in that proceeding before the Commonwealth Court at Docket No. 506 CD 2023. Columbia argues Mr. Culbertson cannot raise his claims related to the Company's Third LTIIP in the instant

proceeding while his appeal is pending before the Commonwealth Court. Mr. Culbertson provided testimony regarding this issue as a lay witness at a public input hearing. He is not a party to the proceeding and did not file a formal complaint regarding this issue in the instant proceeding. To the extent that this evidence is relevant to the instant proceeding it will be considered and given the appropriate weight. This evidence provided through Mr. Culbertson at the public input hearing will remain within the hearing record and Columbia will be afforded the opportunity to rebut this evidence. The presiding officer will determine the weight, if any, which the evidence will carry and the objection to this evidence will be denied.

Columbia also objects to the reference to the COSO Internal Control-Integrated Framework, the GAO Green Book, the GAO Yellow Book, article VIII, section 10 of the Pennsylvania Constitution, and other auditing authorities, statutes, and regulations at Tr. 53-54, 56; Culbertson Exhibit 1, pp. 3, 11-12, 14. Mr. Culbertson provided testimony regarding this issue as a lay witness at a public input hearing. Columbia asserts the Commission nor Columbia are governed by the provisions cited by Mr. Culbertson under the circumstances. To the extent that this evidence is relevant to the instant proceeding it will be considered and given the appropriate weight. This evidence provided through Mr. Culbertson at the public input hearing will remain within the hearing record and Columbia will be afforded the opportunity to rebut this evidence. The presiding officer will determine the weight, if any, which the evidence will carry and the objection to this evidence will be denied.

Columbia also objected to the allegations related to the safety of the Company's facilities located at 1608 McFarland Road, at Culbertson Exhibit 1, pp. 16-17; Appendix II, p. 26. Mr. Culbertson's testimony relates to an alleged unsafe situation involving a curb valve and meter of Columbia at 1608 McFarland Road.

Columbia argues under Section 316 of the Public Utility Code, a complainant is prohibited from raising issues that were previously decided. See *Moore, Jr. v. PECO Energy Co.*, Docket No. C2012-2309932, 2012 Pa. PUC LEXIS 1251, at *12 (Initial Decision dated July 18, 2019), adopted without modification, Docket No. C-2012-2309932 (Order entered Oct. 24, 2012). Columbia submits an Order rejecting Mr. Culbertson's allegations relating to 1608 McFarland Road, Pittsburgh, Pennsylvania, has not been set aside, annulled, or otherwise

overturned. As such, Columbia concludes, Mr. Culbertson's arguments related to 1608 McFarland Road should be excluded from the record. Columbia also argues that Mr. Culbertson's arguments related to 1608 McFarland Road are barred by the doctrine of collateral estoppel and that Mr. Culbertson had a full and fair opportunity to raise claims and litigate issues regarding the Company's abandonment of facilities at 1608 McFarland Road and the safety of the Company's facilities at that location.

Mr. Culbertson provided testimony regarding this issue as a lay witness at a public input hearing. He is not a party to the proceeding and did not file a formal complaint regarding this issue in the instant proceeding. In addition, Mr. Culbertson was available for cross-examination regarding his allegations regarding safety of facilities and /or service provided by Columbia. To the extent that this evidence is relevant to the instant proceeding it will be considered and given the appropriate weight. Columbia will be afforded an opportunity to rebut this evidence. Accordingly, the objection to this evidence will be denied.

Accordingly, the Objections of Columbia Gas set forth in Paragraphs 6 and 8 of Columbia's Objections will be denied in the Ordering Paragraphs below. The hearsay Objections of Columbia Gas set forth in Paragraph 7 of Columbia's Objections will be sustained. The evidence provided through Mr. Culbertson at the public input hearing identified in Paragraphs 6 and 8 of Columbia's Objections will be admitted to the hearing record. The presiding officer will determine the weight, if any, which the evidence will carry and Columbia will be afforded an opportunity to rebut the evidence. The evidence provided through Mr. Culbertson at the public input hearing identified in Paragraph 7 of Columbia's Objections will be sustained and the hearsay evidence will be stricken from the hearing record.

THEREFORE,

IT IS ORDERED:

1. That, pursuant to 52 Pa.Code § 5.103, § 5.412(f) and § 5.402, the Objections set forth at Paragraph 6 of Columbia Gas of Pennsylvania, Inc. to the Testimony and

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