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File #: 193132

July 22, 2022

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 PUC v. Columbia Gas of Pennsylvania, Inc.
Docket Nos. R-2022-3031211, et al.**

Dear Secretary Chiavetta:

On behalf of Columbia Gas of Pennsylvania, Inc., attached for filing is the Motion to Compel Answers to Interrogatories and Requests for Production of Documents Propounded By Columbia Gas of Pennsylvania, Inc. to RESA/NGS Parties Set IV, Question 1(b) in the above-referenced proceedings. Copies will be provided per the attached Certificate of Service.

Respectfully submitted,



Lindsay A. Berkstresser

LAB/kl
Attachment

cc: Honorable Christopher P. Pell (w/att.)
Honorable John M. Coogan (w/att.)
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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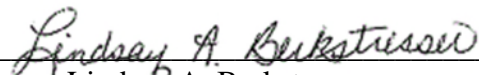
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Date: July 22, 2022


Lindsay A. Berkstresser

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2022-3031211
Office of Small Business Advocate	:	C-2022-3031632
Office of Consumer Advocate	:	C-2022-3031767
Pennsylvania State University	:	C-2022-3031957
Columbia Industrial Intervenors	:	C-2022-3032178
Jose A. Serrano	:	C-2022-3031821
Constance Wile	:	C-2022-3031749
Richard C. Culbertson	:	C-2022-3032203
	:	
v.	:	
	:	
Columbia Gas of Pennsylvania, Inc	:	

**MOTION TO COMPEL ANSWERS TO INTERROGATORIES AND REQUESTS
FOR PRODUCTION OF DOCUMENTS PROPOUNDED BY
COLUMBIA GAS OF PENNSYLVANIA, INC. –
RESA/NGS PARTIES SET IV, QUESTION 1(b)**

TO ADMINISTRATIVE LAW JUDGES CHRISTOPHER P. PELL AND JOHN COOGAN:

As explained herein, Columbia Gas of Pennsylvania, Inc. (“Columbia”) hereby files, pursuant to 52 Pa. Code § 5.342, this Motion to Compel Answers to its Set IV Interrogatories, Question 1(b) directed to the Retail Energy Supply Association (“RESA”) and Shipley Choice, LLC, and NRG Energy, Inc. (collectively, “RESA/NGS Parties”). The Motion to Compel requests that Administrative Law Judges Christopher P. Pell and John Coogan direct the RESA/NGS Parties to provide a full and complete response to Set IV, Question 1(b), as modified by Columbia, and as required by 52 Pa. Code § 5.342(a)(4). In support of its Motion, Columbia states as follows:

I. BACKGROUND

On July 14, 2022, Columbia served its Set IV Interrogatories and Requests for Production of Documents on the RESA/NGS Parties. On July 19, 2022, the RESA/NGS Parties served their formal objections to Set IV, Question 1(b). A true and correct copy of the RESA/NGS Parties’

objections is attached hereto as Appendix A. To date, counsel for Columbia and counsel for the RESA/NGS Parties have been unable to resolve the objections to Set IV, Question 1(b). In the spirit of compromise, Columbia notes that it is willing to limit the request in Set IV, Question 1(b) to information for the past five years.

II. LEGAL STANDARD

Pursuant to Section 5.321(c) of the Commission's regulations, a party may obtain discovery of any matter not privileged that is relevant to a pending proceeding and that is reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). Parties may also request documents "which are in the possession, custody or control of the party upon whom the request is served." 52 Pa. Code § 5.349(a)(1). The Commission's regulations prohibit discovery that would cause unreasonable burden, expense, or delay, or that would cause the answering party to undertake an unreasonable investigation. 52 Pa. Code § 5.361(a)(2), (4). However, the Commission generally provides wide latitude in discovery matters. *See Pa. P.U.C. v. The Peoples Natural Gas Co.*, 62 Pa. P.U.C. 56 (Order Entered Aug. 26, 1986); *Pa. P.U.C. v. Equitable Gas Co.*, 61 Pa. P.U.C. 468 (Order Entered May 16, 1986).

III. THE RESA/NGS PARTIES SHOULD BE COMPELLED TO PROVIDE A FULL AND COMPLETE RESPONSE TO SET IV, QUESTION 1(b), AS MODIFIED BY COLUMBIA.

A. SET IV, QUESTION 1(b) SEEKS INFORMATION THAT IS RELEVANT TO THE ISSUES AND ARGUMENTS IN THIS PROCEEDING.

The information requested in Set IV, Question 1(b) pertains to the RESA/NGS Parties' proposal that Columbia modify its existing practice and confirm all five North American Energy Standards Board ("NAESB") nomination cycles. See RESA/NGS Parties' St. No. 2, pp. 2-5. Specifically, Question 1 provides:

Columbia to RESA/NGS Parties-IV-1:

- a) Does RESA/NGS Parties use NAESB agreements?
- b) If yes, what percentage of RESA/NGS Parties agreements are NAESB agreements?

The RESA/NGS Parties argue in their objections that Question 1(b) is irrelevant because the RESA/NGS Parties did not present testimony specifically concerning their NAESB contracts. See RESA/NGS Parties' Objections, p. 3. The RESA/NGS Parties' objection is contrary to the standard for relevant discovery. The Commission's regulations provide as follows with respect to the scope of discovery:

(c) *Scope.* Subject to this subchapter, a party may obtain discovery regarding any matter, not privileged, **which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things** and the identity and location of persons having knowledge of a discoverable matter. 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.

52 Pa. Code § 5.321(c) (emphasis added).

There is no requirement that an answering party must present information in testimony before that information can be permissible for discovery purposes. Although the RESA/NGS Parties did not present testimony specifically regarding their use of NAESB contracts, they did allege in direct testimony that under Columbia's existing practice, suppliers lack the knowledge that they need regarding a counter-party's nonperformance, which can lead to penalties for the supplier. See RESA/NGS Parties' St. No. 2, pp. 2-5. Columbia presented rebuttal testimony on the issue of NAESB contracts in response to the allegations raised in the RESA/NGS Parties' direct testimony. Columbia's rebuttal testimony explains how the terms of the NAESB base contracts

for the sale and purchase of natural gas address the RESA/NGS Parties' concerns. See Columbia St. No. 19-R, pp. 2-4.

Question 1(b) seeks to understand what portion of the RESA/NGS Parties' contracts are NAESB contracts, which is relevant to Columbia's argument in response to the RESA/NGS Parties' proposal. Information that pertains to the Company's response to the RESA/NGS Parties' direct testimony and that is needed to present Columbia's defense against the RESA/NGS Parties' claims is relevant for discovery purposes. Therefore, Question 1(b) is relevant to this proceeding because it relates to Columbia's argument in response to the RESA/NGS Parties' proposal, and the RESA/NGS Parties' should be ordered to provide a response. Moreover, the RESA/NGS Parties served a discovery request inquiring about Columbia's knowledge of suppliers' use of NAESB contracts. Columbia responded to that question on July 19, 2022. The RESA/NGS Parties should not be permitted to ask questions about a topic and then claim that the information is irrelevant when Columbia asks discovery seeking information on the same topic. Columbia is entitled to seek discovery on the same topic that it has answered requests from the NGS Parties/RESA.

B. SET IV, QUESTION 1(b), AS MODIFIED BY COLUMBIA, IS NOT UNDULY BURDENSOME.

The RESA/NGS Parties claim that Question 1(b) would be unduly burdensome and require an unreasonable investigation because they would need to conduct a "study" of their contracts. See RESA/NGS Parties' Objections, p. 3. The RESA/NGS Parties also argued that the question requests the information for an undisclosed amount of time. See RESA/NGS Parties' Objections, p. 3. Columbia notes that it is willing to limit the request to the past five years. With this modification that limits the scope of the question to the past five years, the request is not unduly burdensome or unreasonable. Moreover, Columbia is not asking for any level of detail regarding

the contracts, nor is it asking for the contract terms or copies of the contracts. The questions simply asks what portion of the RESA/NGS Parties' contracts are NAESB contracts. Columbia disagrees that the RESA/NGS Parties would have to undertake a "study" to answer this question. Information regarding the RESA/NGS Parties' own contracts should be in their possession and readily available to them and would not require an unreasonable investigation. Nevertheless, to the extent that the question does require a study, such a request is permissible in rate proceedings. See 52 Pa. Code § 5.361(b), which provides:

(b) In rate proceedings, discovery is not limited under subsection (a) solely because the discovery request requires the compilation of data or information which the answering party does not maintain in the format requested, in the normal course of business, or because the discovery request requires that the answering party make a special study or analysis, if the study or analysis cannot reasonably be conducted by the party making the request.

C. SET IV, QUESTION 1(b) IS NOT HARASSING OR RETALIATORY.

The RESA/NGS Parties claim that Columbia's Set IV discovery is harassing and retaliatory because it was served after RESA/NGS Parties' discovery requests were served on the same topic. See RESA/NGS Parties' Objections, p. 3. The RESA/NGS Parties' assumptions regarding the purpose of Columbia's Set IV discovery are incorrect. First, it is common for parties to serve discovery on a topic after an opposing party has served discovery on the same topic because both parties are addressing the same issue. Second, Columbia's Set IV interrogatories are directly related to an issue raised by the RESA/NGS Parties in this case and were sought in good faith. Parties have a right to discovery that is permissible under the Commission's regulations. Set IV, Question 1(b) complies with the Commission's discovery regulations, and the RESA/NGS Parties should not be able to avoid answering the question because of their mistaken belief about

Columbia's purpose for asking the question. There is nothing improper, harassing or retaliatory about Set IV, Question 1(b).

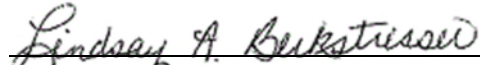
IV. CONCLUSION

WHEREFORE, for the foregoing reasons, Columbia Gas of Pennsylvania, Inc. respectfully requests that Administrative Law Judges Christopher P. Pell and John Coogan grant this Motion to Compel and order the RESA/NGS Parties to fully answer Columbia Set IV, Question 1(b) as modified by Columbia.

Respectfully submitted,

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