**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 :

**PREHEARING ORDER #8**

On March 18, 2022, Columbia Gas of Pennsylvania, Inc. (Columbia or Respondent), filed Supplement No. 337 to Tariff Gas Pa. P.U.C. No. 9 to become effective

May 17, 2022, containing proposed changes in rates, rules, and regulations calculated to produce $82.2 million in additional annualrevenues. Columbia’s filing is docketed at R-2022-3031211.

On March 22, 2022, Erika L. McLain, Esq., entered a Notice of Appearance at docket number R-2022-3031211 on behalf of the Commission’s Bureau of Investigation and Enforcement (I&E).

On March 28, 2022, the Office of Small Business Advocate (OSBA) filed a Verification, Public Statement, a Notice of Appearance on behalf of Steven C. Gray, Esq., and a formal Complaint to the proposed rate increase at docket number R-2022-3031211. The Complaint was docketed at C-2022-3031632.

On April 1, 2022, Jose A. Serrano filed a formal Complaint to the proposed rate increase at docket number R-2022-3031211. The Complaint was docketed at C-2022-3031821.

On April 4, 2022, Constance Wile filed a formal Complaint to the proposed rate increase at docket number R-2022-3031211. The Complaint was docketed at C-2022-3031749.

On April 5, 2022, the Office of Consumer Advocate (OCA) filed a Public Statement, a Notice of Appearance on behalf of Aron Beatty, Esq., Barrett C. Sheridan, Esq., Harrison W. Breitman, Esq., and Lauren E. Guerra, Esq., and a formal Complaint to the proposed rate increase at docket number R-2022-3031211. The Complaint was docketed at C-2022-3031767.

On April 8, 2022, the Pennsylvania Weatherization Providers Task Force, Inc. (Task Force) filed a Petition to Intervene at docket number R-2022-3031211.

On April 11, 2022, the Retail Energy Supply Association, Shipley Choice, LLC, and NRG Energy, Inc. (RESA/NGS Parties) filed a Petition to Intervene at docket number R-2022-3031211.

On April 12, 2022, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) filed a Petition to Intervene at docket number R-2022-3031211.

By Order entered on April 14, 2022, the Pennsylvania Public Utility Commission (Commission) instituted an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase at docket number R-2022-3031211. Pursuant to Section 1308(d) of the Public Utility Code, 66 Pa. C.S.A. § 1308(d), Supplement No. 337 to Tariff Gas Pa. P.U.C. No. 9 was suspended by operation of law until December 17, 2022, unless permitted by Commission Order to become effective at an earlier date. In addition, the Commission ordered that the investigation include consideration of the lawfulness, justness, and reasonableness of Columbia’s existing rates, rules, and regulations. The matter was assigned to the Office of Administrative Law Judge for the prompt scheduling of hearings culminating in the issuance of a Recommended Decision.

In accordance with the Commission’s April 14, 2022 Order, the matter at docket number R-2022-3031211 was assigned to Deputy Chief Administrative Law Judge Christopher P. Pell.

On April 15, 2022, the Pennsylvania State University (PSU) filed a formal Complaint to the proposed rate increase at docket number R-2022-3031211. The Complaint was docketed at C-2022-3031957.

On April 26, 2022, Columbia filed Tariff Supplement No. 343 to Tariff Gas Pa PUC No. 9 (Green Path Rider Tariff Filing), which proposes to add the Green Path Rider to Columbia’s Tariff. That same day, Columbia filed its Motion to Consolidate Columbia Gas of Pennsylvania Inc.’s Proposed Tariff Modifications for Inclusion of the Green Path Rider with the Base Rate Case Filed Pursuant to 66 Pa.C.S. § 1308 at Docket No. R-2022-3031211 (Motion to Consolidate). Tariff Supplement No. 343 to Tariff Gas Pa PUC No. 9 was docketed at R-2022-3032167.

On April 27, 2022, the Columbia Industrial Intervenors (CII) filed a formal Complaint to the proposed rate increase at docket number R-2022-3031211. The Complaint was docketed at C-2022-3032178.

Also on April 27, 2022, The Natural Resources Defense Council (NRDC) filed a Petition to Intervene at docket number R-2022-3031211.

On April 28, 2022, Richard C. Culbertson filed a formal Complaint to the proposed rate increase at docket number R-2022-3031211. The Complaint was docketed at C-2022-3032203.

A Call-in Telephonic Prehearing Conference for the proceeding at docket number R-2022-3031211 was held on April 29, 2022. Counsel for Columbia, I&E, OCA, OSBA, PSU, the Pennsylvania Weatherization Provider’s Task Force, Inc., RESA/NGS Parties, CAUSE-PA, NRDC, CII, and Richard C. Culbertson participated.

On May 2, 2022, Administrative Law Judge John Coogan was assigned to co-preside at the proceeding docketed at R-2022-3031211.

On May 2, 2022, Richard C. Culbertson filed his Motion to Suspend Columbia Gas of Pennsylvania Rate Case Hearings, Docket No. R-2022-3031211, Until Ordered Investigations, and Pennsylvania Constitutionally Required and Pennsylvania Statutionally Required Financial and Performance Audits Have Been Diligently Planned, Performed and Completed by a Competent, Independent and Experienced Audit Firm that Can Provide the Status – Material Weaknesses, Significant Deficiencies and a Level of Assurance of Columbia’s Internal Controls in the Areas of - Effective and Efficient Operations – Safeguarding Assets, Reliable Reporting of Financials and Non-Financials and Compliance with Laws, Regulations, Standards, Tariff and Internal Policy (Motion to Suspend) at docket number R-2022-3031211.

On May 3, 2022, we issued Prehearing Order #1 for the proceeding at docket number R-2022-3031211, granting the Petitions to Intervene of the Pennsylvania Weatherization Task Force, Inc., the RESA/NGS Parties and CAUSE-PA; setting May 6, 2022 as the date by which Columbia must file its Answer to the Petition to Intervene of NRDC; and setting

May 9, 2022 as the date by which OCA and CAUSE-PA must file any objections to Columbia Gas’ Motion to Consolidate. Additionally, a schedule for the submission of pre-served testimony was set and evidentiary hearings were scheduled for August 2, 3, and 4, 2022.

On May 6, 2022, Columbia filed an Answer to the Petition to Intervene of NRDC at docket number R-2022-3031211, stating they did not oppose the intervention of NRDC.

On May 6, 2022, Columbia filed an Answer and New Matter to the Complaint of Richard C. Culbertson at docket number R-2022-3031211.

On May 6, 2022, Columbia filed a Motion for Protective Order at docket number R-2022-3031211.

On May 9, 2022, OCA filed an Answer in Opposition to Columbia’s Motion to Consolidate.

On May 11, 2022, we issued Prehearing Order #2 granting Columbia’s Motion for Protective Order at docket number R-2022-3031211.

By Order dated May 13, 2022, we denied Columbia’s Motion to Consolidate.

Also on May 13, 2022, Columbia filed its Answer of Columbia Gas of Pennsylvania, Inc. to Richard C. Culbertson’s Motion to Suspend Rate Case Hearings.

By Prehearing Order #3 dated May 16, 2022, we denied Mr. Culbertson’s Motion to Suspend.

By Prehearing Order #4 dated May 17, 2022, we granted NRDC’s Petition to Intervene.

On May 31, 2022, a telephonic Public Input Hearing was held at 6:00 p.m. One person registered to provide testimony during that Public Input Hearing but that person failed to call in as scheduled.

On June 1, 2022, a second telephonic Public Input Hearing was held at 6:00 p.m. Two people registered to provide testimony during this Public Input Hearing. Both people called in and provided sworn testimony.

By Prehearing Order #5 dated June 8, 2022, we granted NRDC’s Motion for Admission Pro Hac Vice, admitting John A. Heer, Esq. to represent NRDC in this proceeding.

On June 14, 2022, Richard C. Culbertson filed a motion he captioned as follows:

Motion to Initiate a Special Investigation of Columbia Gas of Pennsylvania Inc. Regarding the Content of Sworn Testimony of XXXXXXX, a Columbia Gas of Pennsylvania Inc. Employee. He Provided Sworn Public Testimony of Columbia’s Practices That May Be Illegal and are Relivant (sic) to this Rate Case. XXXXXXXX Was a Credible Witness Having Access to Columbia’s Operations Over Years. The Purpose of this Special Investigation is to Confirm and Quantify the Financial Imact (sic) on Columbia’s Rate Base as well as to Confirm the Quality of Work and Inspection of Work of Columbia’s Contractors. This Planned, Conducted, Completed and Reported Investigation Must Be Performed in Accordance with Generally Accepted Audit Standards as well as Investigative Standards. This Audit and Investigation Must be Performed Diligently by a Competent and Independent External Audit and Investigative Firm Having Full Access to Relevant Columbia’s and Parent’s Operations, Books and Records, and Employees.

(Motion to Initiate a Special Investigation). Although Mr. Culbertson did not endorse his Motion to Initiate a Special Investigation with a notice to plead as is required by 52 Pa.Code § 5.103(b), we instructed the active parties that any response to Mr. Culbertson’s Motion to Initiate a Special Investigation was due by Tuesday, June 21, 2022.

On June 21, 2022, I&E and Columbia filed separate replies to Mr. Culbertson’s Motion to Initiate a Special Investigation.

By Prehearing Order #6 dated June 24, 2022, we denied Mr. Culbertson’s Motion to Initiate a Special Investigation.

On July 14, 2022, Columbia served its Set IV interrogatories on the RESA/NGS Parties.

On July 19, 2022, the RESA/NGS Parties served their formal objections to Question 1(b) of Columbia’s Set IV interrogatories.

On July 22, 2022, Columbia filed a Motion to Compel the RESA/NGS Parties’ response to its Set IV, Question 1(b) (Motion to Compel).

On July 25, 2022, the RESA/NGS Parties filed its Answer to Columbia’s Motion to Compel. The RESA/NGS Parties aver that Columbia’s Set IV, Question 1(b): is not relevant; is burdensome, even with Columbia’s proposed modification; and appears to have been made to harass or retaliate.

In accordance with the Prehearing Order issued by the undersigned on May 3, 2022, Motions to Compel are due within three days of service of written objections.[[1]](#footnote-1) The RESA/NGS Parties served their formal objections on July 19, 2022. Therefore, Columbia’s Motion to Compel was timely filed on July 22, 2022.

For the reasons stated below, Columbia’s Motion to Compel is granted in its entirety.

DISCUSSION

Section 5.321(c) of the Commission’s Rules of Administrative Practice and Procedure, 52 Pa.Code § 5.321(c), specifically provides that “a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.” Discovery is permitted regardless of whether the information sought “relates to the claim or defense of the party seeking discovery or to the claim or defense of another party or participant.” *Id*. Information may be discoverable, even if it would be inadmissible at a hearing. “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.” *Id*. Consistently, the Commission has allowed participants wide latitude in discovery matters. *Pa. P.U.C. v. The Peoples Natural Gas Company*, 62 Pa. PUC 56 (August 26, 1986); and *Pa. P.U.C. v. Equitable Gas Company*, 61 Pa. PUC 468 (May 16, 1986).

The Commission’s regulations place limitations on the scope of discovery. Discovery that would cause unreasonable burden or expense or require an unreasonable investigation by a party is not permitted. 52 Pa.Code § 5.361(a)(2), (4). “The law is [ ] clear that the Commission has the right to limit discovery that would place an unreasonable burden upon a participant in litigation*.*” *Application of Newtown Artesian Water Company and Indian Rock Water Company*, Docket No. A-212070, 1990 Pa. PUC LEXIS 83 (June 20, 1990) *citing* *City of Pittsburgh v. Pa. PUC*, 526 A.2d 1243, 1249-50 (Pa. Cmwlth. 1987).

Question 1(b) of Columbia’s Set IV interrogatories directed to the RESA/NGS Parties requests that the RESA/NGS Parties answer what percentage of its agreements are North American Energy Standards Board (“NAESB”) agreements. Columbia avers its discovery request is relevant because 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 presented in RESA/NGS Parties’ testimony. Additionally, Columbia asserts its request is not unduly burdensome or unreasonable because they are willing to limit the scope of the question to the past five years. Columbia also disagrees that the RESA/NGS Parties would have to undertake a study to answer this question. However, Columbia asserts if such a study is required, it is permissible in rate proceedings per 52 Pa. Code §5.361(b).[[2]](#footnote-2)

The RESA/NGS Parties’ Answer to the Motion to Compel argues that Columbia’s Set IV, Question 1(b) is irrelevant because knowing the percentage of a supplier’s contracts on the NAESB form as opposed to some other has nothing to do with confirmations. The RESA/NGS Parties assert that the request is burdensome because at least one of the parties that would respond has multiple entities with licenses in multiple jurisdictions. Lastly, the RESA/NGS Parties claim Columbia’s Set IV, Question 1(b) is motivated by retaliation after the RESA/NGS Parties made a request to Columbia regarding NAESB contracts.

We are not persuaded by the RESA/NGS Parties’ objections. We agree with Columbia that its discovery request is relevant to this proceeding. Specifically, after reviewing the relevant testimony, we find that the discovery request is relevant to the RESA/NGS Parties’ testimony and the recommendations expressed therein, as well as Columbia’s response to the RESA/NGS Parties’ testimony. Although Columbia may have first raised the issue of NAESB contracts, that does not bar them from seeking discovery regarding this issue. As noted above, the Commission allows wide latitude in discovery, and Commission regulations specifically state that discovery may relate to the claim or defense of the party seeking discovery (here, Columbia). Additionally, the RESA/NGS Parties’ assertion of irrelevance is undermined by their admission that they, too, have asked Columbia for discovery regarding NAESB contracts. Also, in its Answer, the RESA/NGS Parties state that they agreed to answer the question on whether the RESA/NGS Parties use NAESB contracts. If the RESA/NGS Parties were prepared to answer this question, it’s unclear why a similar question, as asked in the form posed by Columbia, is irrelevant.

We are also not persuaded that Columbia’s request is burdensome. As Columbia argues, and the RESA/NGS Parties acknowledge, Commission regulations do not limit discovery in a rate proceeding because the request requires the compilation of data or information. 52 Pa. Code § 5.361(b). Additionally, Columbia has agreed to limit its request to five years. Although the RESA/NGS Parties assert that the request is burdensome because at least one of the parties that would respond has multiple entities with licenses in multiple jurisdictions, it is not clear from the objections why undertaking research into multiple entities in multiple jurisdictions makes Columbia’s request burdensome.

Lastly, we are not persuaded by the RESA/NGS Parties’ assertion that Columbia’s request is retaliatory. As discussed above, we find that Columbia’s request is relevant, and therefore we do not see anything improper in Columbia asking this interrogatory to the RESA/NGS Parties. Therefore, Columbia’s Motion to Compel is granted and the RESA/NGS Parties are directed to answer Question 1(b) of Columbia’s Set IV interrogatories by July 29, 2022.

THEREFORE,

IT IS ORDERED:

1. That Columbia’s Motion to Compel the RESA/NGS Parties to answer Question 1(b) of Columbia’s Set IV interrogatories is granted.
2. The RESA/NGS Parties are directed to answer Question 1(b) of Columbia’s Set IV interrogatories by July 29, 2022.

Date: July 27, 2022 /s/

Christopher P. Pell

Deputy Chief Administrative Law Judge

/s/

John Coogan

Administrative Law Judge

Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.

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1. Specifically, this Prehearing Order states “Motions to dismiss objections and/or direct the answering of interrogatories shall be filed within three (3) calendar days of service of such motions.” This modification, which was proposed by the OCA and adopted during the prehearing conference without objection from any party, is more correctly stated as proposed by I&E in its prehearing memo: “Motions to dismiss objections and/or direct the answering of interrogatories shall be filed within three (3) calendar days of service of written objections." (emphasis ours). [↑](#footnote-ref-1)
2. 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. 52 Pa. Code §5.361(b) [↑](#footnote-ref-2)