



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

May 5, 2016

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission, Bureau of Investigation
and Enforcement v. Columbia Gas of Pennsylvania, Inc.
Docket No. M-2016- 2378672

Dear Secretary Chiavetta:

Enclosed for filing is the Settlement Agreement and Statements in Support of the Settlement Agreement relative to the above-referenced matter. Copies have been served on the parties of record in accordance with the attached Certificate of Service.

Should you have any questions, please feel free to contact me.

Sincerely,

Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

Enclosure

cc: As per Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement :

v. :

Docket No. M-2016-2378672

Columbia Gas of Pennsylvania, Inc. :

**JOINT PETITION FOR APPROVAL
OF SETTLEMENT AGREEMENT**

Pursuant to 52 Pa. Code § 69.1201, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement (I&E) and Columbia Gas of Pennsylvania, Inc. (Columbia or the Company) (hereinafter referred to collectively as "Parties") hereby submit this Joint Petition for Settlement (Settlement Agreement) to resolve all issues related to the I&E informal investigations of two incidents on Columbia's system associated with the Company's infrastructure replacement projects in Coraopolis, Allegheny County, and Wampum, Lawrence County, Pennsylvania, as consolidated herein. As part of this Settlement Agreement, the Parties request that the Commission issue an order approving the Settlement, without modification. Statements in Support setting forth the views of I&E and of Columbia accompany this Settlement Agreement, as Appendix A and Appendix B, respectively.

I. INTRODUCTION

1. The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth pursuant to the Public Utility Code, 66 Pa.C.S.

§§ 101, *et seq.*

2. I&E is the entity established by statute to prosecute complaints against public utilities pursuant to Section 308(b). The Commission has delegated its authority to initiate proceedings that are prosecutory in nature to I&E and other bureaus with enforcement responsibilities. *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).

3. I&E is the entity established by statute to prosecute complaints against public utilities pursuant to 66 Pa.C.S.A. § 308.2(a)(11).

4. Section 501(a) of the Public Utility Code, 66 Pa.C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Public Utility Code.

5. Columbia is a “public utility” as that term is defined at 66 Pa.C.S. §102,¹ as it is engaged in providing public utility service as a natural gas distribution company to the public for compensation.

¹ At 66 Pa.C.S. § 102, “Public utility” is defined under that term at subsection (1)(i) as:

(1) Any person or corporation now or hereafter owning or operating in this Commonwealth equipment or facilities for:

(i) Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity, or steam for the production of light, heat, or power to or for the public for compensation.

6. Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility, or any other person or corporation subject to the Commission's authority, for violation(s) of the Public Utility Code and/or Commission regulations. Section 3301 further allows for the imposition of a separate fine for each day's continuance of such violation(s).

7. Pursuant to the Commission's regulations at 52 Pa. Code § 59.33(b), the Commission's Gas Safety Division, which is part of I&E, also has the authority to enforce the federal gas pipeline safety regulations, set forth in 49 U.S.C.A. §§ 60101, *et seq.*, and implemented in 49 CFR Parts 191-193 and 199, 49 CFR §§ 191-193, 199.

8. Columbia, in providing gas distribution service for compensation, is subject to the power and authority of this Commission pursuant to Section 501(c) of the Public Utility Code, 66 Pa.C.S. § 501(c), which requires a public utility to comply with Commission orders.

9. It is I&E's position that, pursuant to the provisions of the applicable Commonwealth and federal statutes and regulations, the Commission has jurisdiction over the subject matter of this investigation and the alleged actions of Columbia related thereto.²

10. Pursuant to Sections 331(a) and 506 of the Public Utility Code, 66 Pa.C.S. §§ 331(a) and 506, and Section 3.113 of the Commission's Practice and Procedure (Regulations), 52 Pa. Code § 3.113, Commission staff has the authority to conduct

² Columbia disputes that the Commission has jurisdiction over the alleged actions at issue in this matter, but has chosen to forego a jurisdictional challenge in light of the amicable resolution reached herein.

informal investigations or informal proceedings in order to gather data and/or to substantiate allegations of potential violations of the Commission's regulations.

11. This settlement concerns two informal investigations initiated by I&E's prosecutory staff at the request of I&E's Gas Safety Division (GSD). The GSD's initial investigations of these matters, as described herein, suggested that further investigations be conducted to examine whether the actions of Columbia, or the contractors of Columbia, violated state and/or federal gas safety regulations as well as the Company's own operating procedures.

12. Based on its investigations, I&E determined that the filing of formal complaints regarding these matters was warranted.

13. As a result of negotiations between the Parties, the Parties have agreed to resolve their differences without the need to move forward with a formal process, as encouraged by the Commission's policy to promote settlements without the filing of formal complaints. (*See*, 52 Pa. Code § 5.231.) The duly authorized Parties executing this Settlement Agreement agree to the settlement terms set forth herein (Settlement) and urge the Commission to approve the Settlement Agreement as submitted as being in the public interest.

II. BACKGROUND

A. Coraopolis Incident

14. On July 24, 2013, a contractor crew was working for Columbia and engaged in a main replacement project in the area of Coraopolis Road, Long Valley Drive, Laurel Ridge Road and East Ridge Road in Coraopolis, Pennsylvania. The eight-

member contractor crew consisted of a foreman, an operator, two flagmen, three laborers and a supervisor. In addition to the contracting crew, three Columbia employees were on-site as construction coordinators. The project involved the installation of plastic main to replace an existing steel main. Following the installation of the new line on July 24, 2013, the system was pressure tested but it did not hold pressure, indicating that there was a leak on the line.

15. On July 25, 2013, the contractor crew and Company construction coordinators returned to the job site to leak test the new line, which had previously failed pressure testing. To complete this task, the approximately 2,200 foot main was cut into three sections and pressurized with air to determine whether each section could hold air. This process enables the Company to confirm whether each section holds pressure, and, if not, then to locate and repair the leak found.

16. The first segment of main was tested at 90 psig. This segment held air, but was not depressurized or "blown down" once the test was completed.

17. The second section of the pipe was then tested and blown down, upon successfully holding pressure. The final segment of pipe was then subjected to a test. The test on this 700 foot segment did not hold pressure.

18. The contractor crew continued its efforts to isolate the leak by excavating and testing this segment at its midpoint and determining that the leak was located in the final 320 foot section between the midpoint of the new main section and the regulator.

19. At approximately 2:00 p.m., an employee of the contractor returned to the first section of the line that was tested, in order to cut the cap off of the line in preparation for reconnecting the pipe segments.

20. I&E's investigation was unable to determine whether the contractor laborer was directed to return to the first segment of main in order to cut the end cap from the main or whether the contractor laborer was acting on his own volition.

21. The contractor laborer proceeded to cut a six-inch plastic end cap from the first main segment using a single-wheel rotary pipe cutter, apparently unaware that the segment was still under pressure. In the process of making the cut, the end cap blew off from the pressurized main segment and struck the contractor laborer in the lower leg, causing severe injury.

22. The accompanying contractor crew member at the first main segment excavation immediately called 911. Other contractor crew members including the foreman of the contractor and Columbia's on-site construction coordinators heard the incident and ran from their location to the location where the injured contractor laborer was being attended. An ambulance arrived within ten minutes and the injured contractor laborer was transported to the Allegheny General Hospital Emergency Room.

23. The I&E Gas Safety Division's post-incident investigation revealed that Columbia had proper procedures in place for testing its facilities. However, a contractor foreman on site at the time of the incident was not in compliance with the Company's operating procedures, Columbia Gas Standard 1150.005. This standard requires individuals including, but not limited to, supervisors who are responsible for emergency

actions and all construction and maintenance personnel, to successfully pass the M-7, Abnormal Operating Conditions qualification test. It was found that the contractor foreman had not successfully passed the M-7 test.

B. Wampum Incident

24. On November 25, 2013, Columbia was notified of a gas supply problem in the area of East Clyde Street in Wampum, Pennsylvania. A contractor crew engaged in a new plastic construction job for Columbia in the area was called in to help resolve the issue. Columbia personnel were also on site.

25. In the morning of November 25, 2013, the contractor's crew members arrived on site and began to shut services off in the problem area.

26. Prior to pigging the mainline³, services were also cut off at the main and capped to allow the procedure. Air compressors and light plants were set up. Two areas were excavated to allow an entry point and exit point to the main gas line for the purpose of pigging the main line. The pigs used were cleaning pigs. The gas was turned off on the main.

27. Pigging began on the afternoon of November 25, 2013. A contractor employee was stationed at each end of the pipe, one launching the cleaning pig and one receiving it. Cell phones were used by the two contractor employees to keep in contact. The pipe cleaning demonstrated that water and ice were in the pipe.

³ "Pigging" refers to the practice of using devices known as pigs to perform various maintenance operations on a pipeline. These operations include but are not limited to cleaning and inspecting the pipeline.

28. The pigging operation consisted of two cleaning pigs inserted in the pipe and separated by a rag. Several pig runs were conducted. On the last run, a loud "explosion" sound was heard. Contractor employees and Columbia personnel ran to the receiving hole to see what happened. At the receiving end of the pigging operation was a contractor employee who sustained injuries to his foot and ankle. A call was made to 911 and the contractor employee was subsequently transported to a local hospital for treatment.

29. The I&E Gas Safety Division's post-incident investigation resulted only in a finding of violations of Commission regulations for state safety standards; no violations of Federal safety standards relative to the Wampum incident resulting in the injury to the contractor employee were cited. However, the GSD's investigation identified that a contractor employee who was a member of the contractor crew performing service line work on site at the time of the incident was not in compliance with the Company's operating procedures, Columbia Gas Standard 1150.005, which requires individuals including, but not limited to, supervisors who are responsible for emergency actions and all construction and maintenance personnel, to successfully pass the Installing, Replacing and Repairing Gas Service Lines qualification test.

III. ALLEGED VIOLATIONS

30. I&E has conducted an investigation into these matters. Based upon this investigation, I&E contends that Columbia has committed the following acts or omissions related to the above-referenced incidents:

A. Coraopolis Incident

31. Columbia and its contractor failed to “exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to” by not taking adequate precautions to prevent the contractor laborer from being injured while taking action to reconnect the two pipeline segments in that no one advised the contractor laborer that the section of newly installed plastic pipe from Coraopolis Road to Laurel Ridge Road was still under pressure from the earlier test. If proven, this omission would be a violation of 52 Pa. Code § 59.33(a).

32. Columbia and its contractor failed to follow Columbia Standard 1500.010, Section 3 “SAFETY DURING TESTING,” subsections b. and g. which state, in pertinent part, that: “[d]uring the test, all personnel shall be kept clear of the piping under pressure” and “[t]he tested system shall be depressurized through a valve before any fittings are loosened or removed” in that the contractor laborer was not given notice that the main segment he was working on was still under pressure and he unknowingly proceeded to cut the end cap fitting off the pressurized main. As a result of the cut, the end cap blew off the main and severely injured the contractor laborer’s lower right leg. If proven, this would be a violation of 49 CFR § 192.13(c).

B. Wampum Incident

33. Columbia and its contractor failed to “exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to” in that the Company failed to take adequate precautions to prevent the contractor laborer from being

injured while pigging the main gas line. If proven, this omission would be a violation of 52 Pa. Code § 59.33(a).

IV. TERMS OF SETTLEMENT

34. Columbia and I&E desire to: (i) resolve I&E's informal investigations at the above-referenced docket and (ii) settle this matter completely without further litigation.

35. Columbia disputes or disagrees with some or all of the alleged violations. Columbia also recognizes the need to prevent such alleged violations and the numerous benefits of amicably resolving the investigation and thereby avoiding the filing of a formal complaint.

36. Columbia and I&E, intending to be legally bound and for consideration given, desire to resolve the above-captioned matter and agree to the following terms solely for the purposes of this Settlement Agreement:

a. Pursuant to 66 Pa.C.S. § 3301(c), Columbia will pay a civil penalty of fifty thousand (\$50,000) dollars. Said payment shall be made by certified check payable to "Commonwealth of Pennsylvania" and forwarded to the Commission Secretary, with notice to the prosecuting attorney of said payment, within thirty (30) days of the date of the Final Order approving this Settlement.

b. Columbia has taken corrective action and implemented revisions to its operating procedures, which will act as safeguards against similar incidents occurring in the future. The pertinent actions taken by Columbia are briefly described as follows:

i. Columbia will enhance its operator qualification ("OQ") program by accelerating its roll out of the enhanced OQ training for Columbia contractors from its current planned three-year cycle to a two-year cycle.

c. In addition to remedial actions already taken by the Company, Columbia will take the following corrective action:

- i. Provide physical identifiers on all sections of main under test pressure where the main is exposed. An example of an identifier could be a band that slips over the exposed main indicating the main is under test pressure. The Company will revise Gas Standard 1500.010 to reflect this process;
- ii. Revise its training procedures relative to pressure testing pipelines to incorporate an Abnormal Operating Condition for working around a pressurized main. Include Sections 2. RESPONSIBILITY and 3. SAFETY DURING TESTING of Gas Standard 1500.010, Pressure Testing;
- iii. Revise Columbia Gas Standard 1500.010, Pressure Testing, to specify a main should be blown down after the test is completed unless there is a valid reason to keep it under pressure;
- iv. Review all current qualifications that for all contractors that have performed for Columbia to confirm that all records are accurate and provide the Commission's GSD with any discrepancies found;
- v. Verify that all required contractors and Columbia employees have successfully completed training relative to preventing and responding to potentially hazard situations , establish a method to confirm this regularly, and provide the Commission's GSD with a list of non-qualified individual(s);
- vi. Include training procedures relative to Gas Standard 3000.500 – Internal Cleaning of Pipelines (Pigging) to provide sufficient material to adequately train employees and contractors going forward on proper pigging procedures;
- vii. Retrain all current employees and contractors on the revised Gas Standard 3000.500 – Internal Cleaning of Pipelines (Pigging) and provide to GSD completed attendance sheets indicating the names of all attendees and the time and place of each training session; and

37. In consideration of the Company's payment of a civil penalty and other, non-monetary relief, as specified herein, I&E agrees to forgo the institution of any formal complaint that relates to the matters described herein and the related conduct of the Company, its employees, and its contractor's employees, as described in the Settlement Agreement. Nothing contained in this Settlement Agreement shall adversely affect the Commission's authority to receive and resolve any informal or formal complaints filed by any affected party with respect to these matters, except that no further sanctions may be imposed by the Commission for any actions identified herein.

V. CONCLUSION

38. With the Commission's approval that the terms and conditions in this Settlement Agreement are in the public interest and cannot be used against Columbia in any future proceeding relating to this matter, Columbia agrees to, among other terms set forth above, pay a civil penalty of fifty thousand (\$50,000) dollars within thirty (30) days of the date of the Final Order approving this Settlement in order to resolve through this Settlement Agreement the allegations raised by the I&E investigations. Moreover, Columbia agrees not to seek recovery of any portion of this payment or contribution in a future ratemaking proceeding or any other proceeding or manner whatsoever and shall not include any portion of this civil penalty in any future rate proceeding, nor shall it be tax deductible under Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

39. This Settlement Agreement is a full and final resolution of the I&E investigations, related in any way to the alleged actions of Columbia as described in this

Settlement Agreement, up to and including the date this Settlement Agreement is signed by the Parties.

40. Columbia and I&E have agreed to this amicable settlement in the interest of avoiding formal litigation and moving forward in the conduct of business in Pennsylvania. I&E agrees not to institute any formal complaint relating to the alleged actions of Columbia that are the subject of this Settlement.

41. Columbia and I&E have entered into and seek the Commission's approval of the Settlement Agreement pursuant to 52 Pa. Code § 3.113. This Settlement Agreement is a compromise and subject to all applicable administrative and common law treatments of settlements, settlement offers, and/or negotiations. This Settlement Agreement is, therefore, a compromise and is conditioned upon the Commission's approval of any of the terms and conditions contained herein without modification or amendment.

42. If the Commission does not approve this Settlement Agreement by tentative or final order, or any of the terms or conditions set forth herein, without modification, addition or deletion, then either Party may elect to withdraw from this Settlement Agreement by filing a response to the tentative or final order within twenty (20) days of the date the tentative or final order is entered. None of the provisions of this Settlement Agreement shall be considered binding upon the Parties if such a response is filed.

43. This document represents the Settlement Agreement in its entirety. No changes to obligations set forth herein may be made unless they are in writing and are

expressly accepted by the parties involved. This Settlement Agreement shall be construed and interpreted under Pennsylvania law.

44. None of the provisions of the Settlement Agreement or statements herein shall be considered an admission of any fact or culpability. I&E acknowledges that this Settlement Agreement is entered into with the express purpose of settling the asserted claims regarding the specific alleged violations of the Public Utility Code, Pennsylvania Code, and the regulations promulgated thereunder without admission against, or prejudice to, any position which any Party may adopt during any subsequent proceeding of whatever nature.

45. This Settlement Agreement resolves with prejudice all issues related to the informal investigations. This Settlement Agreement is made without admission against, or prejudice to, any factual or legal positions which any of the Parties may assert in subsequent litigation of this proceeding before the Commission in the event that the Commission does not issue a final, non-appealable Order approving this Settlement Agreement without modification. This Settlement Agreement is determinative and conclusive of all the issues addressed herein and constitutes a final settlement of the matters thereof as among the parties to the Settlement Agreement and the Commission. Provided, however, that this Settlement Agreement makes no findings of fact or conclusions of law, and therefore, it is the intent of the Parties that this document and the related Statements in Support not be admitted as evidence in any potential civil proceeding involving this matter. It is further understood that by entering into this Settlement Agreement and agreeing to pay a civil penalty, Columbia has made no

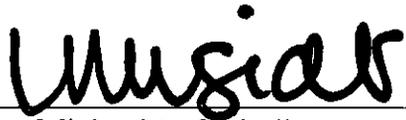
admission of fact or law and disputes all issues of fact and law for all purposes in all proceedings, including but not limited to any civil proceedings, that may arise as a result of the circumstances described in this Settlement Agreement.

WHEREFORE, Columbia Gas of Pennsylvania, Inc. and the Commission's Bureau of Investigation and Enforcement respectfully request that the Commission adopt an order approving the terms and conditions of this Settlement Agreement as being in the public interest.

Respectfully submitted,

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

Columbia Gas of Pennsylvania, Inc.

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Date: 5 MAY 16

Date: 5-5-16

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Pennsylvania Public Utility :
Commission, Bureau of :
Investigation and Enforcement :

v. :

Docket No. M-2016-_____

Columbia Gas of Pennsylvania, Inc. :

**STATEMENT IN SUPPORT OF SETTLEMENT AGREEMENT
OF PENNSYLVANIA PUBLIC UTILITY COMMISSION
BUREAU OF INVESTIGATION AND ENFORCEMENT**

The Pennsylvania Public Utility Commission Bureau of Investigation and Enforcement (“I&E”) submits this Statement In Support Of Settlement Agreement at the above docket. The specific terms of the settlement are found at Paragraphs 34 through 37 of the Settlement Agreement. I&E submits that the settlement as memorialized by the Settlement Agreement was amicably reached by I&E and Columbia Gas of Pennsylvania, Inc. (“Columbia”) (hereinafter collectively referred to as “Parties”) and balances the duty of the Pennsylvania Public Utility Commission (“Commission”) to protect the public interest with the interests of the Company, the Company’s customers, and all Pennsylvania consumers.

This matter involves Columbia, a jurisdictional public utility engaged in providing public utility service as a natural gas distribution company to the public for

compensation. I&E's investigation focused on two separate incidents where initial investigations conducted by I&E's Gas Safety Division ("GSD") suggested that the actions of Columbia, or contractors of Columbia, violated state and/or federal gas safety regulations as well as the Company's own operating procedures.

First, I&E investigated what is referred to as the "Coraopolis Incident." In July 2013, a member of the contractor crew working for Columbia and engaged in a main replacement project in the area of Coraopolis Road, Long Valley Drive, Laurel Ridge Road and East Ridge Road in Coraopolis, Pennsylvania was injured when he cut a six-inch plastic end cap from the first main segment using a single-wheel rotary pipe cutter, apparently unaware that the segment was still under pressure with air from a leak test. In the process of making the cut, the end cap blew off from the pressurized main segment and struck the contractor laborer in the lower leg, causing severe injury. I&E's Gas Safety post-incident investigation concluded that while Columbia had proper procedures in place for testing its facilities, a contractor foreman on site at the time of the incident was not in compliance with certain Company operating procedures.

Second, I&E investigated what is referred to as the "Wampum Incident." In November 2013, a member of the contractor crew working for Columbia in the area of East Clyde Street in Wampum, Pennsylvania was injured during a pigging operation when the worker was struck in the foot and ankle by an object which was propelled from the opening of the gas main from which the cleaning pigs were to exit. I&E's Gas Safety post-incident investigation concluded that a contractor employee working on site at the time of the incident was not in compliance with certain Company operating procedures.

I&E acknowledges that Columbia cooperated with I&E's investigation with regard to both incidents and responded to I&E's requests for information. Moreover, throughout the entire investigatory process, Columbia and I&E remained active in communications and informal discovery and continued to explore the possibility of resolving this investigation, which ultimately culminated in the Settlement Agreement reached here.

The Settlement Agreement addresses the allegations raised in I&E's informal investigation while avoiding the time and expense of litigation, including but not limited to, discovery, preparation of witness testimony, hearings, briefs, exceptions, and appeals. The Settlement Agreement, as proposed, is in the public interest and should be approved by the Commission. The Settlement Agreement sets forth the following terms:

a. Pursuant to 66 Pa.C.S. § 3301(c), Columbia will pay a civil penalty of fifty thousand (\$50,000) dollars. Said payment shall be made by certified check payable to "Commonwealth of Pennsylvania" and forwarded to the Commission Secretary, with notice to the prosecuting attorney of said payment, within thirty (30) days of the date of the Final Order approving this Settlement.

b. Columbia has taken corrective action and implemented revisions to its operating procedures which will act as safeguards against similar incidents occurring in the future. The pertinent actions taken by Columbia are briefly described as follows:

i. Columbia will enhance its operator qualification ("OQ") program by accelerating its roll out of the enhanced OQ training for Columbia contractors from its current planned three-year cycle to a two-year cycle.

c. In addition to remedial actions already taken by the Company, Columbia will take the following corrective action:

i. Provide physical identifiers on all sections of main under test pressure where the main is exposed. An example of an identifier could be a band that slips over the exposed main

indicating the main is under test pressure. The Company will revise Gas Standard 1500.010 to reflect this process;

- ii. Revise training module, M-3 Pressure Testing Pipelines to incorporate an Abnormal Operating Condition for working around a pressurized main. Include Sections 2. RESPONSIBILITY and 3. SAFETY DURING TESTING of Gas Standard 1500.010, Pressure Testing;
- iii. Revise Columbia Gas Standard 1500.010, Pressure Testing, to specify a main should be blown down after the test is completed unless there is a valid reason to keep it under pressure;
- iv. Review all current qualifications that for all contractors that have performed for Columbia to confirm that all records are accurate and provide the Commission's GSD with any discrepancies found;
- v. Verify that all required contractors and Columbia employees have successfully completed M-7, Abnormal Operating Conditions, establish a method to confirm this regularly, and provide the Commission's GSD with a list of non-qualified individual(s);
- vi. Revise title OQ M-8 Installing, Replacing, and Repairing Main lines to provide sufficient material to adequately train employees and contractors going forward on proper pigging procedures; and
- vii. Retrain all current employees and contractors on the revised Gas Standard 3000.500 – Internal Cleaning of Pipelines (Pigging) and provide to GSD completed attendance sheets indicating the names of all attendees and the time and place of each training session.

Columbia has, as stated above, agreed to pay a fair and equitable civil penalty totaling \$50,000.00, and has taken appropriate corrective action regarding its failure in these two incidents to exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to by not taking adequate precautions to prevent

the contractor laborers from being injured. The monetary and non-monetary settlement terms entered into in this Settlement Agreement are in accord and satisfaction of disputed claims and not an admission of liability of any sort by Columbia. This settlement was reached after taking into consideration past settlements regarding similar incidents that were approved by this Commission which acted as a foundation from which the Parties could determine reasonable settlement terms in this case.¹

All necessary factors were considered in reaching a settlement amount that would be deemed by this Commission as an appropriate balance of all mitigating factors while adequately reflecting the seriousness of the allegations and promoting ongoing regulatory compliance and compliance with Commission policy. It is the position of I&E that the settlement reached, including a civil settlement amount to be paid by Columbia of \$50,000.00, in addition to the non-monetary operational improvements implemented by the Company, is reasonable and should be found by this Commission to be in the public interest.

The agreement of the Parties to settle this case is made without any admission or prejudice to any position that the Parties might adopt during subsequent litigation, including but not limited to, in the event that this settlement is rejected by the Commission or otherwise properly withdrawn by any of the Parties. Had this matter proceeded to hearing, I&E would have alleged with regard to the Coraopolis incident that

¹ In *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. UGI Utilities, Inc. – Gas Division*, Docket No. M-2013-2313375 (Order entered April 23, 2014) (“*UGI Order*”), this Commission approved a settlement with a civil penalty of \$96,000 where a contractor employee was injured from the ignition of gas from an active gas main. By comparison, the instant incidents did not involve the ignition of gas, greatly reducing the potential harm to the public.

Columbia and its contractor failed to follow Columbia Standard 1500.010, Section 3 “SAFETY DURING TESTING,” subsections b. and g. which state, in pertinent part, that: “[d]uring the test, all personnel shall be kept clear of the piping under pressure” and “[t]he tested system shall be depressurized through a valve before any fittings are loosened or removed” in that the contractor laborer was not given notice that the main segment he was working on was still under pressure and he unknowingly proceeded to cut the end cap fitting off the pressurized main. As a result of the cut, the end cap blew off the main and severely injured the contractor laborer’s lower right leg. If proven, this is a violation of 49 CFR § 192.13(c).

With regard to the Wampum incident, I&E would have alleged that Columbia and its contractor failed to “exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to” in that the Company failed to take adequate precautions to prevent the contractor laborer from being injured while pigging the main gas line. If proven, this omission would be a violation of 52 Pa. Code § 59.33(a).

In *Rosi v. Bell Atlantic Pennsylvania Inc., et al.*, 94 PA PUC 103, Docket No. C-00992409 (Order entered March 16, 2000), as set forth in *Pa. Pub. Util. Comm’n v. NCIC Operator Serv.*, Docket No. M-00001440 (Order entered December 21, 2000), the Commission adopted and utilized standards for determining whether a particular enforcement outcome is in the public interest. The standards set forth in *Rosi* were reviewed by I&E. I&E submits that this Settlement Agreement complies with the

requirements for settlements found in *Rosi* and that the terms of the Settlement Agreement are in the public interest.

I&E further asserts that approval of this Settlement Agreement is consistent with the Commission's Policy Statement, *Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations – statement of policy*, at 52 Pa. Code § 69.1201 ("Policy Statement"). Under the Policy Statement, while many of the *Rosi* standards may still be applied, the Commission specifically recognized that in settled cases the parties "will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest." 52 Pa. Code § 69.1201(b).

The Commission's Policy Statement provides for ten (10) factors and standards to be considered by the Commission. The first standard addresses whether the conduct at issue was of a serious nature. 52 Pa. Code § 69.1201(c)(1). As the Commission indicated in its *UGI Order*, the act of pipeline replacement on an active gas main is inherently serious in nature. At least in each of these instances, the pipe was not pressurized with gas and there was no natural gas ignition involved.

The second standard addresses whether the resulting consequence of the conduct in question was of a serious nature. 52 Pa. Code § 69.1201(c)(2). Since personal injury resulted from each of these incidents, the resulting consequences were obviously serious. Public safety is a major concern when gas safety incidents occur. Fortunately, there was no imminent threat to the general public in either matter.

The third standard addresses whether the conduct was intentional or unintentional. 52 Pa. Code § 69.1201(c)(3). Since this standard applies to litigated proceedings and this matter resulted in an amicable Settlement Agreement, it is not applicable here.

The fourth standard addresses whether the Company made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). As previously stated, the Company has taken corrective action, as described in Paragraph 36 of the Settlement Agreement, to prevent these types of incidents from reoccurring. Most importantly, the Company is enhancing its operator qualification program by accelerating the roll out of its enhanced training of contractor employees from the planned three-year cycle to a two-year cycle. As such, the Company is taking appropriate action to address concerns and decrease the likelihood of similar incidents in the future.

In the process of negotiating this Settlement Agreement, the remaining factors in the Policy Statement were also considered. Specifically, the Parties reviewed the number of customers affected, the compliance history of the Company, the Company's cooperation with the Commission, and the monetary penalty necessary not only to deter future violations but to recognize alleged violations in the past. The Settlement Agreement was amicably negotiated and recognizes the Company's good faith efforts to comply with the Commission's regulations.

Finally, a settlement avoids the necessity for the prosecuting agency to prove elements of each violation. In return, the opposing party in a settlement avoids the possibility of a greater fine or penalty. Both parties negotiate from their initial litigation

positions. The fines and penalties in a litigated proceeding, such as *Rosi*, have always been different from those that result from a settlement. I&E submits that this is the reason that *Rosi* listed whether penalties arise from a settlement or a litigated proceeding as one of its tests.

The Settlement Agreement is in the public interest because it effectively addresses the allegations identified by the informal investigation, avoids the time and expense of litigation which entails hearings, filings of briefs, exceptions, reply exceptions, and possible appeals. The Company has also agreed to pay a fair and equitable civil penalty and has improved or is improving its procedural safeguards and operator qualification training, among other things. Moreover, the Settlement Agreement is consistent with the Commission's Policy Statement at 52 Pa.Code § 69.1201, *Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations – statement of policy*.

Commission Rules and Regulations encourage the settlement of proceedings and, consequently, Columbia and I&E convened a number of discussions during the course of this investigation. These discussions ultimately resulted in the foregoing Settlement Agreement which is a full and final resolution of I&E's investigation.

In addition to the foregoing reasons, based upon I&E's analysis of these matters, acceptance of this proposed settlement is in the public interest because resolution of this case by settlement rather than litigation will avoid the substantial time and expense involved in continuing to formally pursue all allegations in this proceeding. Moreover, acceptance of the Settlement Agreement at this time will ensure that the Company will

immediately implement the changes in their policies enumerated in the Settlement Agreement instead of at the end of what could be protracted litigation.

WHEREFORE, the Pennsylvania Public Utility Commission Bureau of Investigation and Enforcement represents that it supports the settlement of this matter as memorialized by the Settlement Agreement as being in the public interest and respectfully requests that the Commission approve the foregoing Settlement Agreement, including all terms and conditions contained therein, in its entirety.

Respectfully submitted,



Michael L. Swindler
Deputy Chief Prosecutor
Bureau of Investigation and Enforcement

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 783-6369

Dated: May 5, 2016

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement, :
Complainant :
v. : Docket No. M-2016-
Columbia Gas of Pennsylvania, Inc., :
Respondent :

COLUMBIA GAS OF PENNSYLVANIA, INC.'s
STATEMENT IN SUPPORT OF JOINT PETITION

Columbia Gas of Pennsylvania, Inc. ("Columbia Gas" or "the Company"), by and through its counsel, hereby respectfully submits its Statement in Support of the Joint Petition for Settlement ("Joint Petition") submitted in the above-captioned proceeding. The terms and conditions of the Joint Petition are in the public interest and represent a fair, just, reasonable, and equitable resolution of the matters described therein. Approval of the Joint Petition is consistent with the Commission's *Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations*, 52 Pa. Code § 69.1201.

Columbia Gas and the Commission's Bureau of Investigation and Enforcement ("I&E") engaged in extensive exchange of information and negotiation and, as a result, I&E and the Company have agreed upon the terms embodied in the Joint Petition. Columbia Gas submits that the Joint Petition is in the public interest, as discussed herein.

I. BACKGROUND

1. As the Joint Petition indicates, this matter resolves informal investigations initiated by I&E's prosecutory staff at the request of the I&E Gas Safety Division ("GSD"), which focused on whether Columbia Gas or third party contractors hired by Columbia Gas violated state and/or federal gas safety regulations, as well as the Company's own operating standards, with regard to incidents which occurred in Coraopolis and Wampum, Pennsylvania. I&E's averments of facts and alleged violations are stated in Paragraphs 14 through 33 of the Joint Petition, and need not be restated here.

2. It is important to note that Columbia Gas has been, and continues to be, cooperative and pro-active with regard to I&E's investigations with a view toward resolving these matters amicably. Although Columbia Gas acknowledges the Commission's jurisdiction to consider the Joint Petition at issue, in the event that I&E's alleged violations in this matter were to be litigated, the Company would assert that neither of the incidents involve gas safety issues under the Commission's jurisdiction. Nonetheless, Columbia Gas wishes to resolve these matters in the spirit of cooperation and judicial economy.

3. I&E and other bureaus with enforcement authority are the entities established by statute to initiate proceedings against public utilities that are prosecutory in nature. (*Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities*, M-00940593, Order entered September 2, 1994), as amended by Act 129 of 2008, 66 Pa.C.S.A § 308.2(a)(11). I&E brought this matter under that delegated authority.

4. Columbia Gas's principal place of business is located in Canonsburg, Pennsylvania and at all times relevant to this proceeding was a public utility, as defined by 66 Pa. C.S. Section 102, engaged in providing natural gas service to the public for compensation.

II. PARTIES' POSITIONS

5. The averments of I&E contained in the Joint Petition were formulated without the benefit of a hearing and certain averments are or may be disputed by Columbia Gas.

6. The Parties' agreement to settle the matters described in I&E's averments was made without any admission of fact, or without prejudice to any position that they might adopt during any necessary subsequent litigation in the event that this settlement is rejected by the Commission or otherwise properly withdrawn by any of the parties.

III. JOINT PETITION

7. The parties to the Joint Petition have engaged in extensive and detailed discussions with respect to the allegations and defenses relating to each of the matters described in Paragraphs 14 through 37 of the Joint Petition. The purpose of the Joint Petition is to resolve these matters without litigation in a manner that minimizes concerns regarding future similar events.

8. Columbia Gas has been cooperative and pro-active in addressing the concerns identified in Paragraphs 14 through 33 of the Joint Petition.

9. Based upon the foregoing, the Parties have agreed to the entry of an Order directing as follows:

- a. Pursuant to 66 Pa.C.S.A. § 3301(c), Columbia Gas will pay a civil penalty of fifty thousand (\$50,000) dollars. Said payment shall be made by certified check payable to "Commonwealth of

Pennsylvania” and forwarded to the Commission Secretary, with notice to the prosecuting attorney within thirty (30) days of the date of the Final Order approving this Settlement.

- b. Columbia Gas has taken corrective action and implemented revisions to its operating procedures which will act as safeguards against similar incidents occurring in the future. The pertinent actions taken by Columbia Gas are briefly described as follows:
 - i. Columbia Gas will enhance its operator qualification (“OQ”) program by accelerating its roll out of the enhanced OQ training for Columbia Gas contractors from its current planned three-year cycle to a two-year cycle;
- c. In addition to remedial actions already taken by the Company, Columbia Gas will take the following corrective actions:
 - i. Provide physical identifiers on all sections of main under test pressure where the main is exposed. An example of an identifier could be a band that slips over the exposed main indicating the main is under test pressure. The Company will revise Gas Standard 1500.010 to reflect this process;
 - ii. Revise training module, M-3 Pressure Testing Pipelines to incorporate an Abnormal Operating Condition for working around a pressurized main. Include Sections 2. RESPONSIBILITY and 3. SAFETY DURING TESTING of Gas Standard 1500.010, Pressure Testing;
 - iii. Revise Columbia Gas Standard 1500.010, Pressure Testing, to specify a main should be blown down after the test is completed unless there is a valid reason to keep it under pressure;
 - iv. Review all current qualifications for all contractors that have performed for Columbia Gas to confirm that all records are accurate and provide the Commission’s GSD with any discrepancies found;
 - v. Verify that all required contractors and Columbia Gas employees have successfully completed M-7, Abnormal Operating Conditions, establish a method to confirm this regularly, and provide the Commission’s GSD with a list of non-qualified individual(s);
 - vi. Revise title OQ M-8 Installing, Replacing, and Repairing Main lines to provide sufficient material to adequately train

employees and contractors going forward on proper pigging procedures;

- vii. Retrain all current employees and contractors on the revised Gas Standard 3000.500 – Internal Cleaning of Pipelines (Pigging) and provide to GSD completed attendance sheets indicating the names of all attendees and the time and place of each training session.

10. In consideration of Columbia Gas's payment of a civil penalty in the amount of \$50,000, as described herein, and implementation and completion of the measures described above in Paragraph 9 of this Statement in Support, I&E has expressly agreed to forbear the institution of any formal complaint or other informal investigation that relates to the conduct of Columbia Gas, its employees, and its contractors' employees, as alleged in Paragraphs 14 through 33 of the Joint Petition.

11. Nothing in the Joint Petition shall affect the Commission's authority to receive and resolve any informal or formal complaints filed by any affected party with respect to the alleged events covered by the Joint Petition, except that no further enforcement action, including but not limited to civil penalties and sanctions, shall be imposed by the Commission on Columbia Gas for any actions that are within the scope of the Joint Petition.

12. Columbia Gas submits that the Joint Petition is in the public interest, and therefore requests that the Commission approve this Joint Petition, accordingly. The Joint Petition is expressly conditioned upon the Commission's approval under applicable public interest standards without modification, addition, or deletion of any term or condition herein. If the Commission fails to approve the Joint Petition by tentative or final order, or any of the terms or conditions set forth herein, without modification, addition or deletion, then either Party may elect to withdraw from the

Joint Petition by filing a response to the tentative or final order within twenty (20) days of the date that the tentative or final order is entered. None of the provisions of the Joint Petition shall be considered binding upon the Parties if such a response is filed.

13. Nothing contained in the Joint Petition may be used or construed by any person as an admission of any fact by Columbia Gas. The Joint Petition is proposed by the Parties without any admission against, or prejudice to, any position which any Party may adopt during any subsequent administrative or court proceeding of whatever nature.

**IV. COMPLIANCE WITH THE COMMISSION'S POLICY STATEMENT ON
LITIGATED AND SETTLED PROCEEDINGS INVOLVING VIOLATION
OF THE PUBLIC UTILITY CODE AND COMMISSION REGULATIONS**

14. Columbia asserts that approval of the Joint Petition is consistent with the Commission's *Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations*, 52 Pa. Code § 69.1201 ("Policy Statement").

15. Under this Policy Statement, the Commission will consider specific factors when evaluating settlements of alleged violations of the Public Utility Code and Commission's Regulations. These factors are: (1) Whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation; (2) Whether the resulting consequences of the conduct at issue were of a serious nature, such as personal injury or property damage; (3) Whether the conduct at issue was deemed intentional or negligent (may only be considered when evaluating litigated cases); (4) Whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future; (5) The number of customers affected

and the duration of the violation; (6) The compliance history of the regulated entity that committed the violation; (7) Whether the regulated entity cooperated with the Commission's investigation; (8) The amount of the civil penalty or fine necessary to deter future violations; (9) Past Commission decisions in similar situations; and (10) Other relevant factors. 52 Pa. Code § 69.1201(c).

16. When applied to settled cases, the Commission will not apply the standards as strictly as it will in litigated cases. 52 Pa. Code § 69.1201(b).

17. With regard to the first standard and starting point in the Policy Statement, whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, there is no suggestion in the descriptions of alleged violations in the Joint Petition that Columbia Gas engaged in willful fraud or misrepresentation. The alleged conduct was in the nature of technical errors, which the Policy Statement characterizes as "less egregious." To be sure, Columbia Gas does not dispute that the injuries incurred were serious. Rather, Columbia Gas submits that since the injuries did not arise as a result of willful fraud or misrepresentation by Columbia Gas, the **conduct** at issue should not be deemed to be of a serious nature under the first standard of the Policy Statement.

18. With regard to the second standard set out in the Policy Statement, whether the resulting consequences attributable to the conduct at issue were of a serious nature, Columbia Gas submits that the resulting consequences did involve personal injuries. However, in both of the instances subject to the Joint Petition, that gas was turned off to the main and services lines and the injuries were sustained by contractors working on facilities that were subject to air pressure testing. Moreover, the conduct at issue, as described in the Joint Petition, was not attributable to the conduct of a

Columbia Gas employee. Therefore, while the incidents described in Paragraphs 14 through 33 of the Joint Petition involved personal injuries resulting from line air pressurization testing and pigging operations, it is important to note that it was not the conduct of a Columbia Gas employee which caused the injuries. Rather, the injuries were caused by the conduct of the contractor employees, who acted without direction from their supervisors or the Company. Further, these contractors were not in compliance with the Company's operating procedures, Columbia Gas Standard 1150.005. Thus, while one could not reasonably play down the gravity of the injuries resulting from the incidents at issue, Columbia Gas respectfully submits that the intervening actions of the contractors' employees are circumstances that mitigate the Company's culpability.

19. Since this is a settled matter, the third standard set out in the Policy Statement, whether the alleged conduct at issue was intentional or negligent, is not at issue.

20. Under the fourth standard in the Policy Statement, the Commission will consider modifications that may include activities such as training and improving company techniques and supervision, as well as the time it took to correct the conduct, and the involvement of top-level management in correcting the conduct. All of these considerations weigh in favor of Columbia Gas in this matter. Based upon input from Columbia gas operations employees, including the active involvement of the Vice President of Pipeline Safety Compliance, the Joint Petition calls for changes to Columbia Gas training protocols, physical modifications to its distribution system, as well as revisions to its contractor qualification program, as described in Paragraph 9 of this Statement in Support of Joint Petition.

21. Under the fifth standard of the Policy Statement, none of I&E's allegations suggest that any customers were impacted at all, for any period of time, by the incidents at issue. Indeed, as the facilities at issue here were not providing gas service at the time of either of the incidents.

22. Under the sixth standard of the Policy Statement, beyond I&E's allegations regarding the incidents described in Paragraphs 14 through 33 of the Joint Petition, there are no further allegations that that Columbia Gas has demonstrated poor compliance history when it has engaged in the activities that were involved in the incidents at issue in this matter.

23. Regarding the seventh standard in the Policy Statement, Columbia cooperated fully with I&E in its investigation. There are no facts alleged that would tend to establish bad faith on the part of Columbia Gas, active concealment of alleged violations, or attempts to interfere with the Commission's investigation.

24. Regarding the eighth standard in the Policy Statement, Columbia Gas submits that the civil penalty of \$50,000, when coupled with the associated remedial actions addressed more fully below in Paragraph 25, will adequately serve to deter future violations. Columbia Gas notes that the Company has cooperated in good faith with I&E's investigation, despite the Company's reservations about whether these matters involve jurisdictional gas safety issues.

25. The Joint Petition provides that Columbia will enhance its operator qualification ("OQ") program by accelerating its roll out of the enhanced OQ training for Columbia Gas contractors from its current planned three-year cycle to a two-year cycle. In addition, Columbia Gas has agreed to revise its training standards and to provide physical identifiers on all section of main under test pressure to avoid the reoccurrence

of the incidences at issue in this Joint Petition. By agreeing to install physical modifications to its gas distribution system, and revise its contractor training qualification program, Columbia Gas has demonstrated a willingness to collaborate with the Gas Safety Division that underscores the Company's commitment to providing safe and reliable natural gas distribution service.

26. Columbia Gas submits that both Parties' efforts have resulted in fair and equitable settlement that is in the public interest. The Commission has consistently encouraged settlements to avoid the time and expense associated with litigation. The parties submit that the Joint Petition is in the public interest because it recognizes the alleged incidents, while effectively addressing and resolving the issues raised by the investigation, and avoids the time and expense of litigation, which entails hearings, filings of briefs, exceptions, reply exceptions, and appeals. The Company has also agreed to pay a civil penalty and to comply with the Commission's Regulations. The Joint Petition clearly meets the standards set forth in Section 69.1201.

WHEREFORE, Columbia Gas of Pennsylvania, Inc. respectfully requests that the Pennsylvania Public Utility Commission adopt an order approving the terms of the Joint Petition as being in the public interest.

Respectfully submitted,

Columbia Gas of Pennsylvania, Inc.

By: 
Andrew S. Tubbs, Esquire

Dated: May 5, 2016

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Bureau of Investigation and Enforcement :
v. : Docket No. M-2016-
Columbia Gas of Pennsylvania, Inc. :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service by First Class Mail:

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Dated: May 5, 2016

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