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| **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** | |
|  | Public Meeting held December 7, 2017 |
| Commissioners Present:  Gladys M. Brown, Chairman  Andrew G. Place, Vice Chairman  Norman J. Kennard  David W. Sweet  John F. Coleman, Jr. | |
| Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement  v.  Columbia Gas of Pennsylvania, Inc. | M-2016-2378672 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Joint Petition for Approval of Settlement Agreement (Joint Petition or Settlement Agreement) filed on May 5, 2016, by Columbia Gas of Pennsylvania, Inc. (Columbia Gas) and the Commission’s Bureau of Investigation and Enforcement (I&E) (collectively, the Parties). Each Party also filed a Statement in Support of the Settlement (Statement in Support). For the reasons set forth herein, we find that the Settlement should be approved, consistent with this Opinion and Order.

**History of the Proceeding**

This matter concerns two informal investigations initiated by I&E’s prosecutory staff at the request of I&E’s Gas Safety Division (GSD). The investigations relate to two incidents on Columbia Gas’s system associated with the Company’s infrastructure replacement projects in Coraopolis, Allegheny County, and Wampum, Lawrence County, Pennsylvania, and have been consolidated at this docket. The GSD’s initial investigations suggested that further investigations were warranted to examine whether the actions of Columbia Gas or its contractors violated state regulations, federal regulations, and/or Columbia Gas’s operating procedures.

By letter dated August 26, 2013, I&E requested that Columbia Gas provide responses to various inquiries and document requests. Based on its investigation, I&E concluded that sufficient data had been gathered to substantiate allegations of violations of state and federal gas safety regulations.

The Parties entered into negotiations and have agreed to resolve this matter in accordance with the Commission’s policy to promote settlements at 52 Pa. Code § 5.231. The Parties filed the instant Joint Petition on May 5, 2016.

By Order entered November 9, 2016 (*November 2016 Order*), the Commission provided interested parties with the opportunity to file comments. In order to be considered timely, comments were due within twenty days of the date of entry of the *November 2016 Order*.

To date, no party has filed comments in response to our *November 2016 Order.*

**Background**

**1. Coraopolis Incident**

On July 24, 2013, a contractor crew – consisting of a foreman, an operator, two flagmen, three laborers, and a supervisor – was working for Columbia Gas on a main replacement project in the area of Coraopolis Road, Long Valley Drive, Laurel Ridge Road, and East Ridge Road in Coraopolis, Pennsylvania. In addition to the contracting crew, three Columbia Gas employees were on-site as construction coordinators. The project involved the installation of plastic main to replace an existing steel main. After the installation of the new line on July 24, 2013, the system was pressure tested and did not hold pressure, indicating that there was a leak on the line. Settlement Agreement at 4-5.

On July 25, 2013, the contractor crew and Columbia Gas construction coordinators returned to the job site to leak test the new line. During this task, the approximately 2,200 foot main was cut into three sections and pressurized to determine whether each section held air in order to locate and repair any leaks that were found. The first segment of the main was tested at 90 psig. This segment held air but was not depressurized once the test was finished. Next, the second section of the pipe was tested and depressurized upon successfully holding pressure. The final 700 foot segment of the pipe was then tested and did not hold pressure. The contractor crew continued to try to isolate the leak by excavating and testing this segment at its midpoint and determined that the leak was located in the final 320 foot section between the midpoint of the new main section and the regulator. Settlement Agreement at 5.

At approximately 2:00 p.m., a contractor employee returned to the first section of the line that was tested to cut the cap off of the line in preparation for reconnecting the pipe segments. The contractor employee began to cut a six-inch plastic end cap from the first main segment using a single-wheel rotary pipe cutter, seemingly 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 employee in the lower leg, resulting in severe injury. An accompanying contractor crew member at the first main segment excavation immediately called 911. An ambulance arrived within ten minutes and transported the injured employee to the Allegheny General Hospital emergency room. Settlement Agreement at 6.

I&E was unable to determine, based on its investigation, whether the contractor employee was directed to return to the first segment of main in order to cut the end cap from the main or whether the employee was acting on his own volition. The GSD’s post-incident investigation indicated that Columbia Gas had proper procedures in place for testing its facilities. Settlement Agreement at 6. However, the investigation indicated that a contractor foreman on site during the incident was not in compliance with the Company’s operating procedures, as set forth in Columbia Gas Standard 1150.005, which requires individuals who are responsible for emergency actions and all construction and maintenance personnel, to successfully pass the M-7, Abnormal Operating Conditions qualification test. *Id*. at 6-7.

**2. Wampum Incident**

On November 25, 2013, Columbia Gas was notified of a gas supply problem in the area of East Clyde Street in Wampum, Pennsylvania. Columbia Gas contacted a contractor crew that was engaged in a new plastic construction job for Columbia Gas in the area to help resolve the issue, and Columbia Gas personnel were also on site. That morning, the contractor’s crew members arrived and began to shut off services in the problem area. Before pigging[[1]](#footnote-1) the main line, services were also cut off at the main and capped; air compressors and light plants were set up; two areas were excavated to allow an entry and an exit point to the main gas line; and the gas was turned off on the main line. Settlement Agreement at 7.

Pigging began on the afternoon of November 25, 2013. Contractor employees were stationed at each end of the pipe, one launching the cleaning pig and one receiving it. Several pig runs were conducted. On the last run, the contractor employee at the receiving end of the pigging operation sustained injuries to his foot and ankle. Following a call to 911, the employee was transported to a local hospital for treatment. Settlement Agreement at 7-8.

The GSD’s post-incident investigation resulted in a finding of violations of the Commission’s Regulations. The investigation indicated 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, set forth in Columbia Gas Standard 1150.005, which require individuals 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. Settlement Agreement at 8.

**3. Alleged Violations**

If this matter had been litigated, I&E was prepared to allege that, with respect to the Coraopolis Incident, Columbia Gas 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 employee from being injured while taking action to reconnect the two pipeline segments, because no one advised the contractor employee 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 constitute a violation of 52 Pa. Code § 59.33(a). And because the contractor employee 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, I&E would have also contended that Columbia Gas and its contractor failed to follow Columbia Gas Standard 1500.010, Section 3 “SAFETY DURING TESTING,” subsections b and g, which provide 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.” If proven, this would be a violation of Part 192 of Title 49 of the Code of Federal Regulations, 49 C.F.R. § 192.13(c). I&E Statement in Support at 5-6.

Additionally, with regard to the Wampum Incident, I&E would have alleged that Columbia Gas and its contractor failed to “exercise reasonable care to reduce the hazards to which employees, customers, and others may be subjected to” by failing to take adequate precautions to prevent the contractor employee from being injured while pigging the main gas line. If proven, this would constitute a violation of 52 Pa. Code § 59.33(a). I&E Statement in Support at 6.

On the other hand, if this matter had been litigated, Columbia Gas would have rebutted that neither the Coraopolis Incident nor the Wampum Incident involves gas safety issues under the Commission’s jurisdiction. Columbia Gas Statement in Support at 2.

**Terms of the Settlement Agreement**

The Parties entered into the proposed Settlement Agreement to resolve I&E’s informal investigations and to settle this matter completely without litigation in a formal proceeding. The Parties assert that the proposed Settlement Agreement is in the public interest and should, therefore, be approved by the Commission. Settlement Agreement at 4. While Columbia Gas disputes or disagrees with some or all of the alleged violations, it also recognizes the need to prevent such alleged violations and the benefits of amicably resolving each investigation. *Id*. at 10. Additionally, I&E submits that Columbia Gas fully cooperated with each investigation by responding to all requests for information and documentation. I&E Statement in Support at 3.

The essential terms of the Settlement Agreement are set forth in Paragraph No. 36 of the Joint Petition, which is restated below:

a. Pursuant to 66 Pa. C.S. § 3301(c), Columbia will pay a civil penalty of fifty thousand ($50,000) dollars.[[2]](#footnote-2) 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 hazardous 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[.]

Settlement Agreement at 10-11.

In consideration of Columbia Gas’s agreement to pay a civil penalty and other non-monetary relief, as set forth in the Settlement Agreement, I&E agrees to forebear from instituting any formal complaint that relates to the matters described in the Settlement and the related conduct of Columbia Gas, its employees, and its contractor’s employees, as described in the Settlement Agreement. The Parties submit that nothing contained in the 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 the alleged incidents, except that no further sanctions may be imposed by the Commission for any actions identified in the Settlement Agreement. Settlement Agreement at 12. Additionally, none of the provisions of the Settlement Agreement or the statements in the Settlement Agreement shall be considered an admission of any fact or culpability. As the Settlement Agreement does not make any findings of fact or conclusions of law, the Parties intend that the Settlement Agreement and the Statements in Support thereof not be admitted as evidence in any potential civil proceeding involving this matter. *Id*. at 14.

The Settlement Agreement is conditioned upon the Commission’s approval of its terms and conditions, without modification. The Parties reserve the right to withdraw from the Settlement if it is modified. Settlement Agreement at 13.

**Discussion**

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. The Commission must review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004). As discussed below, after a review of the terms of the Settlement Agreement, we are of the opinion that it is in the public interest and should be approved without modification.

The Pennsylvania Public Utility Code (Code) sets forth the maximum civil penalty amount that we may levy on public utilities for violations of a Commission Order, Commission Regulation, or statute. Section 3301(c) of the Code, 66 Pa. C.S. § 3301(c), which governs civil penalties for gas pipeline safety violations, was amended by Act 11 of 2012. The amended Section 3301(c) provides that any public utility that violates any gas pipeline safety provisions of the Code “shall be subject to a civil penalty of not to exceed $200,000 for each violation for each day that the violation persists, except that the maximum civil penalty shall not exceed $2,000,000 for any related series of violations, or subject to a penalty provided under federal pipeline safety laws, whichever is greater.”

The Commission has promulgated a Policy Statement at 52 Pa. Code § 69.1201 that sets forth ten factors to be considered in evaluating whether a civil penalty for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest. The Policy Statement sets forth the guidelines we use when determining whether, and to what extent, a civil penalty is warranted. In this case, application of these guidelines supports approval of the Settlement as filed.

The first factor we may consider is whether the conduct at issue is of a serious nature. 52 Pa. Code § 69.1201(c)(1). “When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.” *Id*. Based on the information obtained during I&E’s investigation, we find that the actions of Columbia Gas and its Contractor constitute conduct of a serious nature. I&E submits that although, in each of the instances in this proceeding, the pipe at issue was not pressurized with gas and there was no natural gas ignition involved, the act of pipeline replacement on an active gas main is, nonetheless, inherently serious in nature. I&E Statement in Support at 7. We agree with I&E’s assessment. As a result, we conclude that the actions of Columbia Gas and its Contractor in this case warrant a higher civil penalty.

The second factor we may consider is whether the resulting consequences of the conduct at issue were of a serious nature. 52 Pa. Code § 69.1201(c)(2). “When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.” *Id.* As discussed above, personal injury resulted from each of the incidents at issue in this proceeding. Because public safety is a major concern when gas safety incidents occur, we consider the resulting consequences of each incident, which included personal injuries, to be of a serious nature. We acknowledge, as the Parties point out, that there are some mitigating factors in this case, in that there was no imminent threat to the general public in either matter. *See* I&E Statement in Support at 7; Columbia Gas Statement in Support at 7-8.

The third factor we may consider is whether the conduct at issue was deemed intentional or negligent. 52 Pa. Code § 69.1201(c)(3). “When conduct has been deemed intentional, the conduct may result in a higher penalty.” *Id.* The third factor pertains to litigated cases only. Because this proceeding was settled prior to an evidentiary hearing, this factor is not applicable to this proposed Settlement.

The fourth factor we may consider is whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered. 52 Pa. Code § 69.1201(c)(4). In this case, as described in Paragraph 36 of the Settlement, Columbia Gas has taken or will take corrective action and has implemented revisions to its operating procedures that will safeguard against a similar incident occurring in the future. Specifically, Columbia Gas has made or will make changes to its training protocols, physical modifications to its distribution system, and revisions to its contractor qualification program. As a whole, we find that these actions support a lower civil penalty.

The fifth factor we may consider is the number of customers affected and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). The information I&E obtained in its investigation does not indicate that any customers were impacted, for any period of time, by the incidents at issue. Further, the facilities at issue were not providing gas service at the time of either of the incidents. I&E Statement in Support at 8, Columbia Gas Statement in Support at 9. Under the circumstances, we find that this factor supports a lower civil penalty.

The sixth factor we may consider is the compliance history of the regulated entity which committed the violation. 52 Pa. Code § 69.1201(c)(6). We have reviewed our records regarding complaints against, and investigations of, Columbia Gas in which the Company was directed to pay civil penalties during the past five years. During this time period, Columbia Gas has had only one other investigation initiated against it involving alleged gas safety violations. Pursuant to a Joint Petition for Settlement, Columbia Gas paid a $200,000 civil penalty. *See, Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Columbia Gas of Pennsylvania, Inc*., Docket No. M-2014-2306076 (Order on Reconsideration entered December 18, 2014) (*December 2014 Order*).[[3]](#footnote-3) Nonetheless, our *December 2014 Order* addressed an investigation that involved a high number of alleged violations, including the ignition of gas, that occurred over nine separate incidents within a short time frame. Based on our review, we find that in this instance, this factor supports neither a higher nor a lower civil penalty.

The seventh factor we may consider is whether the regulated entity cooperated with the Commission’s investigation. 52 Pa. Code § 69.1201(c)(7). I&E represents that Columbia Gas cooperated with I&E in its investigation, and that the Settlement was amicably negotiated and recognizes the Company’s good faith efforts to comply with the Commission’s Regulations. I&E Statement in Support at 8. Thus, we conclude that this factor warrants the imposition of a lower penalty.

The eighth factor we may consider is the amount of civil penalty or fine necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). As a result of the Settlement negotiated in this proceeding, Columbia Gas has agreed to pay a civil penalty of $50,000. Given the serious nature of the allegations in this case, as well as consideration of all of the above factors taken collectively, we are of the opinion that a civil penalty of $50,000 is appropriate in this specific case. In our view, this amount may be sufficient to deter future violations and is consistent with our prior decisions in other proceedings as well as the Code.[[4]](#footnote-4)

The ninth factor we may consider is past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). In its Statement in Support, I&E notes that the Parties reached the Settlement Agreement after taking into consideration past settlements regarding similar incidents that were approved by the Commission. I&E explains that these past settlements acted as a foundation from which the Parties could determine reasonable settlement terms in the matter before us. Specifically, I&E cites to *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*). *See* I&E Statement in support at 5, n.1. As I&E highlights, in *UGI,* we approved a settlement involving an incident in which a contractor employee was injured from the ignition of gas from an active gas main. The settlement in *UGI* resulted in the assessment of a $96,000 civil penalty. *See UGI* at 11-12. The incidents in the matter before us, likewise, involve injuries to contractor employees. However, as I&E points out, the matter in the instant case did not involve the ignition of gas, thereby greatly reducing the potential harm to the public. Further our assessment of a $96,000 civil penalty in *UGI* was based, in part, on our finding that the company in that proceeding had demonstrated a poor compliance history. *See Id.*  Thus, while the matter before us today is similar in nature to that in *UGI,* we find that a lower civil penalty is appropriate given the facts in the instant case.

The tenth factor we may consider is other relevant factors. 52 Pa. Code § 69.1201(c)(10). We believe that it is in the public interest to approve the settlement of this matter so as to avoid the expense of litigation and the possibility of appeals. In addition, we believe that the Settlement is in the public interest because it promotes safety by deterring unsafe practices and improving implementation of Columbia Gas’s operating procedures, including a revision of Columbia Gas’s training standards and the installation of physical modifications to Columbia Gas’s distribution system.

For the reasons set forth above, after reviewing the terms of the Settlement Agreement, we find that approval of the Settlement is in the public interest and is consistent with the terms of our Policy Statement.

**Conclusion**

It is the Commission’s policy to promote settlements. 52 Pa. Code § 5.231. The Parties herein have provided the Commission with sufficient information upon which to thoroughly consider the terms of the proposed Settlement. Based on our review of the record in this case, including the Settlement Agreement and the Statements in Support thereof, we find that the proposed Settlement is in the public interest and merits approval; **THEREFORE**,

**IT IS ORDERED:**

1. That the Joint Petition for Approval of Settlement Agreement filed on May 5, 2016, by Columbia Gas of Pennsylvania, Inc. and the Commission’s Bureau of Investigation and Enforcement is granted and the Settlement Agreement and its terms and conditions are therefore approved without modification.

2.  That, in accordance with Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, within thirty (30) days of the entry date of the Commission’s final Opinion and Order, Columbia Gas of Pennsylvania, Inc. shall pay a civil penalty in the amount of $50,000, payable by certified check or money order, to “Commonwealth of Pennsylvania” and sent to:

Rosemary Chiavetta, Secretary

Pennsylvania Public Utility Commission

Commonwealth Keystone Building

400 North Street

Harrisburg, PA  17120

3. That a copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Office of Administrative Services.

4. That upon receipt of the civil penalty described in Ordering Paragraph No. 2, the Secretary’s Bureau shall mark this proceeding closed.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: December 7, 2017

ORDER ENTERED: December 7, 2017

1. “Pigging” is the practice of using devices known as pigs to perform various maintenance operations on a pipeline, including, but not limited to, cleaning and inspecting the pipeline. The pigs used in this case were cleaning pigs. Settlement at 7 n.3. [↑](#footnote-ref-1)
2. Columbia agrees not to seek recovery of any portion of this payment in a future ratemaking proceeding. [↑](#footnote-ref-2)
3. During this period, Columbia Gas also paid two other civil penalties which were relatively small in amount. One of the civil penalties resulted from a Settlement. *See* *Pa. PUC, Law Bureau Prosecutory Staff v. Columbia Gas of Pennsylvania, Inc*., Docket No. C-2010-2071433 (Order entered August 31, 2012) (Columbia Gas paid a $5,000 civil penalty as a result of a temporary problem in its bill viewer program that allowed the bills of twenty-two customers to be viewed by other customers on Columbia Gas’s website). The other civil penalty resulted from a consumer complaint proceeding. *See* *Harris v. Columbia Gas of Pennsylvania, Inc.,* Docket No. C‑2011‑2241198 (Order entered January 20, 2012) (Columbia Gas was ordered to pay a $500 civil penalty for failing to provide reasonable and adequate customer service). [↑](#footnote-ref-3)
4. As noted, *supra,* the proceeding involving Columbia Gas that we addressed in our *December 2014 Order* involved a high number of alleged violations, including the ignition of gas, that occurred over nine separate incidents. Therefore, in that proceeding, we found that a civil penalty amount of $200,000 was appropriate. In contrast, the matter before us today is much smaller in scope and warrants a lower civil penalty amount. [↑](#footnote-ref-4)