

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Public Meeting held May 12, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman  
John F. Coleman, Jr., Vice Chairman  
Ralph V. Yanora

Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement

M-2021-3005572

v.

Columbia Gas of PA, Inc.

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a proposed Joint Petition for Approval of Settlement (Settlement, Settlement Agreement, or Petition) filed on June 8, 2021, by the Commission's Bureau of Investigation and Enforcement (I&E) and Columbia Gas of PA, Inc. (Columbia Gas or the Company) (collectively, the Parties), with respect to an informal investigation conducted by I&E. Both Parties filed Statements in Support of the Settlement. The Parties submit that the proposed Settlement is in the public interest and 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.* Petition at 10. For the reasons set forth below we shall deny the Settlement consistent with this Opinion and Order.

### **Background**

By Tentative Order entered February 3, 2022 (Tentative Order) and consistent with the requirement of 52 Pa. Code § 3.113(b)(3), we directed publication of the Settlement in the *Pennsylvania Bulletin* to provide an opportunity for interested parties to file comments regarding the proposed Settlement.<sup>1</sup> Comments to the proposed Settlement were received on February 24, 2022, from Mr. Richard C. Culbertson (Mr. Culbertson), and on March 16, 2022, from the Pennsylvania Office of Consumer Advocate (the OCA) and on March 17, 2022<sup>2</sup> from Columbia Gas.

### **History of the Proceeding**

This matter concerns alleged over pressurization events that occurred on Columbia Gas' Fayetteville and Rimersburg distribution systems. I&E initiated an informal investigation of Columbia Gas on February 8, 2019, as a result of information provided by its Gas Safety Division relating to these allegations. Specifically, the alleged over pressurizations occurred between January 9, 2018 and January 12, 2018 on Columbia Gas' Fayetteville distribution system and between May 16, 2018 and June 12, 2018 on Columbia Gas' Rimersburg system. Petition at 4 and 6-8.

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<sup>1</sup> As discussed in the Tentative Order, because of the number of customers involved in the Settlement, including the customers who registered gas odor complaints with Columbia Gas in this matter, we deemed it appropriate to publish the Settlement in the *Pennsylvania Bulletin*.

<sup>2</sup> Columbia Gas' Comments were efiled after the close of the Commission's normal business hours on March 16, 2022, therefore the Commission uses the next business day as the filing date. Consequently, we will consider the Comments as timely filed.

I&E conducted multiple inspections of the sites and interviews with Columbia Gas employees. As part of its investigation, I&E also served one set of Data Requests to Columbia Gas on February 8, 2019, to which Columbia Gas responded on March 8, 2019. Petition at 5.

Thereafter, the Parties entered into negotiations and agreed to resolve the matter in accordance with the Commission's policy to promote settlements at 52 Pa. Code § 5.231. *Id.* The Parties filed the instant Settlement on June 8, 2021.

As noted, the Commission issued the Tentative Order requesting comments regarding the proposed Settlement on February 3, 2022. On February 24, 2022, comments to the proposed Settlement were received from Mr. Culbertson. Comments were also received from the OCA and Columbia Gas.

## **Discussion**

### **1. The Involved Systems**

#### **A. The Rimersburg Distribution System**

As described more fully in the Settlement, the first system, Rimersburg, serves 420 active customers, and was over-pressurized daily for nearly a month, from May 16, 2018, to June 12, 2018, when the bypass valve at Regulator Station 4046 allowed the system to over-pressure 13 inches of water column above the maximum allowable operating pressure ("MAOP"). It was determined that this overpressure occurred because dried grease on the bypass valve to the main pipeline prevented the valve from sealing when a technician had applied new grease to the valve. Petition at 5-6, n. 2 and 3.

## **B. The Fayetteville Distribution System**

The distribution system in Fayetteville serves 966 active customers. I&E found that between January 9, 2018 and January 12, 2018, the Ausherman Regulator Station, R-3523, located in Fayetteville, was over-pressurized because a Columbia Gas technician failed to fully close the bypass valve after the valve had been opened to address a supply shortage. Petition at 6-8, n. 4 and 5. During the three (3) over-pressure events, the open bypass valve allowed upstream pressure to the R-3523 Station to bypass the regulator set and cause the system to exceed the MAOP of 45 pounds per square inch gauge (psig), reaching a pressure of 107 psig, which is 160% of the MAOP. Petition at 7. I&E stated its understanding that three (3) over-pressure events occurred on the following occasions:

- a. On January 9, 2018 the pressure exceeded the MAOP of 45 psig for two hours, reaching approximately 77 psig.
- b. On January 10, 2018, the pressure exceeded the MAOP of 45 psig for two hours, reaching approximately 52 psig.
- c. From January 11, 2018 to January 12, 2018, the pressure exceeded the MAOP of 45 psig for twenty-one hours, reaching approximately 107 psig.

Petition at 7 and n. 4.

The Petition further states that on January 2, 2018, Columbia Gas detected low gas flow from the supplier, Texas Eastern, in the Fayetteville gas system. Columbia Gas responded and increased the flow by manually operating the bypass valve of this station to supply the system. On January 12, 2018, a Columbia Gas technician determined that the system was over-pressurized when repairing a meter that was struck by a vehicle. I&E Pipeline Safety inspectors were contacted by a Columbia Gas

Compliance Manager and notified of an over-pressure in the Fayetteville area system of the Greencastle shop. Columbia Gas personnel informed the Commission inspectors of the over-pressure, reported that the system was a two-way feed, and that no outages were reported due to the overpressure. The I&E Pipeline Safety inspectors alongside Columbia Gas personnel then inspected Station R-3523 and reviewed the pressure chart. It was discovered that when the chart was previously changed, the chart recorded the inlet pressure in the system which caused the time to be marked incorrectly and required the chart to be read several hours ahead of time. The R-3523 Station operates with an inlet MAOP of 125 psig, and outlet MAOP of 45 psig. With Columbia Gas' assistance reading the chart, it was determined that over-pressure events occurred on three (3) occasions from January 9, 2018 to January 12, 2018. Petition at 7.

As noted in the Petition, Columbia Gas reported that subsequent to discovering the over-pressure events, from January 12, 2018 to January 26, 2018, it received 62 odor of gas calls, both from the public and self-generated. Petition at 8. Importantly, of the 62 calls, 21 calls were deemed "Grade 1" leaks, or hazardous leaks requiring immediate repair. On February 16, 2018, following a leak survey, Columbia Gas reported a total of 193 leaks had been found in the Fayetteville system. Columbia Gas also indicated that the majority of identified leaks were from mechanical fitting failures for meter sets. I&E found that this exceedance of MAOP from an engineering view compromised the integrity of the system and warranted total replacement of the system. *Id.*

## **2. Terms and Conditions of the Settlement**

The Parties submit that the Settlement has been filed to resolve all issues related to I&E's informal investigation and represents a compromise by both I&E and Columbia Gas of their competing positions. The Parties further state that the Settlement constitutes a carefully crafted package representing reasonably negotiated compromises

on the issues addressed therein. Petition at 11-12. The Parties urge the Commission to approve the Settlement in its entirety and without modification, as being in the public interest and consistent with the Commission's Policy Statement at 52 Pa. Code § 69.1201 governing settled proceedings involving violations of the Public Utility Code (Code) and the Commission's Regulations. Petition at 13.

The Settlement consists of the Joint Petition for Approval of Settlement containing the terms and conditions of the Settlement, Proposed Ordering Paragraphs (Appendix A to the Petition) and the respective Statements in Support of the Settlement of I&E (Appendix B to the Petition) and Columbia Gas, filed June 9, 2021 in this docket.

The essential terms of the Settlement are set forth in Paragraphs 23-32 of the Petition. Petition at 9-15. These terms and conditions are excerpted in relevant part (footnotes omitted for brevity), as follows:

23. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of discussions that culminated in this Settlement. I&E and Columbia [Gas] desire to (1) resolve I&E's informal investigation; and (2) settle this matter completely without litigation. The Parties recognize that given the inherent unpredictability of the outcome of a contested proceeding, there are mutual benefits of amicably resolving the disputed issues. The terms and conditions of the Settlement, for which the Parties seek Commission approval, are set forth below.
24. I&E and Columbia Gas, intending to be legally bound and for consideration given, desire to fully and finally conclude this investigation and agree that a Commission Order approving the Settlement without modification shall create the following rights and obligations:

A. Civil Penalty

25. Columbia Gas agrees to pay a total civil penalty of \$535,000, identified as follows:
  - a. A civil penalty of \$400,000 for the alleged violation of 49 CFR § 192.195, and 49 CFR § 192.199, when Columbia Gas' Rimersburg system had been overpressurized from May 16, 2018 to June 12, 2018 due to old dry and hardened grease on a bypass valve prohibiting new grease from forming a seal, and thus allowing gas to release;
  - b. A civil penalty of \$30,000 for the alleged violation of 49 CFR § 192.201, when the pressure of Columbia Gas's Fayetteville distribution system exceeded the MAOP plus 6 psig on January 9, January 10, January 11, and January 12, 2018;
  - c. A civil penalty of \$30,000 for the alleged violation of 49 CFR § 192.619 when the pressure of the plastic pipelines in the Fayetteville system exceeded the MAOP of 45 psig on January 9, January 10, January 11, and January 12, 2018;
  - d. A civil penalty of \$30,000 for the alleged violation of 49 CFR § 192.743 when the MAOP in the Fayetteville system, established by Columbia Gas, of 45 psig was exceeded due to gas by-passing the pressure limiting and regulating devices at the Ausherman Regulation Station R-3523 on January 9, January 10, January 11, and January 12, 2018;
  - e. A civil penalty of \$25,000 for the alleged violation of 49 CFR § 192.605 due to Columbia Gas' having trained its technicians to close a bypass valve by listening to any gas leaks, thereby leading to the valves' incomplete closure and allowing gas to pass through the

valve causing the Fayetteville system to overpressure;

- f. A civil penalty of \$20,000 for the alleged violation of the Commission regulations at 52 Pa. Code § 59.33 promulgated under 66 Pa.C.S. § 1501. The Parties note that while the above action resulted in an increased danger to the public, no loss of life, personal injury, nor property damage occurred in connection with any of the matters set forth above.
- g. Columbia Gas will not seek recovery of any portion of the total civil penalty amount of \$535,000 in any future ratemaking proceeding, and agrees that it will not be tax deductible under Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f). Said payment shall be made by certified check payable to “Commonwealth of Pennsylvania” and forwarded to the Commission through the prosecuting attorney within sixty (60) days of the entry date of the Final Order approving this Settlement;

B. Voluntary Modification of Business Practices

- 26. In 2019, Columbia Gas implemented the Safety Management System (“SMS”), which is a comprehensive approach to managing safety, emphasizing continual assessment and improvement and mitigating potential risks before they happen. Columbia Gas will include the issues of bypass valves in its SMS process (including determining whether they are opened or closed, active monitoring, remote access and pressure relief on its regulator stations that include bypass valves). Columbia [Gas] will update I&E on its findings and proposed process changes that result from SMS;
- 27. As part of its Gas Distribution Integrity Management Program (“DIMP”), Columbia Gas will include the issues of bypass valves (including the determination of



whether bypass valves are opened or closed, active monitoring, remote access and pressure relief on its regulator stations that include bypass valves) in its identification and ranking of risk, segment by segment, across its system:

- a. As part of the process to integrate the valves into the DIMP plan, Columbia Gas will inventory all bypass valves in its system in Pennsylvania. The inventory will first focus on regulator stations on low pressure stations (to be completed by December 31, 2021) and stations with greater than 125 psig inlet pressure (to be completed by March 31, 2022). Columbia Gas will complete inventory of the remaining systems within two (2) years from the effective date of the settlement order;
  - b. In this inventory, Columbia Gas shall identify, at a minimum, manufacture, installation year, size, and whether the valve has a way to identify the position of the valve (whether it is on or off);
  - c. This inventory shall also include inlet and outlet pressures of the station;
  - d. From this list, Columbia Gas shall develop a process to rank the risk specifically on the bypass valves across the distribution system, and;
  - e. Columbia Gas shall develop a replacement schedule or preventative and mitigative measures to prevent bypass valves from bleeding though or failing.
28. Columbia Gas shall abide by its newly implemented procedures regarding the use of bypass valves so that technicians properly determine whether bypass valves are opened or closed and in proper working order;

29. In addition to the above-mentioned procedures regarding bypass valves, Columbia shall also abide by the following Operational Notice issued by NiSource Inc.:
  - a. Operational Notice 19-05: there is a minimum 30-minute requirement to monitor downstream pressure at the end of all work performed in a regulator station when that work has involved bypassing the station to ensure the downstream pressure has stabilized. This work shall always be performed with two qualified metering and regulation (“M&R”) personnel.
  - b. If a bypass valve is operated, Columbia [Gas] shall observe and record the downstream pressure on the following day and observe and record the downstream pressure. This process should occur on all stations with bypass valves until non-primary reliefs or remote pressure monitoring can be installed at these stations, at which time Columbia [Gas] should reevaluate the need to continue this process.
30. Columbia Gas will improve its active monitoring, remote access and nonprimary reliefs on its regulator stations that include bypass valves.
  - a. With regard to low pressure systems, Columbia Gas will continue the program initiated in 2019, under which the Company began installing monitor regulators that are designed to slam shut when the pressure is either too low or too high for the systems to function correctly.
  - b. In addition to these slam shut regulators, on its low pressure systems Columbia Gas will continue to install remote monitoring devices that communicate directly with gas control that have set parameters that allow Columbia Gas to respond should pressure exceed either the high or low set points.

- c. Regarding its entire distribution network, Columbia Gas will initiate a program to install remote electronic pressure monitoring devices which will warn Columbia Gas when pressures increase. Under that program, Columbia Gas will also:
  - (1) Install a non-primary relief for each system that utilizes a bypass valve to prevent future overpressures and prevent similar instances while giving Columbia Gas more information and time to respond to events;
  - (2) Prioritize systems identified as higher risk for installations of non-primary relief valves, and;
  - (3) Provide I&E with a timeframe for the installation of downstream monitors, slam shut regulators and bypass valves;
  
- 31. Columbia Gas will add fields to its inspection forms regarding bypass valves to record pressure measured at the beginning and end of the monitoring period established under Operational Notice 19-05.
  
- 32. Beginning April 27, 2021, Columbia Gas has implemented pilot Standard Operating Procedures regarding shut down and start up of District Regulator Stations. Following those standard operating procedures, Columbia [Gas] will ensure that the following items will be observed as part of each inspection:
  - a. Does the regulator station include a bypass valve? Y/N
  - b. Is the bypass valve marked to indicate when it is fully closed, Y/N, or does it have a stop? Y/N
  - c. How is the valve marked to indicate that it is fully closed?

In response, and if the Settlement is approved by the Commission without modification, I&E agrees to forgo the institution of any formal complaint against Columbia Gas with respect to the alleged violations committed by Columbia Gas. Petition at 17; I&E Statement in Support at 13-15.

The proposed Settlement is conditioned on the Commission's approval without modification of any of its terms or conditions. If the Commission does not approve the proposed Settlement or makes any change or modification to the proposed Settlement, either Party may elect to withdraw from the Settlement. Petition at 16.

### **3. Settlement Considerations**

Initially, we note that any issue or argument that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the Parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

In reviewing settlements that resolve informal investigations, the Commission will provide other potentially affected parties with the opportunity to file comments regarding a proposed settlement prior to issuing a decision. In accordance with our regulations, the Tentative Order was published in the *Pennsylvania Bulletin*, inviting interested parties to file comments on the proposed Settlement.

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements. The Commission must, however, 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).

#### **4. Comments and Disposition**

##### **A. Culbertson Comments**

In his Comments, Mr. Culbertson questions whether the Settlement and the total civil penalty are proper and will stimulate Columbia Gas to operate in a safer manner. Mr. Culbertson references a 2010 “San Bruno pipeline explosion in California” to assert that over-pressurized lines are a common cause of gas line and house explosions. Further, Mr. Culbertson notes that over-pressurization has harmed the customers, employees, shareholders, and communities of Columbia Gas and Columbia Gas of Massachusetts (Columbia Gas MA). Moreover, Mr. Culbertson avers that, because Columbia Gas’ parent company, NiSource, Inc. (NiSource) operates utility companies in six different states and the presence of weakness, deficiencies and best practice solutions can be spread over each utility, NiSource has an advantage over other publicly traded gas distribution companies. Culbertson Comments at 1. In short, Mr. Culbertson asserts that the Settlement “does not sufficiently fulfill the purpose of enforcement, punishment, adequate incentives, and requirements for corrective actions that may prevent harm to people and property.” *Id.* at 7.

Mr. Culbertson references several publicly available documents, including news articles, federal and international regulations, and case-related legal documents, regarding over-pressurization and Columbia Gas or NiSource’s involvement with over-pressurization to question and analyze the reasonability of Settlement. Mr. Culbertson, at the outset of his analysis, notes that the best resource for setting and validating the suitability of any Commission penalty is the United States Sentencing Commission’s *Chapter Eight - Sentencing of Organizations*. *Id.* at 1-2. Mr. Culbertson also questions the timeliness of the Settlement and the Commission’s actions to suggest that, if the instant Settlement had been addressed sooner, then “the occurrence in Massachusetts may not have occurred.” Culbertson Comments at 2, 6.

Mr. Culbertson notes the penalties assessed against Columbia Gas MA for its involvement in a 2018 over-pressurization event (2018 MA Event). Mr. Culbertson attached to his comments news articles and legal documents associated with a plea agreement reached in *United States v. Bay State Gas Company, d/b/a Columbia Gas of Massachusetts*, Docket No. 20-cr-10066-FDS (*U.S. v. Columbia Gas MA*). Culbertson Comments at 3, 10-12. Mr. Culbertson states that the 2018 MA Event resulted in: (1) the removal of NiSource from a list of “the world’s most ethical companies;” (2) the removal of Columbia Gas MA from Massachusetts; and (3) the installation of a different utility in charge of the disaster response. *Id.* at 3. Mr. Culbertson also notes that as part of the plea agreement related to the 2018 MA Event, NiSource and its subsidiaries agreed to recommendations from the National Transportation Safety Board (NTSB). *Id.* at 3, 14-16. According to Mr. Culbertson, although the recommendations became requirements under the agreement, Columbia Gas failed to comply and “fix” things in Massachusetts and Pennsylvania. *Id.* at 3-4. Mr. Culbertson also attached to his comments links to news articles that address a 2019 elevated gas pressure event which involved Columbia Gas and occurred in Washington County, Pennsylvania (2019 Washington County Event). Mr. Culbertson claims that, in response to the 2019 Washington County Event, the NTSB and the Commission have not followed-up with an investigation or taken any enforcement action. *Id.* at 4, 6, 18-19.

Next, Mr. Culbertson refers to several national and international regulations to assert that a “lack of compliance” exists in “Pennsylvania operations.” Culbertson Comments at 5. Specifically, Mr. Culbertson cites the Code for Federal Regulations at 49 C.F.R. § 192.605, *Procedural manual for operations, maintenance, and emergencies*, to note that this manual is required to be followed in the normal course of business, including incorrect pipeline operations. *Id.* at 3, 13 (citing 49 C.F.R. § 192.605(a), (b)(5)). Further, Mr. Culbertson cites 49 C.F.R. § 192.195, *Protection against accidental over-pressuring*, to aver that over-pressuring devices have been required to be in place for a long time. *Id.* at 4, 17 (citing 49 C.F.R. § 192.195(a)). Moreover, Mr. Culbertson

cites to *Joint Statement of Mr. Joe Hamrock, Chief Executive Officer, NiSource, et al., Before the United States Senate Committee on Commerce, Science and Transportation, November 26, 2018*, to assert that NiSource did not comply with 49 C.F.R. § 192.195 and only made an effort to comply after the 2018 MA Event. *Id.* at 4-5, 17-18. Additionally, Mr. Culbertson cites 49 C.F.R. § 192.513, *Test requirements for plastic pipelines*, and Sections 406.4 of the International Fuel Gas Code, *Test Pressure*, to note that regulation and standards for test methods and test pressure for plastic pipes have been in place for at least fifty years. *Id.* at 4-5, 19-20 (citing 49 C.F.R. § 192.513(c); 2018 I.F.G.C. § 406.4.1).

Mr. Culbertson also addresses *Pa. Public Utility Commission, Bureau of Investigation and Enforcement v. Columbia Gas of Pennsylvania, Inc.*, Docket No. M-2016-2378672 (Order entered December 7, 2017) (*2017 Columbia Gas Case*), which involved a severe injury to a contract crew worker who was working on a plastic gas mainline during a steel main replacement. Mr. Culbertson notes that the first segment of the main tested at 90 psig and held air but was not depressurized. Culbertson Comments at 5, 23 (citing *2017 Columbia Gas Case*). Mr. Culbertson opines that, in the *2017 Columbia Gas Case*, the time of the accident and the time of the settlement was unreasonable and disregards worker safety. Further, Mr. Culbertson claims that, because the regulation for testing plastic pipes is 50 psig, the main test reading of 90 psig was a regulatory violation and, therefore, Columbia Gas and the Commission have been testing plastic pipes incorrectly for over fifty years. *Id.* at 5-6 (citing *2017 Columbia Gas*). Moreover, Mr. Culbertson references the United States General Accountability Office Green Book and the Committee of Sponsoring Organizations of the Treadway Commission Internal Control - Integrated Framework to assert that Columbia Gas and the Commission lack current and sufficient internal controls to enforce accurate test methods for plastic pipe installation. *Id.* at 6.

Mr. Culbertson attaches a news article to his comments regarding more than 200 Columbia Gas employees who voted to strike over unsafe working conditions for contractors, including multiple safety incidents that resulted in gas leaks in homes. Culbertson Comments at 5, 25. Mr. Culbertson notes that, although the nature and causes of these safety incidents are unknown, gas leaks in homes can put homeowners and their property at risk. *Id.* at 5.

Finally, Mr. Culbertson cites Section 335(d) of the Code, 66 Pa. C.S. § 335(d), to question the documents relied upon in determining the total civil penalty of \$535,000. Culbertson Comments at 6-7.

In closing, Mr. Culbertson recommends that: (1) the Commission and an independent third-party investigator “reinvestigate” the 2018 incidents and other prior over-pressurization related incidents and violations; (2) an independent third-party conduct an investigation of the Commission to determine the cause of the untimely investigation and enforcement actions; (3) Columbia Gas and NiSource receive additional oversight and supervision, to provide assurance of effective internal controls over operations; (4) Columbia Gas implement practiced industry standards to strengthen the Company’s internal control system;<sup>3</sup> (5) upon the implementation of the practiced industry standards, Columbia Gas conduct annual testing of conformance and compliance with the standards, with reporting to the Commission, the NiSource Audit Committee, the NiSource “probation officer,” and the public as appropriate; (6) Columbia Gas “retire”

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<sup>3</sup> Specifically, Mr. Culbertson recommends that the following “industry consensus standards” be implemented: (1) API –Safety Management Systems 1173, with annual conformance assessments; (2) ASTM 2279 – Guiding Principles of Asset Management; (3) ISO 9000 Quality Management; (4) ISO 31000 Risk Management; (5) ISO 45000 Safety Management; (6) ISO 55000 Asset Management; (7) ISO 37002 Whistle Blowing Management; (8) ISO 37301 Compliance management systems; and (9) ISO 19011, Guidelines for auditing management systems. Culbertson Comments at 7-8.



the Standards for Customer Service Lines, Meters, and Service Regulators (Plumber's Guide), as it is not an officially approved NiSource/Columbia Gas management document and it does not provide accurate or reliable information; and (7) the Commission focus on improving its internal controls and its required audits of Columbia Gas. Culbertson Comments at 7-8, 21-22.

## **B. The OCA's Comments**

The OCA raises three basic concerns about the Settlement and urges the Commission to seek further evidence before considering its approval. The OCA submits that the Commission should not approve the proposed Settlement based on the record before the Commission at this time because the record is unclear and incomplete in several important areas. Specifically, the OCA asserts that there is insufficient information as to cost responsibility for the over-pressurization events, the extent of damage to either the Rimersburg or Fayetteville systems, and what repairs were actually performed to these systems. The OCA submits that these are all important factual issues that must be resolved before the Commission can reasonably determine whether the proposed Settlement is in the public interest. OCA Comments at 2-3.

The OCA point out that, according to the Petition, the over-pressurization events on both the Rimersburg and Fayetteville systems were traced back to two separate, ineffective and/or incomplete repair processes performed by Columbia Gas technicians. The OCA refers to I&E's Statement in Support, which discusses the various reasons why

the maximum civil penalty should not be imposed on Columbia for these events. The OCA provides the following relevant excerpt:

As consequences of a serious nature did not ensue, alongside Columbia Gas cooperating with I&E's investigation and Columbia Gas **bearing the expense**, *inter alia*, to replace more than 45,000 feet of its Fayetteville system pipeline, this factor weighs in favor of an agreed upon civil penalty of \$535,000.

OCA Comments at 3 (citing I&E Statement in Support at 21-22, emphasis added by OCA). Based on I&E's findings as to the root cause of both of these events, that Columbia Gas created the problem, the OCA avers that Columbia Gas (and not its customers) should bear the costs involved in repair and replacement of the systems as needed. Under the plain language of the quoted excerpt, it appears that I&E's understanding is that Columbia is bearing the costs, at least as to the repairs required for the Fayetteville system. The OCA is concerned, however, that the Settlement is not clear about whether Columbia Gas has sought or will seek recovery of these expenses through its base rates. OCA Comments at 3-4.

The OCA argues that the record is devoid of information as to cost responsibility for the Rimersburg system repairs. The OCA argues further that, even though I&E's statement about the Fayetteville system replacement cost responsibility may seem clear, the specific terms of the Settlement are silent on this issue. The OCA thus submits that additional information is needed in this area before the Commission can adequately assess whether the Settlement as proposed is truly in the public interest. Further, the OCA argues that the Commission should solicit further information from both I&E and Columbia Gas on the intended cost responsibility for these events. *Id.*

Next, the OCA contends that at numerous places in the record there are statements that "no property damage occurred." *See e.g.*, Petition at 11; I&E Statement in

Support at 7. The OCA takes issue with the statements as being inconsistent with the record, because both the Rimersburg and Fayetteville systems apparently were damaged. I&E Statement in Support at 18; Tentative Order at 4-5. The OCA asserts that this is an important issue to be clarified, given I&E's statement that "there has not been any reported property damage due to the leaks", as support for its conclusion that the civil penalty of \$535,000 is reasonable and should be approved. OCA Comments at 4-5 (citing I&E Statement in Support at 21). The OCA agrees that whether any Columbia Gas customers experienced damage to their appliances or equipment is an important factor to be considered. Simply put, the OCA suggests that the Commission should gauge the reasonableness of the civil penalty in conjunction with the resolution of whether Columbia is bearing the expense of the repair and replacements of the Rimersburg and Fayetteville systems. OCA Comments at 4.

Finally, the OCA points out record discrepancies of how much plant was replaced on the Fayetteville system. The OCA notes that the Petition provides the following as to the Fayetteville system: "I&E found that this exceedance of MAOP [Maximum Acceptable Operating Pressure] from an engineering view compromised the integrity of the system and warranted total replacement of the system." OCA Comments at 5 (citing Petition at 8). The Petition then states that the Fayetteville system contains approximately 25 miles of pipeline. *Id.* (citing Petition at 8, fn. 5). In its Statement in Support, however, I&E provides that Columbia replaced "more than 45,000 feet" of the Fayetteville system. *Id.* (citing I&E Statement in Support at 21). The OCA voiced a concern about whether total replacement of the twenty-five-mile Fayetteville system is warranted, yet it appears that only about nine miles (45,000 feet) of the system was actually replaced by Columbia Gas. The OCA urges the Commission to seek further information and clarification on this issue before reaching a final determination in this matter. *Id.* at 5.

### C. Columbia Gas's Comments

Columbia submitted comments to purportedly correct two items in I&E's Statement in Support, and to respond to the comments filed by Mr. Culbertson.

Columbia Gas first makes a ministerial correction to I&E's statement that "Columbia became a jurisdictional gas distribution supplier licensed by the Commission at Docket No. A-2015-2491750." Columbia Gas Comments at 1-2. Columbia stated that Docket No. A-2015-2491750 was an abandonment proceeding. Specifically, Columbia explained that:

[It] was incorporated on June 23, 1960 as a wholly-owned subsidiary of the Columbia Gas System, Inc., under the Act of May 29, 1885, P.L. 29 of the Commonwealth of Pennsylvania and commenced service as Columbia Gas of Pennsylvania, Inc., on January 1, 1962, when it acquired the Pennsylvania retail business of The Manufacturers Light and Heat Company, which was at that time another wholly-owned subsidiary of The Columbia Gas System, Inc.

Columbia Gas Comments at 2 (citing *Pa. Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2021-3024296, Columbia St.1, Direct Testimony of Mark Kempic). Columbia Gas' licensure correction is hereby noted.

Next, Columbia Gas takes issue with I&E's assertion on page 21-22 of its Statement in Support of the Settlement, which reads as follows:

As consequences of a serious nature did not ensue, alongside Columbia Gas cooperating with I&E's investigation and Columbia Gas bearing the expense, *inter alia*, to replace more than 45,000 feet of its Fayetteville system pipeline, this factor weighs in favor of an agreed upon civil penalty of \$535,000.

Columbia Gas Comments at 2 (citing I&E Statement in Support at 21-22). Columbia Gas submits that the language "Columbia Gas bearing the expense" could be interpreted to

mean that, as part of the Settlement, the Company agreed it would not seek to recover any portion of the cost of pipe replacement. *Id.* The Company then notes that while it did agree, in paragraph A.1.g. in the Terms of Settlement, that it would not seek to recover any part of the civil penalty in any future ratemaking proceeding, the Settlement did not contain any restriction on Columbia's ability to seek rate relief for the costs associated with facility replacement. *Id.*

Finally, Columbia Gas responds to the Comments of Mr. Culbertson by pointing out that Mr. Culbertson raises issues that he litigated in Columbia's 2021 base rate case at Docket No. R-2021-3024296, and which the Commission denied by Order issued on December 16, 2021 (*December 2021 Order*). Columbia Gas Comments at 2. Columbia Gas asserts that on February 17, 2022, Mr. Culbertson filed a Petition for Review in the Commonwealth Court of Pennsylvania challenging the Commission's *December 2021 Order*. See *Richard C. Culbertson v. Pa. Public Utility Commission*, Case No. 152 CD 2022 (Pa. Cmwlth. 2022). Columbia Gas argues that Mr. Culbertson should not be afforded the ability to relitigate these matters in the case at hand and thus, requests that the Commission afford no weight to the comments filed by Mr. Culbertson in this matter. Columbia Gas Comments at 2-3.

#### **D. Disposition**

While it is the Commission's policy to promote settlements, 52 Pa. Code § 5.231, upon review of the Settlement and Statements in Support of same, the limited record, and the Comments filed in response to the Tentative Order, we determine that further development of a complete record is necessary before the Commission renders a decision on appropriate remedies in relation to the Rimersburg and Fayetteville System events. It is clear from the OCA's Comments, and those submitted by Columbia Gas itself, that the Settlement is not clear on the issue of exactly what facilities required replacement. In addition, the Parties appear to be in disagreement about Columbia Gas's

ability to recover/seek recovery of the cost of replacement facilities in rate base. Finally, the record is not clear on what damage to customer property resulted due to the over-pressurization events. These issues must be elucidated further in order for the Commission to rule and make a well-reasoned determination on whether the Settlement is in the public interest.

### **Conclusion**

For the reasons set forth above, after reviewing the terms of the Settlement and associated Statements in Support of same, the limited record and the Comments filed in response to the Tentative Order, we deny the Settlement. This matter is referred to I&E for further proceedings as deemed necessary and appropriate; **THEREFORE,**

#### **IT IS ORDERED:**

1. That the Joint Petition for Approval of Settlement filed on June 8, 2021, between the Commission's Bureau of Investigation and Enforcement and Columbia Gas of PA, Inc. is denied.
2. That this matter is referred to the Commission's Bureau of Investigation and Enforcement for further proceedings as deemed necessary and appropriate, consistent with this Opinion and Order.

3. That a copy of this Opinion and Order shall be served on the Office of Consumer Advocate, the Office of Small Business Advocate, and Mr. Richard C. Culbertson.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: May 12, 2022

ORDER ENTERED: May 20, 2022