



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
COMMONWEALTH KEYSTONE BUILDING  
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

July 28, 2022

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement v.  
Columbia Gas of Pennsylvania, Inc.  
Docket No. M-2022-3012079  
**I&E Comments**

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the **Comments of the Bureau of Investigation and Enforcement** in the above-referenced matter.

Copies have been served on the parties of record in accordance with the Certificate of Service. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads 'M. Swindler'.

Michael L. Swindler  
Deputy Chief Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney ID No. 43319  
(717) 783-6369  
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MLS/ac  
Enclosures

cc: Deputy Chief Administrative Law Judge Charles E. Rainey (*via email*)  
Office of Special Assistants (*via email* – [ra-OSA@pa.gov](mailto:ra-OSA@pa.gov))  
Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2022-3012079
	:	
Columbia Gas of Pennsylvania, Inc.	:	

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**COMMENTS OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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**I. Background and Introduction**

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), by and through its prosecuting attorneys, hereby submits Comments, *nunc pro tunc*, to respond to the Comments of the Office of Consumer Advocate (“OCA”) filed in the above-referenced proceeding on July 27, 2022. For the reasons explained in greater detail herein, the Commission should reject the OCA’s assertion that the Joint Petition for Approval of Settlement (“Settlement Agreement” or “Settlement”) should not be approved as any non-approval of the Settlement will hinder and/or further delay the significant public benefits achieved by the Settlement.

Pursuant to the Commission’s sound policy to encourage settlements,<sup>1</sup> I&E and Columbia Gas of Pennsylvania, Inc. (“Columbia” or “Company”) filed the instant

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<sup>1</sup> 52 Pa. § Code 5.231(a).

Settlement Agreement on March 4, 2022. The Agreement fully and amicably resolves I&E's informal investigation of a July 31, 2019 uprating incident at 100 Park Lane, Washington, Washington County, Pennsylvania.

On June 16, 2022, the Commission entered a Tentative Order providing an opportunity for interested parties to file comments regarding the proposed Settlement. Pursuant to the Tentative Order, interested parties had twenty-five (25) days to submit comments following publication of the Tentative Order in the *Pennsylvania Bulletin*. The Tentative Order was published in the *Pennsylvania Bulletin* on July 2, 2022.<sup>2</sup> Accordingly, comments were due on or before July 27, 2022.

As stated above, the OCA filed its Comments on July 27, 2022, the final day in which the Tentative Order sought comments. I&E respectfully requests that the Commission consider the instant I&E's Comments, *nunc pro tunc*. A party seeking *nunc pro tunc* relief must show that the document was filed within a short period after the deadline or date and that the parties will not suffer prejudice due to the delay. *Cook v. Unemployment Compensation Board of Review*, 671 A.2d 1130, 1131 (Pa. 1996); *Bureau Veritas North America, Inc. v. Department of Transportation*, 127 A.3d 871, 879 (Pa. Cmwlth. 2015). I&E's Comments are filed one (1) day after the filing deadline and one (1) day after the OCA's Comments were filed. No party is prejudiced with the submission of I&E's Comments and I&E otherwise lacks an opportunity to respond to the OCA. Moreover, the OCA's Comments suggest drastic additions to the filed

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<sup>2</sup> 52 Pa.B. 3750 (July 2, 2022).

Settlement which go to the very heart of the issues amicably negotiated between I&E and the Company. As a matter of fairness, I&E must be permitted to respond to OCA's claims.

## II. I&E Comments

### A. **The OCA's Request that the Commission Deny the Settlement Agreement Disregards the Public Interest As It Will Further Delay the Company's Implementation of the Important Corrective Measures that the Settlement Agreement Achieves**

The Commission should reject the OCA's Comment that the Settlement Agreement should be denied for omitting specific timeframes in which Columbia must complete the agreed-upon corrective actions.<sup>3</sup> This is hardly a reason to reject the Settlement. It is often impossible for parties to a settlement to predict the exact amount of time it will take to execute various non-monetary remedial measures. The Commission, and specifically I&E, does not micro-manage the operations of the jurisdictional entities that it oversees. In addition, many remedial measures are implemented, executed and completed immediately prior to a Final Order even being entered. Nevertheless, in its Order concerning the merits of the Settlement Agreement, the Commission has the option to direct a timeframe in which the Company should perform some or all of the agreed-upon corrective measures. For example, a common timeframe used in pipeline safety matters consists of performing such measures within thirty (30) days after entry of any Commission Order approving a settlement.<sup>4</sup> This

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<sup>3</sup> OCA Comments at 3.

<sup>4</sup> See *Pa. Pub. Util. Comm'n v. Peoples Natural Gas Company LLC*, Docket No. M-2022-3028365 (Settlement Agreement filed March 9, 2022).

thirty-day timeframe is also used in the instant Settlement Agreement related to the civil penalty payment. I&E does not anticipate that a thirty (30) day timeframe for the performance of many of the corrective measures set forth in this Settlement would be problematic, since the corrective measures pertain to revisions of the Company's processes and procedures as well as the development of a new training module, which the Company has already contemplated and is likely to complete in the upcoming months, if not already performed. Should the Company determine that any such timeframe as imposed by the Commission Order - in the event that the Commission deems it necessary to impose a specific timeframe - is deemed unrealistic, parties are afforded the ability to file a petition for reconsideration of any such terms. To be clear, the Commission has in the past approved numerous settlements without chaining the utility to specific, set time frames to implement each and every remedial measure as such a burden could jeopardize the benefits amicably negotiated and gained by the settlement.

The Commission should also reject the OCA's comment that: (1) Columbia should provide a report to the I&E Pipeline Safety Inspectors detailing the status of Columbia's performance of corrective actions; and (2) I&E and Columbia should prepare a public report to inform the Commission and the public that all corrective actions have been taken.<sup>5</sup> Both of the OCA's concerns will already be accomplished through routine Commission regulation. Pursuant to 52 Pa. Code § 5.591(a), Columbia is required to file with the Commission's Secretary a publicly available notice that it has complied with the

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<sup>5</sup> OCA Comments at 3.

directives set forth in any Commission Order entered in this proceeding. Likewise, I&E Pipeline Safety Inspectors routinely ensure that natural gas public utilities comply with recently approved Settlement Agreements during the inspections of those public utilities. Therefore, the OCA's concerns related to timing and reporting do not warrant disrupting the carefully negotiated Settlement Agreement, which would further delay the public benefits obtained by the Agreement.

**B. The Property Damage Associated with the Uprating Incident may be Addressed in Columbia's Next Base Rate Case**

The Commission should reject the OCA's Comment that the total monetary damages and associated cost responsibility from the uprating incident should be addressed prior to the Commission's approval of the Settlement Agreement of this matter.<sup>6</sup> First, the "amount of money needed to resolve all of the damage and injury claims..." is not imperative to know for the Commission to reach a conclusion that this Settlement is in the public interest. Personal property damage claims and personal injury claims are themselves outside the scope of the Commission's jurisdiction. In a matter such as this, the efforts of I&E and the jurisdictional entity to reach an amicable settlement are intended to resolve safety concerns that impact customers, utility employees and the general public. Settlements are often preferred to litigation because it allows agreed-to safety measures set forth in the settlements to be implemented on an expedited basis. Such safety improvements are intended to be implemented without

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<sup>6</sup> OCA Comments at 4.

concern for the status of non-jurisdictional damage or injury claims that may exist and of which the Commission has no involvement.

Nevertheless, it is worthy to note that pursuant to 49 CFR § 191.1, Columbia has filed an incident report with the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) initially on August 30, 2019 and supplemented on December 16, 2021. Columbia reported damages of \$282,337. This incident report was provided to I&E as part of its informal investigation and the aggregated data from the report is publicly available on PHMSA’s website. As such, there is certainly no reason to reject this Settlement as filed based on the OCA’s belief that this “additional information” is needed.

As for OCA’s claim that cost responsibility and “monetary liability” must be specifically set forth in this Settlement, I&E avers that this is a topic best suited for the OCA to raise in Columbia’s next base rate case, and not in this Settlement. No utility, including Columbia in this instance, is precluded from potentially seeking cost recovery of costs incurred or to justify a proposed rate increase. It is during a rate proceeding that parties such as statutory advocates, especially OCA, often challenge such evidence, and demand such accountings from the filing utility. Consequently, whether Columbia will or will not seek recovery of costs or will or will not ultimately claim such costs as a basis for rate recovery is premature here and not a necessary component of this Settlement that amicably resolves safety concerns and implements remedial measures that are clearly in the public interest.

**C. The Agreed-Upon Civil Penalty Amount Comports with the Commission’s Policy Statement at 52 Pa. Code § 69.1201 and Should not be Disturbed**

The OCA comments that the civil penalty amount should be reconsidered if the “cost of the corrective actions” is being passed onto Columbia ratepayers.<sup>7</sup> I&E submits that the Settlement adequately addresses the *Rosi* standards to show that the civil penalty amount of \$990,000.00, amicably agreed to between the parties, is appropriate and sufficient to deter Columbia from committing future violations. As explained in I&E’s Statement in Support, the civil penalties imposed upon Columbia for prior violations have fluctuated over time due to the factors dictated in 52 Pa. Code § 69.1201, ranging anywhere from a \$5,000.00 civil penalty to \$200,000.00. The instant Settlement would be the highest civil penalty ever imposed upon Columbia and appropriately recognizes the seriousness of pipeline overpressuring. Thus, all the factors in 52 Pa. Code § 69.1201 were considered when determining whether the civil penalty is appropriate, including the fact that the parties agreed to settle the matter instead of engaging in litigation.

The reference to the “cost of corrective actions” was merely intended to recognize the fact that Company will be expending funds to implement safety improvements over and above the civil penalty agreed to when considering the Section 1201 factors. It is doubtful that the actual cost of the agreed-to corrective actions could even be quantified at such an early stage. The parties recognize that the costs associated with the remedial measures, while difficult to specifically calculate at the time of settlement, will be

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<sup>7</sup> OCA Comments at 4-5.

substantial and were appropriately considered when reaching the civil penalty amount. Further, the determination of whether Columbia seeks to pay for corrective actions with ratepayer funds is a question to be posed by OCA and others in Columbia's next rate base proceeding, not here. The Commission has consistently approved settlements in the past that contain no express prohibition from at least permitting the utility to seek such cost recovery. Then, it is at that rate proceeding that the determination regarding cost recovery is ultimately made.

### **III. Conclusion**

For the foregoing reasons, I&E respectfully requests that the Commission consider I&E's Comments and expeditiously approve the Settlement Agreement in its entirety so that the important public benefits set forth therein can be implemented.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "M. Swindler", written in a cursive style.

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

Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Date: July 28, 2022

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing **Comments** dated July 28, 2022, upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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