

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

Public Meeting held December 8, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
Stephen M. DeFrank, Vice Chairman
Ralph V. Yanora, Joint Statement, Dissenting
Kathryn L. Zerfuss
John F. Coleman, Jr., Joint Statement, Dissenting

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

M-2022-3012079

v.

Columbia Gas of Pennsylvania, 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 Joint Petition) filed on March 4, 2022, by the Commission's Bureau of Investigation and Enforcement (I&E) and Columbia Gas of Pennsylvania, Inc. (Columbia Gas or the Company) (collectively, the Parties), with respect to an informal investigation conducted by I&E. By Order entered June 16, 2022, relative to the above-captioned proceeding (*June 2022 Order*), we provided interested parties with the opportunity to file comments on the Settlement. Also, before the

Commission for consideration and disposition are the Comments of: (1) North Franklin Township (Township) filed on July 15, 2022 (Township Comments); (2) Richard C. Culbertson (Mr. Culbertson) filed on July 18, 2022 (Mr. Culbertson Comments); (3) Columbia Gas filed in response to Mr. Culbertson's Comments on July 27, 2022; (4) the Office of Consumer Advocate (OCA) filed on July 27, 2022 (OCA Comments); and (5) I&E filed in response to the OCA's Comments on July 28, 2022; all filed in response to the *June 2022 Order*.

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 (Rosi)*. Joint Petition at 10. We shall deny the Joint Petition for Approval of Settlement filed on March 4, 2022, between the Commission's Bureau of Investigation and Enforcement and Columbia Gas of PA, Inc. for the reasons set forth below consistent with this Opinion and Order.

I. History of the Proceeding

This matter concerns a natural gas explosion that occurred on July 31, 2019, at 100 Park Lane in Washington, Washington County, Pennsylvania (100 Park Lane). At least four individuals were injured as a result of the explosion. No fatalities occurred. The explosion demolished the entire residential structure at 100 Park Lane and caused severe damage to three vehicles that were located on the property. One other residence was condemned as a result of the explosion, and numerous other homes were damaged. Pipeline Safety Inspectors from I&E's Gas Safety Division responded to the scene on the day of the explosion and initiated an investigation. Petition at 4.

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.* As previously indicated, the Parties filed the instant Settlement on March 4, 2022.

On June 16, 2022, the Commission adopted the *June 2022 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. As earlier noted, Comments to the proposed Settlement were received on July 15, 2022, from the Township; on July 17, 2022, from Mr. Culbertson; on July 27, 2022, from the OCA; on July 27, 2022, from Columbia Gas; and on July 28, 2022, from I&E.¹ For the reasons discussed *infra*, we determine that further development of the record is necessary before the Commission renders a decision on appropriate remedies in relation to the natural gas explosion that occurred at 100 Park Lane. As such, we will deny the proposed Settlement in its current form and refer the Settlement to I&E for such further proceedings as may be deemed necessary and appropriate.

II. Background

Columbia Gas and NPL Construction Co. (NPL), the construction contractor used by Columbia Gas on this project, were working on an incremental mainline uprating project as part of the Company’s “Dewey Avenue Replacement Project” (Project) at the time of the explosion. The Project was a two-phase project initiated by Columbia Gas on March 8, 2019, to install new main and uprate existing

¹ The *June 2022 Order* was published in the *Pennsylvania Bulletin* on July 2, 2022. Accordingly, comments were due on or before July 27, 2022. I&E requested the Commission consider its Comments, efiled on July 28, 2022, *nunc pro tunc*.

main from its operating pressure of Low Pressure (LP), ~ 11 inches of water column, to a Maximum Allowable Operating Pressure (MAOP) of 45 pounds per square inch gauge (psig). The uprate portion of the Project involved facilities on Nokomis Drive, Mineola Avenue, Iola Avenue and Winona Avenue in Washington, PA. It was expected to impact approximately sixty of the Company's customers. Columbia Gas failed to include the residence at 100 Park Lane on the Company's maps for the Project, and, therefore, it was mistakenly omitted from the scope of the Dewey Avenue Replacement Project. While the house did have a different street address from other houses included in the Project, the service line for this residence was tapped off the Company's Mineola Avenue facilities – facilities that were within the scope of the Project. Joint Petition at 4-5.

On August 23, 2019, a joint evaluation was conducted by the State Fire Marshal and I&E Pipeline Safety personnel to determine the cause of the 100 Park Lane explosion. It was determined that the primary cause of the explosion was the over pressurization of the house piping and appliances since the service line to the 100 Park Lane residence was not equipped with a service regulator at the time of the incremental pressure uprating. The source of the gas was surmised to be natural gas leaks occurring around the gas appliances located inside the residence. Joint Petition at 6.

If this matter had been fully litigated, I&E would have proffered evidence and legal arguments to demonstrate that Columbia Gas committed, *inter alia*, the following violations:

- a. Columbia Gas did not use reasonable effort to protect the public from danger in that it failed to identify all gas and non-gas customers within the scope of its Dewey Avenue Replacement Project, an alleged violation of 52 Pa. Code § 59.33(a).
- b. Columbia Gas did not adequately inspect adjacent structures to the gas main(s) involved in the incremental uprating, in that it failed to identify that the service line at

100 Park Lane would be affected by its Dewey Avenue Replacement Project, an alleged violation of 52 Pa. Code § 59.35.

- c. Columbia Gas uprating procedures were inadequate in that the procedures failed to require the inspection of all abutting and adjacent structures to gas main(s) involved in an incremental uprating project before significantly increasing the normal operating pressure of a distribution or transmission pipeline, an alleged violation of 49 CFR § 192.13(c).
- d. Columbia Gas Incremental Uprate Plan did not identify the adjacent structure of 100 Park Lane as being affected by its Dewey Avenue Replacement Project, an alleged violation of 49 CFR § 192.553(c).
- e. Columbia Gas' design failed to include operating, and maintenance history of the segment of pipeline before increasing the operating pressure above the previously established MAOP in that it did not include the service at 100 Park Lane in its design documents and procedures for the uprating project, an alleged violation of 49 CFR § 192.557(b)(1) and 52 Pa. Code § 59.33(a).
- f. Columbia Gas' leak survey before increasing the operating pressure above the previously established MAOP from ~ 11 inches of water column to 45 psig did not include 100 Park Lane, an alleged violation of 49 CFR § 192.557(b)(2) and 52 Pa. Code § 59.33(a).
- g. Columbia Gas failed to account for the service line at 100 Park Lane and therefore failed to install a service regulator on the service line before the Company increased the operating pressure of the distribution system from ~ 11 inches of water column to 45 psig, an alleged violation of 49 CFR § 192.557(b)(6).
- h. Columbia Gas failed to furnish and maintain adequate, efficient, safe and reasonable service and facilities and make such repairs, changes, alterations, substitutions, extensions and improvements in or to its service and facilities necessary or proper for the accommodation and

safety of its patrons, employees and the public, thereby placing the safety of its customers, employees and the public in danger, an alleged violation of 66 Pa. C.S. § 1501.

Joint Petition at 10-12.

Columbia Gas fully acknowledges the seriousness of the allegations and recognizes the need to prevent future reoccurrences. Joint Petition at 13.

III. Terms and Conditions of the Settlement

The Parties submit that the Settlement is a complete settlement 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. 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. Joint Petition at 19.

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 Joint Petition) and the respective Statements in Support of the Settlement of I&E (Appendix B to the Joint Petition) and Columbia Gas (Appendix C to the Joint Petition), filed on March 4, 2022.

The essential terms of the Settlement are set forth in Paragraphs 48-49 of the Joint Petition. Joint Petition at 13-16. These terms and conditions are excerpted in relevant part (footnotes omitted for brevity), as follows:

48. 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.

49. 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:

Respondent will pay a civil penalty in the amount of \$990,000.00 pursuant to 66 Pa.C.S. § 3301(c). Said payment shall be made within thirty (30) days of the date of the Commission’s Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the “Commonwealth of Pennsylvania.” Columbia Gas will not seek recovery of any portion of the total civil penalty amount 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).

b. Corrective Actions:

Columbia Gas recognizes the seriousness of this matter and will promptly take the following steps to prevent a similar occurrence:

- 1) Revise its Upgrading Procedure Gas Standard [GS 5500.400] to require the inspection of all abutting and adjacent structures to gas main(s) involved in an incremental upgrading project before significantly increasing the normal operating pressure of a distribution or transmission pipeline above the previously established MAOP. Significantly shall mean the increase in operating pressure requiring a change in service regulation or an incremental increase in pressure as required by 192.557(c).
- 2) Develop and implement a program or process which ensures identification of the location, main, and pressure system for each service line tap within Columbia Gas service territory. This program or process must be able to identify properties where the actual tap location differs from the street address.
- 3) Modify the minimum requirements found in Exhibit A under Gas Standard GS 3020.012 for service line records to include street names and address or geospatial data. Where the actual tap location differs from the street address, the service line sketch will include street names and address, until such time the service line record is fully contained within the Company's Geographic Information System. Retrain all impacted Columbia Gas employees on all Company standards that outline the minimum requirements for service line records which includes the locations of the tap and the main. Create a QA/QC program to review service line records to ensure they meet the minimum requirements of the Company standards. Create a program to review all existing service line

records to ensure that the record meets the minimum requirements. Establish procedures to identify all service lines in and around every project which significantly increases the MAOP of the system or an incremental increase in pressure as required by 192.557(c), including physical inspections and record inspections of all adjacent structures. This shall include marking out the service location or other equivalent confirmation method prior to any 15 uprate. The mark out or other equivalent confirmation method must include verification of service location.

- 4) Develop a buffer zone with a minimum of a 500-foot radius of the main to be uprated to capture and verify all service locations of all structures. This buffer zone should consider the length of the service lines.
- 5) Enhance personnel training, including field, management, supervision and engineering. The Company must develop an uprate training module that incorporates the new procedural changes. This training should be provided to all impacted employees, including management and engineering staff on three (3) year intervals. This training module must also address the low pressure conversions, or re-qualifications.
- 6) Develop a process to ensure pipeline system updates are correctly mapped. When substantive mapping or record errors are encountered, conduct a causal evaluation investigation into why the maps or records are incorrect so that Company can develop best practices and training programs to help ensure the errors are reduced or eliminated.

- 7) Consider mapping system enhancements that would include the following:
 - a) Enhance the information retained on the Service Line Records (SLR) designating a new data field or a symbol(s) in an existing data field which gives clear indication that a tap location differs from the actual service address. When the tap itself is not depicted in GIS, this designation should be usable within the GIS database and not solely based in a comment section on a scanned tap card. Conflate the mapping/asset information using high-quality road-edge/centerline information;
 - b) Capture and store X, Y, and Z coordinates for facility locations (and other asset data) through means which comport with acceptable industry standards;
 - c) Complete a “Visualization Tool,” which will visualize what is connected to mains via service points and will be linked to service record information and drawings; and
 - d) Capture and store information including but not limited to location of main service taps, curb valves, and other such appurtenances and pipe anomalies for legacy pipe when mains and services are “out of service” through the use of in-line cameras, geo-spatial technology and/or other means.
- 8) Discontinue use of incremental uprates for low pressure to elevated pressure. Utilize requalification (air pressure test) process to convert low pressure to elevated pressure systems.

If the Settlement is approved by the Commission without modification, I&E shall be deemed to have released Columbia Gas from all past claims that were made or could have been made by the Commission for monetary and/or other relief based on allegations that the Company failed to comply with the allegations that are the subject of the instant I&E informal investigation. Joint Petition at 16; I&E Statement in Support at 7.

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. Joint Petition at 17.

The Parties agree that the underlying allegations were not the subject of any hearing and that there has been no order, findings of fact or conclusions of law rendered in this proceeding. Further, by entering into this Settlement Agreement, Respondent has made no concession or admission of fact or law and may dispute all issues of fact and law for all purposes in any other proceeding. This Settlement may not be used by any other person or entity as a concession or admission of fact or law. The Parties acknowledge that this Settlement Agreement reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issues raised in this proceeding. Joint Petition at 17-18.

This Settlement represents a complete settlement of I&E's informal investigation against Columbia Gas' alleged violations of the Code and the Commission's Regulations. The Parties expressly acknowledge that this Settlement Agreement represents a compromise of positions and does not in any way constitute a finding or an admission concerning the alleged violations of the Code and the Commission's Regulations. Joint Petition at 19.

IV. Discussion

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).

A. Comments to Settlement and Disposition

1. Township Comments

In its Comments, the Township stated that it endured months of additional workload for the Board of Supervisors and the Township staff. Additionally, its volunteer fire company was particularly affected as the Chief and Assistant Chief were injured in the explosion and unable to return to work or fulfill their job duties with the volunteer fire company. The Township mentioned its staff spent countless hours fielding

calls and damage reports from residents, processing Workmen's Compensation claims for the firefighters, and acting as a liaison between the affected residents, insurance companies, and Columbia Gas. Further, the Township described that its Road Department spent weeks cleaning debris from the streets in the neighborhood of the explosion and assisted residents with debris removal from their properties. Due to the additional expenses of the Township's response to the explosion, it asks that the Commission grant the Township a portion of the civil penalty. Township Comments at 1-2.

2. Mr. Culbertson Comments

In his Comments, Mr. Culbertson opines the Settlement will not accomplish its intended results. Mr. Culbertson believes another independent investigation is needed to determine: (1) root causes of the explosion; (2) if any crimes were committed; (3) if and how Columbia Gas' accelerated spending efforts influenced its work and risk-taking; and (4) the extent of the deficiencies in the risk management system. Mr. Culbertson notes that, on September 13, 2018, an over-pressurization and explosions (2018 MA Event) caused by Columbia Gas of Massachusetts (Columbia Gas MA) resulted in a death, injury, and extensive property damage. Mr. Culbertson believes investigators in the Columbia Gas MA incident should have coordinated with other investigators to identify and fix weaknesses and deficiencies. Moreover, Mr. Culbertson avers that Columbia Gas' parent company, NiSource, Inc. (NiSource), should be viewed as a repeat offender of over pressurizing pipelines. Given the seriousness of the 100 Park Lane explosion and weaknesses discovered in Columbia Gas' operations, Mr. Culbertson concludes I&E was too reluctant to prosecute the Company. Culbertson Comments at 1-2.

Continuing with more specific comments, Mr. Culbertson questions the necessity of uprating the pressure of the mains and service lines. He states this is a

fundamental question that was not asked or answered in the record evidence. Culbertson Comments at 2.

Next, Mr. Culbertson avers the Settlement does not contain a schedule for completion of the corrective actions. Mr. Culbertson deems a root cause of the 100 Park Lane incident was Columbia Gas not implementing operational improvements in a timely manner. Culbertson Comments at 2.

As part of the Dewey Avenue Replacement Project, Mr. Culbertson argues that Columbia Gas assumed ownership of, and replaced, customers' service lines. He declared that this is prohibited by Section 1510 of the Code, 66 Pa. C.S. § 1510. Due to this alleged prohibition, Mr. Culbertson claims the Commission should not allow the Company to recover costs associated with replacing any customer's service lines. Culbertson Comments at 2-3.

Mr. Culbertson claims the Settlement should also consider the 2018 MA Event. Mr. Culbertson notes that as part of the plea agreement related to the 2018 MA Event, NiSource and its subsidiaries, including Columbia Gas, agreed to recommendations from the National Transportation Safety Board (NTSB). According to Mr. Culbertson, the NTSB recommended "that all records [including that of Columbia Gas of Pennsylvania] and documentation of your natural gas systems are traceable, reliable, and complete." The incident at 100 Park Lane proves, according to Mr. Culbertson, that Columbia gas did not enact the NTSB recommendations. Culbertson Comments at 7-9.

Next, Mr. Culbertson opines that there are four root causes of the incident at 100 Park Lane. First, Mr. Culbertson claims NiSource/Columbia Gas has an antiquated asset management record system, associated procedures, and processes. Therefore, he argues the Settlement is ineffective to correct these issues. Culbertson

Comments at 10-12. According to Mr. Culbertson, the second root cause is Columbia Gas using improper test methods. Generally, Mr. Culbertson asserts the Settlement does not explain why Columbia Gas authorized testing the Dewey Avenue Replacement Project at 40 psig. Culbertson Comments at 12-14. Mr. Culbertson states a lack of internal controls as the third root cause of the explosion. Noting “Columbia (Gas)/NiSource has adopted the COSO Internal Control-Integrated Framework, Mr. Culbertson proffers the Commission should have jurisdictional utilities implement the Committee of Sponsoring Organizations of the Treadway Commission (COSO) Internal Control-Integrated Framework.” Culbertson Comments at 14-15. The fourth root cause Mr. Culbertson identifies is Columbia Gas accelerating its pipeline replacement program, leading to an expansion of the Company’s rate base. Mr. Culbertson believes NiSource is financially incentivized to increase the rate base of Columbia Gas at the expense of its ratepayers. Culbertson Comments at 15-16.

In closing, Mr. Culbertson recommends that: (1) Columbia Gas should be treated as if four people died in the explosion at 100 Park Lane; (2) the Commission not quickly settle the instant proceeding, and it should obtain more information and eliminate the root causes with corrective actions; (3) ask federal agencies involved in the 2018 MA Event if NiSource has fulfilled its obligations related to that event; (4) the Commission investigate with the U.S. Justice Department if NiSource broke its deferred prosecution agreement; (5) close this docket only upon NiSource fulfilling its corrective actions with third-party validation; (6) assign a PUC overseer to supervise and validate that Columbia Gas is making its commitments on corrective actions as well as to assure that Columbia Gas’s expenditures are necessary; (7) require Columbia Gas to pay restitution to those harmed by the explosion and require the Company to obtain a “certificate of satisfaction” from those harmed by the explosion; (8) prohibit uprating pipelines; (9) prevent Columbia Gas from replacing customer’s service lines and placing meters under or in front of windows; (10) strengthen internal controls including the safety and quality assurance functions, validations of allowable costs, and compliance with laws,

regulations, standards, and the tariff; and (11) applicable findings and lessons learned should also apply to other Pennsylvania gas utilities. Culbertson Comments at 16.

3. Columbia Gas's Comments

In response to Mr. Culbertson's comments, Columbia Gas submitted comments. Before delving into specific Culbertson Comments, Columbia Gas noted that Mr. Culbertson's comments failed to address the proposed Settlement under the Commission's *Policy Statement* regarding Factors and Standards for Evaluating Litigated and Settled Proceedings, 52 Pa. Code § 69.1201.

Columbia Gas notes Mr. Culbertson recommends an independent, third-party investigation of the explosion. In response, the Company argued Mr. Culbertson failed to cite any process for initiating such an investigation. In addition, Columbia Gas asserts Mr. Culbertson did not establish any inadequacies in I&E's investigation. Columbia Gas Comments at 2.

Next, the Company addressed Mr. Culbertson's belief that the Commission should consider the September 13, 2018, over pressurization incident of Columbia Gas of Massachusetts. Columbia Gas details Mr. Culbertson's opinion that the Commission should assess whether NiSource, Columbia Gas of Massachusetts and the Company's parent company, fulfilled its obligations related to the September 13, 2018, over pressurization incident. Columbia Gas avers the *Policy Statement* does not provide an opportunity to review a settlement based on the acts or obligations of an out of state affiliate of a Pennsylvania jurisdictional utility. Columbia Gas Comments at 3.

Columbia Gas next responds to Mr. Culbertson questioning the necessity of the Company to uprate its mains from 0.5 psig to 40 psig, and recommending that the Commission prohibit uprating the operating pressure of natural gas facilities. The

Company notes Mr. Culbertson provided no explanation or analysis for his aforementioned question and recommendation. Columbia Gas comments that I&E found no issue with uprating the gas pressure in its mains and found no violation related to the Company's decision whether to uprate its system. Rather, Columbia Gas asserts the Settlement properly addresses the manner in which the Company conducted the upgrade. Further, Columbia Gas cites its base rate case testimony that explains the benefits of uprating its low-pressure systems. Columbia Gas Comments at 3-4.

In its fifth comment, Columbia Gas states Mr. Culbertson argues that the Company assumed ownership of the customer's service line and it should be prohibited from placing meters under or in front of windows. Columbia Gas argues these are issues he raised, and the Commission denied, in a Formal Complaint at Docket No. F-2017-2605787. Therefore, the Company maintains Mr. Culbertson should not be allowed to raise these issues in the instant proceeding. Columbia Gas Comments at 4-5.

Columbia Gas' sixth comment pertains to Culbertson Comments that ask the Commission to consider matters the Company believes are not relevant to the Settlement. Columbia Gas considers matters that touch on the reasonableness and prudence of Columbia Gas' expenditures to be relevant to a base rate proceeding. As explained by the Company, Mr. Culbertson is a party to its pending base rate case at Docket No. R-2022-3031211. Therefore, Columbia Gas deems Mr. Culbertson has an opportunity to raise these matters in that case. Columbia Gas Comments at 5.

The Company's seventh comment responds to Culbertson Comments requesting the Commission consider the extent of damage that occurred from the explosion and the extent of injuries that could have occurred. Columbia Gas asserts Mr. Culbertson ignores that the Settlement accounts for these factors. Reinforcing its point, the Company specifically cites to pages 9 and 12 of I&E's Statement in Support

where the seriousness of the damage and injuries is recognized. Columbia Gas Comments at 5-6.

In its eighth comment, Columbia Gas takes issue with Culbertson Comments urging the Commission to require that the Company address alleged deficiencies with its mapping and recordkeeping. Columbia Gas states the Settlement accounts for Mr. Culbertson's comments. Specifically, the Company refers to pages 14-16 of the Settlement where it agrees to take corrective actions relating to this issue. Columbia Gas Comments at 6.

The Company's ninth comment addresses Culbertson Comments recommending the Commission "Assign a PUC overseer to supervise and validate that Columbia is making its commitments on corrective actions as well as to assure that Columbia's expenditures are necessary." (Culbertson Comments at 16). Columbia Gas avers I&E already fulfills this task with respect to overseeing corrective actions. Further, with respect to assuring the Company's expenditures are necessary, Columbia Gas asserts these matters are considered in base rate proceedings. Columbia Gas Comments at 6.

The tenth comment of Columbia Gas addresses Mr. Culbertson's recommendation that the Commission authorize restitution to persons harmed by the explosion. The Company notes personal injury claims are not within the Commission's jurisdiction. Citing *DeFrancesco v. Western Pa. Water Co.*, 453 A.2d 595 (1982); *Elkin v. Bell Tel. Co.*, 420 A.2d 371, 375 (1980); and *Gary H. G. Utter v. Metropolitan Edison Company*, Docket No. C-2018-3005969 (Order entered Oct. 8, 2020), Columbia Gas observes questions of monetary damages belong before the civil courts. Columbia Gas Comments at 6-7.

In its eleventh and last comment, the Company responds to Culbertson Comments recommending findings in the instant case be applied to other jurisdictional

Pennsylvania gas utilities. Columbia Gas submits it is inappropriate to apply findings in the instant case to any non-participating gas utilities. Columbia Gas Comments at 7.

4. 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 the terms of the Settlement do not include any timeframe in which Columbia Gas must have the corrective measures completed, there is insufficient information as to the cost of the explosion and who is responsible for such costs, and additional information from Columbia Gas is needed to determine if the Settlement's proposed civil penalty is appropriate. 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 2-6.

The OCA notes that the Settlement sets out a series of corrective actions that Columbia Gas must take in order to prevent a similar event from occurring in the future. However, the OCA points out that there is no specific timeframe as to when the Company must have these actions completed. The OCA provides the following relevant excerpt is the only mention of any time period as to the corrective actions:

Columbia Gas recognizes the seriousness of this matter and will promptly take the following steps to prevent a similar occurrence.

OCA Comments at 3 (citing Joint Petition at 14). The OCA submitted that given the significant risk to public safety due to the nature of Columbia Gas' operations, Columbia

Gas' customers and the general public deserves much more than Columbia Gas' agreement to *promptly* act to address these corrective actions. Therefore, the OCA recommended the following:

1. A timeframe should be established as to when Columbia Gas will have all of the corrective actions completed;
2. Columbia Gas should provide a report to I&E's Gas Safety Division detailing the corrective actions that have been taken, or are in the process of being completed; and,
3. I&E and Columbia Gas, jointly, should prepare a public report to inform the Commission, Columbia Gas' customers and the general public to ensure that all corrective actions have been taken as set out in the Settlement.

OCA Comments at 3.

Based on the Joint Petition's record of this event, the OCA argues there is no accounting for the cost to resolve all of the various damage and injury claims due to the explosion. The OCA further contends there are no facts provided to establish the ultimate monetary liability for this event. The OCA declares that Columbia Gas' ratepayers deserve a full accounting of this event and also a clear understanding of who is paying for it. Thus, the OCA proposes 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.* The OCA states that because Columbia Gas created the problem, 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 Gas 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.

Finally, the OCA notes the Settlement provides that Columbia Gas will pay a civil penalty of \$990,000, and that no part of that penalty will be recoverable or tax deductible. OCA Comments at 4 (citing the *June 2022 Order*). The OCA submits that additional details and facts are necessary in order to reasonably evaluate whether the proposed \$990,000 penalty is sufficient. Further, the OCA claims the record is also silent as to whether Columbia Gas' shareholders or Columbia Gas' ratepayers are paying for the corrective actions that Columbia Gas has agreed to perform. The OCA argues paying for corrective actions with ratepayer funds would provide little in the way of deterrence or punishment for Columbia Gas' actions, and thus significantly increased penalties may be called for depending on the resolution of who pays the costs of the corrective actions to be implemented by Columbia Gas. The OCA thus submits that additional information is needed in this area before the Commission can adequately assess whether the Settlement is a sufficient deterrent to ensure against future violations. *Id.*

5. I&E Comments

I&E filed comments on July 28, 2022, one day after the end of the twenty-five-day comment period. Noting the OCA filed its comments on July 27, 2022, the final day for submitting comments, I&E requested the Commission consider I&E's comments *nunc pro tunc*. Citing *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 states 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. To substantiate its request for *nunc pro tunc* relief, I&E specifies that its comments were filed one day after the deadline and one day after the OCA filed its comments. I&E

claims no party is prejudiced by it submitting comments after the deadline. Furthermore, I&E maintains the OCA's comments suggest significant alterations to the Settlement. Therefore, I&E declares it must be permitted to respond to the OCA's comments. I&E Comments at 2-3.

I&E's first comment responds to the OCA's position that the Settlement should be denied since it does not include specific timeframes for agreed-upon corrective actions. Countering the OCA, I&E argues it is not possible to predict the exact amount of time needed to implement the Settlement's corrective measures. I&E also mentions that the Commission has approved other settlements without a set time frame to fulfill the remedial actions contained in those settlements. Additionally, I&E notes the OCA's concerns are taken care of pursuant to 52 Pa. Code § 5.591(a), where Columbia Gas is required to file a notice when it has complied with the directives of the Settlement. Lastly, I&E states its Pipeline Safety Inspectors ensure that natural gas public utilities comply with settlement agreements during inspections of those public utilities. I&E Comments at 4-5.

Next, I&E addresses the OCA's opinion that the total monetary damages and associated cost responsibility from the uprating incident should be resolved prior to the Commission's approval of the Settlement. I&E asserts it is not necessary to know the monetary sum for damage and injury claims since property damage claims and personal injury claims are outside of the Commission's jurisdiction. Further I&E avers that in a base rate proceeding, the OCA can demand such accounting from Columbia Gas. I&E Comments at 5-6.

I&E's last comment responds to the OCA's assertion that the civil penalty amount should be reconsidered if the cost of the corrective actions is being passed onto Columbia Gas' ratepayers. I&E submits that the Settlement adequately addresses the *Rosi* standards to show that the civil penalty amount of \$990,000 is appropriate and

sufficient to deter Columbia Gas from committing future violations. Thus, I&E states the civil penalty is in line with the Commission's Policy Statement at 52 Pa. Code § 69.1201. I&E Comments at 7-8.

6. Disposition

Upon review of the Settlement and the Statements in Support of the Settlement, the limited record, and the Comments filed in response to the *June 2022 Order*, we determine that further development of the record is necessary before the Commission renders a decision on appropriate remedies in relation to the natural gas explosion that occurred at 100 Park Lane. As the OCA noted in its Comments, the Settlement contains no timeline for corrective action by Columbia. In addition, the OCA's Comments request an accounting of the damage caused by the explosion. We find that this factual information is pertinent and necessary to determine the scope of the harmed caused by this event, particularly as severity of harm is a factor in determining whether, and to what extent, we assess a civil penalty. *See* 52 Pa. Code § 69.1201(c)(2).

Moreover, we note that Mr. Culbertson's Comments urged the Commission to consider the 2018 MA Event caused by Columbia Gas MA which resulted in a death, injury, and extensive property damage. While Columbia Gas MA is not within this Commission's jurisdiction, to the extent that operational policy set by these previously affiliated companies' parent company are relevant to the operational process utilized by Columbia Gas, the 2018 MA Event and the remedial actions established and adopted by Columbia Gas as a result of the 2018 MA Event may be relevant to this case.

Accordingly, we are unable to make an informed determination on this matter without information regarding the following: (1) whether any remedial measures stemming from the 2018 MA Event were recommended for Columbia Gas and, if so, whether they were effectuated; (2) an estimated timeline for completion of each of the

corrective actions proposed in the Settlement; and (3) an accounting of the monetary damage caused by the explosion and if Columbia Gas ratepayers will be responsible for the financial liability associated with the explosion. For these reasons, we deny the Settlement in its current form.

We acknowledge, however, that remedial measures pertaining to safety are already underway. After the explosion at 100 Park Lane, Columbia Gas made several modifications to its policies and procedures, including additional trainings, that are intended to prevent a similar incident and benefit public safety. *See* I&E Statement in Support at 10-12; Columbia Gas Statement in Support at 8-9. We support these safety measures and ask that if the Parties choose to provide the requested information and proceed with a settlement of this matter, any re-filing of a settlement be done expeditiously, specifically, within sixty days of the entry of this Opinion and Order.

V. Conclusion

For the reasons set forth above, after reviewing the terms of the Settlement and associated Statements in Support, the limited record, and the Comments filed in response to the *June 2022 Order*, we deny the Settlement and refer this matter to I&E for such further proceedings as deemed necessary and appropriate; **THEREFORE,**

IT IS ORDERED:

1. That the Joint Petition for Approval of Settlement filed on March 4, 2022, by the Commission's Bureau of Investigation and Enforcement and Columbia Gas of Pennsylvania, Inc., is denied.

2. That this matter is referred to the Commission's Bureau of Investigation and Enforcement for such further proceedings, as deemed necessary and appropriate, consistent with this Opinion and Order.

3. That any re-filing of a settlement in this matter be accomplished within sixty (60) days of the entry of this Opinion and Order.

4. That a copy of this Opinion and Order shall be served on North Franklin Township, Richard C. Culbertson, Columbia Gas of Pennsylvania, Inc., the Office of Consumer Advocate, the Office of Small Business Advocate, and Commission's Bureau of Investigation and Enforcement.

BY THE COMMISSION,

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

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 8, 2022

ORDER ENTERED: December 27, 2022