

Richard. C. Culbertson  
1430 Bower Hill Road  
Pittsburgh, PA 15243  
609-410-0108

April 13, 2023

***VIA ELECTRONIC FILING***

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility  
Commission Commonwealth Keystone  
Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: PA PUC v. Columbia Gas of Pennsylvania, Inc. Additional Culbertson Comments, Docket No. M-2022-3012079, Destruction by Explosion of 100 Park Lane Caused by Columbia Gas of Pennsylvania, and the 65-page, Revised Joint Petition for Approval of Settlement dated February 27, 2023.**

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Dear Secretary Chiavetta:

I thank the Commission for the opportunity to provide public comments regarding July 31, 2019, the home explosion at 100 Park Lane, North Franklin Township, Washington County, Pennsylvania. I also thank the Commission and the Office of Consumer Advocate for recognizing “*additional information is needed to before the Commission can adequately assess whether the Settlement is sufficient to ensure against future violations.*” (Page 21 of the Commission’s Order of December 8, 2022. <https://www.puc.pa.gov/pcdocs/1768744.pdf>)

This letter provides additional information that should be assessed or considered prior to any settlement in this incident that almost killed several people in North Franklin Township.

**1. FORM 10-K NiSource Inc.** 801 East 86th Avenue Merrillville, IN,  
For the fiscal year ended December 31, 2022  
<https://d18rn0p25nwr6d.cloudfront.net/CIK-000111711/2abc5b69-1a77-450b-8464-88c5ac758849.pdf>

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“C. *Legal Proceedings. On September 13, 2018, a series of fires and explosions occurred in Lawrence, Andover, and North Andover, Massachusetts related to the delivery of natural gas by Columbia of Massachusetts (the "Greater Lawrence Incident").*

*We have been subject to inquiries and investigations by government authorities and regulatory agencies regarding the Greater Lawrence Incident. On February 26, 2020, the Company and Columbia of Massachusetts entered into agreements with the U.S. Attorney's Office for the District of Massachusetts to resolve the U.S. Attorney's Office's investigation relating to the Greater Lawrence Incident, as described below. The Company and Columbia of Massachusetts entered into an agreement with the Massachusetts Attorney General's Office (among other parties) to resolve the Massachusetts DPU and the Massachusetts Attorney General's Office investigations, that was approved by the Massachusetts DPU on October 7, 2020 as part of the sale of the Massachusetts Business to Eversource.*

***U.S. Department of Justice Investigation.*** *On February 26, 2020, the Company and Columbia of Massachusetts entered into agreements with the U.S. Attorney's Office to resolve the U.S. Attorney's Office's investigation relating to the Greater Lawrence Incident. Columbia of Massachusetts agreed to plead guilty in the United States District Court for the District of Massachusetts (the "Court") to violating the Natural Gas Pipeline Safety Act (the "Plea Agreement"), and the Company entered into a Deferred Prosecution Agreement (the "DPA").*

*On March 9, 2020, Columbia of Massachusetts entered its guilty plea pursuant to the Plea Agreement. The Court sentenced Columbia of Massachusetts on June 23, 2020, in accordance with the terms of the Plea Agreement (as modified). On June 23, 2021, the Court terminated Columbia of Massachusetts' period of probation under the Plea Agreement, which marked the completion of all terms of the Plea Agreement.*

*Under the DPA, the U.S. Attorney's Office agreed to defer prosecution of the Company in connection with the Greater Lawrence Incident for a three-year period ending on February 26, 2023 (which three-year period may be extended for twelve (12) months upon the U.S. Attorney's Office's determination of a breach of the DPA) subject to certain obligations of the Company, including, but not limited to, the Company's agreement, as to each of the Company's subsidiaries involved in the distribution of gas through pipeline facilities in Massachusetts, Indiana, Ohio, **Pennsylvania**, Maryland, Kentucky and Virginia **to implement and adhere** to each of the recommendations from the NTSB stemming from the Greater Lawrence Incident. Pursuant to the DPA, if the Company complies with all of its obligations under the DPA, the U.S. Attorney's Office will not file any criminal charges against the Company related to the Greater Lawrence Incident."*

**Culbertson Comment:** NiSource included this information in its 10-K because it may be material information for investors. Wrongdoing in any of those states, including Pennsylvania, may result in Federal prosecution. **Wrongdoing includes not implementing and adhering to each of the recommendations from the NTSB.** The NTSB recommendations are not "recommendations." Recommendations are normally discretionary – these recommendations are legally mandatory or binding.

The U.S. Attorney's Office does not indicate how enforcement would occur in each of the covered states. Did Columbia Gas of Pennsylvania / NiSource report the Washington County incident to the U.S. Attorney's Office? I do not know. Should the U.S. Attorney's Office have been made aware of the incident? **YES!** If the U. S. Attorney's office was not informed, should they be informed now? **Yes!**

## **2. UNITED STATES OF AMERICA v. NiSOURCE, Inc., Defendant.**

### **DEFERRED PROSECUTION AGREEMENT**

<https://www.justice.gov/media/1114771/dl?inline>

*"11. NiSource also agrees, as to each of its subsidiaries involved in the distribution of gas through pipeline facilities in Massachusetts, Indiana, Ohio, **Pennsylvania**, Maryland, Kentucky*

and Virginia to implement and adhere to each of the recommendations from the National Transportation Safety Board ("NTSB") related to NTSB Accident ID PLD18MR003 regarding the Event." (Page 4)

13. If, however, during the Term of this Agreement, NiSource (1) commits any felony under U.S. federal law including, but not limited to, any felony violation of the Pipeline Safety Act; (2) gives deliberately false, incomplete, or misleading testimony or information to the Government or to the Court; or (3) otherwise fails to perform or fulfill each of NiSource's obligations under this Agreement, NiSource will thereafter be subject to prosecution for any federal criminal violation of which the Government has the knowledge, including, but not limited to, federal criminal violations related to the conduct alleged in the CMA Criminal Information, the Event, or CMA's and NiSource's restoration work in the Merrimack Valley following the Event.

14. The Government, in its sole discretion, will determine whether NiSource has breached the Agreement and whether, as a result, the Government will pursue prosecution of NiSource, and any such prosecution may be premised on information provided by NiSource.

**Culbertson Comment:** There does not appear to be an expiration date for the requirement to "implement and adhere." The Justice Department probably needs information and cooperation from the identified states to fully determine if NiSource and owned gas companies have violated the DPA.

3. IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE,  
CITY OF DETROIT POLICE AND FIRE RETIREMENT SYSTEM, Derivatively On Behalf  
Of NiSource, Inc., Plaintiff, v. JOSEPH HAMROCK, et al. Defendants and NISOURCE  
Nominal Defendant.

[https://www.wlrk.com/docs/City\\_of\\_Detroit\\_Police\\_&\\_Fire\\_Retirement\\_System\\_v.\\_Hamrock\\_\(NiSource\)\\_Complaint.pdf](https://www.wlrk.com/docs/City_of_Detroit_Police_&_Fire_Retirement_System_v._Hamrock_(NiSource)_Complaint.pdf)

In part:

"Critically, the independent monitor's final report, which was filed with the federal court on October 7, 2020, outlined how CMA continued to fail to address the NTSB's recommendations and how NiSource attempted to take short-cuts by narrowing the focus of the NTSB's recommendations ( Page 8) in order to show CMA's purported compliance with them. (Footnote 2),

Footnote 2 Monthly and Final Report, United States v. Bay State Gas Co., Case No. 1:20-cr10066-FDS (D. Mass. Oct. 7, 2020), ECF No. 52" (Page 9 of the Complaint)

**H. The Court-Appointed Independent Monitor Confirmed that the NiSource Board Continues to Fail to Ensure All of the Company's Gas Subsidiaries Comply with Pipeline Safety Laws**

158. The DPA required the court appointment of an "Independent Monitor" to monitor NiSource's and CMA's compliance with the DPA's terms. James Hall ("Mr. Hall" or the "Independent Monitor") of Hall & Associates LLC was appointed

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as the Independent Monitor. As a former member and Chairman of the NTSB, Mr. Hall is a leading expert in crisis management and government relations, and transportation safety and security, having served government and private clients for more than five decades.

159. In his capacity as the Independent Monitor, Mr. Hall submitted three reports to the federal court on July 30, 2020, September 3, 2020, and October 6, 2020.

160. The Independent Monitor's Final Report, dated October 6, 2020, condemns the governance and oversight of NiSource over CMA. Specifically, it states:

(i) "The Monitor's obligations were limited to oversight of CMA per the Plea Agreement and Work Plan. In the performance of this oversight, *the Monitor's report shows that certain safety deficiencies exist at CMA as a result of the governance by the parent company [NiSource].*"

(ii) "The Monitor notes that now, after two years and many reports with recommendations, some safety gaps identified from the Merrimack Valley accident have not yet been closed. Performance goals for safety have not been appropriately established or cascaded down through the workforce. *The discretionary performance bonus component provided to leadership has been driven in large part by financial performance of the company rather than safety.*"

(iii) "*The Monitor recognizes that NiSource – as CMA's current parent – remains responsible for ensuring CMA's safety until the [s]ale to Eversource is complete.*"

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(iv) “The Monitor believes that the formal MOC process – as stipulated by API Recommended Practice 1173 – had not been accomplished by NiSource at the time the NTSB closed this recommendation on September 24, 2019, nor has it been fully implemented at CMA as of the date of this report.... The Monitor believes that CMA/NiSource’s efforts with MOC are overdue”; and

(v) “The expectations that lead to a positive safety culture are created at the top of the organization, not merely supported by the top. . . . *leadership failed to prevent the safety lapses that led to the accident, and then failed to expedite corrective safety actions after the event.*” (Emphasis added).

161. These items from the Independent Monitor’s Report directly tie the knowing and willfully criminal pipeline safety practices and policies at CMA to a failure of leadership and governance at NiSource – in other words, the Board’s and the Individual Defendants’ bad faith and lack of oversight. Moreover, they show the Board’s improper motivation to put profits ahead of compliance with federal pipeline safety laws.

162. The Independent Monitor’s Final Report further noted that the “Monitor has not found sufficient evidence to verify the presence of a positive safety culture at CMA.” In fact, Mr. Hall noted that in his “opinion[,] [] a positive safety culture at CMA has existed mostly in the form of words and slogans rather than in its functional application and organizational understanding.” The Independent Monitor also stated as recently as 2020 that he “cannot affirmatively state that all aspects of CMA’s operations are compliant with all such laws and regulations.”

**Culbertson Comment** – After looking and assessing, James Hall, Former Chairman of the NTSB, the “independent monitor,” provides no trust and assurance that NiSource / Columbia Gas of Massachusetts complied with the DBA. <https://www.justice.gov/media/1114781/dl?inline> See Page 4—“ii. Defendant will agree to employ at Defendant's expense an in-house monitor to oversee Defendant's compliance with the recommendations of the NTSB and applicable laws and regulations. This monitor will report monthly in writing to a government committee

*composed of a representative from the U.S. Attorney, the MA DPU and the Massachusetts Attorney General's Office ("MA AGO");"*

After looking, Mr. James Hall did not trust NiSource's implementation of ANSI/ API 1173 Pipeline Safety Management Systems. The Pennsylvania Public Utility Commission should not trust the NiSource / Columbia Gas of PA's requirement to "implement and adhere" to the standard based upon the words of Columbia/ NiSource in their settlement agreements.

A quick test for validation for the Commissioners that may provide some assurance that Columbia has learned from explosions of the Merrimack Valley, Millersville, and North Franklin Township, the Commission could ask those who recommended the settlement submissions.

- Do you have access to and have read and viewed the training material of the API 1173 standard?
- Have you reviewed the processes by which Columbia's pipeline workers and workers of their contractors have been and are trained consistently with API 1173's requirements (about 150 "shall" statements)?
- Where is the evidence that the adoption of API 1173 Pipeline Safety Management System is more than "words and slogans"?
- Is it sufficiently effective to avoid future explosions? That would also be a question for Columbia's pipeline workers and contractors.

I highly recommend using James Hall and Associates to look at Columbia Gas of PA's implementation and adherence to the standard.

<https://static1.squarespace.com/static/5db9c9803d9e4b7c82a62572/t/5ef246c213100231cb0b2719/1592936131103/Jim+Hall+Expert+Team+Profile-Final-2.pdf>, <https://www.hallassoc.net/>

**4. It is my understanding that Columbia Gas of Pennsylvania recently terminated the employment of George Milligan**, the Columbia Gas employee that provided sworn public testimony in the 2022 Columbia Gas Rate Case. He had concerns that his submissions regarding the integrity and implementation of Columbia's Pipeline Safety Management System was "falling on deaf ears". These concerns included the safety performance of Columbia's pipeline contractors, and how this puts the public at undue risk of other explosions.

The Commissioners should review his sworn public testimony.

API 1173

### **3.1.22 non-punitive reporting**

*Acting to encourage employees and contractor personnel to report and only punishing a person for reporting when he/she acts in a reckless manner; demonstrates a pattern of carelessness or noncompliance; or puts themselves, their co-workers, the public, or the pipeline at risk by intentionally violating essential safety rules.*

### **3.1.39 safety culture**

*The collective set of attitudes, values, norms, and beliefs that the operator's employees and contractor personnel share with respect to risk and safety.*

NiSource / Columbia may have severely impaired their Pipeline Safety Management System – it may have turned into a -- "**see no evil, hear no evil, speak no evil**" culture. There will be a George Milligan effect on this system. His experience will not be forgotten. Customers are now at greater risk.

**Conclusion.**

This additional material information is provided to the Commission to consider diligently and carefully the appropriate reaction to the explosion in Washington County July 31, 2019.

Columbia's culture and safeguards must be in place to reliably avoid future pipeline incidents.

Finally, I highly recommend the Commission coordinate and align reactions to the explosion with the U.S. Justice Department that took punitive action against NiSource, including the deferred prosecution agreement. Was the explosion the result of committing crimes similar to what occurred in Massachusetts?

Sincerely and respectfully submitted.



Richard C. Culbertson  
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Pittsburgh, PA 15243  
609-410-0108

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<p>Michael L. Swindler Deputy Chief Prosecutor PA Attorney ID No. 43319 (717) 783-6369 mswindler@pa.gov</p>	<p>Amy E. Hirakis, Esq. Columbia Gas of Pennsylvania, Inc. 800 North 3rd Street, Suite 204 Harrisburg, PA 17102 <a href="mailto:ahirakis@nisource.com">ahirakis@nisource.com</a></p>
<p>Lauren E. Guerra, Esquire Barrett C. Sheridan, Esquire Harrison W. Breitman, Esquire Aron J. Beatty, Esquire Darryl A. Lawrence, Esquire Office of Consumer Advocate 555 Walnut Street 5th Floor Forum Place Harrisburg, PA 17101-1923 <a href="mailto:LGuerra@paoca.org">LGuerra@paoca.org</a> <a href="mailto:BSheridan@paoca.org">BSheridan@paoca.org</a> <a href="mailto:HBreitman@paoca.org">HBreitman@paoca.org</a> <a href="mailto:abeatty@paoca.org">abeatty@paoca.org</a> <a href="mailto:DLawrence@paoca.org">DLawrence@paoca.org</a> <a href="mailto:consumer@paoca.org">consumer@paoca.org</a></p>	<p>Steven C. Gray, Esquire Office of Small Business Advocate 555 Walnut Street, 1<sup>st</sup> Floor Harrisburg, PA 17101 <a href="mailto:sgray@pa.gov">sgray@pa.gov</a></p>

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