

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

Public Meeting held August 3, 2023

Commissioners Present:

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

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 Revised Joint Petition for Approval of Settlement (Revised Settlement, Revised Settlement Agreement, or Revised Joint Petition) filed on February 27, 2023, 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 April 20, 2023, relative to the above-captioned proceeding (*April 2023 Order*), we provided interested parties with the opportunity to file comments

on the Revised Settlement. Before the Commission for consideration and disposition are the Comments of Richard C. Culbertson (Mr. Culbertson), filed on April 5, 2023 (April 5 Culbertson Comments) and April 13, 2023 (April 13 Culbertson Comments), and the Comments of Columbia Gas filed in response to Mr. Culbertson's Comments, on May 31, 2023.

Both Parties filed Statements in Support of the Revised 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)*. Revised Joint Petition at 18-19.

For the reasons set forth herein, we shall approve the Revised Joint Petition based on our finding that the Settlement is in the public interest.

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. Revised Joint 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.* The Parties filed the Original Joint Petition for Approval of Settlement (Original Settlement, Original Settlement Agreement, or Original Joint Petition) on March 4, 2022, 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*), 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 Original Settlement. Comments were filed by: (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's Original Comments); (3) Columbia Gas filed in response to Mr. Culbertson's Comments on July 27, 2022 (Columbia's Original Comments); (4) the Office of Consumer Advocate (OCA) filed on July 27, 2022 (OCA's Comments); and (5) I&E filed in response to the OCA's Comments on July 28, 2022;¹ all filed in response to the *June 2022 Order*.

On December 27, 2022, the Commission adopted an Opinion and Order (*December 2022 Order*), that denied the Original Settlement Agreement and referred the matter to I&E for further proceedings as deemed necessary and appropriate. Specifically, the Commission stated:

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

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*.

relation to the natural gas explosion that occurred at 100 Park Lane.

December 2022 Order at 23.

Further, the Commission noted it was unable to make an informed determination on this matter without information regarding the following:

- (1) whether any remedial measures stemming from the September 13, 2018, over-pressurization and explosions caused by Columbia Gas of Massachusetts (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 the aforementioned reasons, the Commission denied the Original Settlement.

December 2022 Order at 23-24.

Following the *December 2022 Order*, the Parties engaged in further discussions to gather the additional information sought by the Commission. As previously indicated, the Parties filed the instant Revised Settlement on February 27, 2023.

On April 20, 2023, the Commission adopted the *April 2023 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,

Mr. Culbertson's Comments to the proposed Revised Settlement were received on April 5, 2023 and April 13, 2023, and the Comments of Columbia Gas were filed on May 31, 2023.

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 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. Revised Joint Petition at 5-6.

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. Revised Joint Petition at 7.

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.

Revised Joint Petition at 12-14.

III. Terms and Conditions of the Revised Settlement

The Parties submit that the Revised 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 Revised Settlement constitutes a carefully crafted package representing reasonably negotiated compromises on the issues addressed therein. The Parties urge the Commission to approve the Revised 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. Revised Petition at 22.

The Revised Settlement consists of the Revised Joint Petition for Approval of Settlement containing the terms and conditions of the Revised Settlement, additional information sought in the *December 2022 Order* (Attachments 1, 2, and 3, respectively), 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 (Appendix C to the Petition), filed on February 27, 2023.

The essential terms of the Settlement are set forth in Paragraphs 48-49 of the Revised Joint Petition. Revised Joint Petition at 14-18. 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. Subsequent to the entry of the *December 2022 Order* and referral of this matter back to I&E, the Parties engaged in further discussions in order to gather the additional information sought by the Commission so that the Commission could make an informed determination that the Settlement, as revised, is in fact in the public interest. 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 Revised 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. Revised Joint Petition at 18; I&E Statement in Support at 8.

The proposed Revised 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 Revised Settlement, either Party may elect to withdraw from the Revised Settlement. Revised Joint Petition at 20.

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 Revised Settlement Agreement, Columbia Gas 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 Revised Joint Petition may not be used by any other person or entity as a concession or admission of fact or law. The Parties acknowledge that this Revised Settlement reflects a compromise

of competing positions and does not necessarily reflect any party's position with respect to any issues raised in this proceeding. Revised Joint Petition at 20-21.

This Revised Joint Petition represents a complete settlement of I&E's informal investigation against Columbia Gas' alleged violations of the Code and the Commission's Regulations in this proceeding. The Parties expressly acknowledge that this Revised 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. Revised Joint Petition at 22.

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 *April 2023 Order* was published in the *Pennsylvania Bulletin*, inviting interested parties to file comments on the proposed Revised Settlement Agreement.

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. Mr. Culbertson's Comments

In his April 5 Comments, Mr. Culbertson states that without a change in Columbia Gas' business practices and internal controls, the public will still be subject to undue risk. Mr. Culbertson believes the Revised Settlement will not improve operations of Columbia Gas to prevent other incidents similar to 100 Park Lane. Mr. Culbertson opines that the Revised Settlement does not provide justice for the people harmed in the incident at 100 Park Lane. Additionally, Mr. Culbertson questions I&E's informal investigation, asserting that the incident at 100 Park Lane rises to the level of a formal investigation. Culbertson April 5 Comments at 2-4.

Mr. Culbertson claims the Revised Settlement does not satisfactorily provide the information sought in the *December 2022 Order* regarding: (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. Columbia Gas asserted, in Attachments 1 and 2 of the Revised Settlement, that some of the recommendations were completed, however, Mr. Culbertson avers without third-party validations, Columbia Gas' assertions are unreliable. He further recommends that the Commission adopt the U.S. Department of Justice Criminal Division's Evaluation of Corporate Compliance Programs. Culbertson April 5 Comments at 6-7.

Mr. Culbertson notes that as part of the National Transportation Safety Board's investigation of the 2018 MA Event, NiSource and its subsidiaries, including

Columbia Gas, agreed to recommendations from the National Transportation Safety Board (NTSB). These recommendations are incorporated in Attachments 1 and 2 of the Revised Settlement, however Mr. Culbertson contends that Columbia Gas may not have completed the NTSB recommendations. Culbertson April 5 Comments at 8-13.

Next, Mr. Culbertson comments on Attachments 1, 2, and 3 of the Revised Settlement regarding information sought in the *December 2022 Order*. First, Mr. Culbertson claims Attachments 1 and 2 are inconclusive, specifically: (1) whether any remedial measures stemming from the 2018 MA Event were recommended for Columbia Gas and, if so, whether they were effectuated. As a remedy, Mr. Culbertson suggests the Commission have a third-party inspector validate Columbia Gas' claims in Attachment 1. Regarding the second item of the *December 2022 Order*: (2) an estimated timeline for completion of each of the corrective actions in the Revised Settlement, Mr. Culbertson claims Columbia Gas' estimates may not be accurate. As above, Mr. Culbertson asks that an independent third-party inspector validate the Company's estimates. For the third item of the *December 2022 Order*: (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, Mr. Culbertson claims Attachment 3 of the Revised Settlement is not accurate. He argues that the monetary damage amounts are not equal to the amounts paid by the Company's insurance. Therefore, Mr. Culbertson declares those harmed by the incident deserve restitution. Lastly, Mr. Culbertson states Attachment 3 does not account for unallowable costs directly associated with the incident at 100 Park Lane. Culbertson April 5 Comments at 14-16.

Mr. Culbertson makes other comments he claims should be reasons for the Commission to reject the settlement. Mr. Culbertson questions if the Commission investigated the incident at 100 Park Lane. He states the President of Columbia Gas made a statement admitting fault for the incident, however the Revised Settlement does

not address this statement. Next, Mr. Culbertson questions the authority of the NiSource employee who signed the Revised Settlement agreement. He avers the Revised Settlement should have been signed by a Company employee with signing authority and corporate oversight and enforcement responsibilities. Mr. Culbertson continues questioning the Revised Settlement by asserting the Revised Settlement should not have been amicably settled. He claims the United States Government Accounting Office Yellow Book sets standards for the Commission to follow during an investigation. Continuing his observations of the Revised Settlement, Mr. Culbertson contends the Company replaced mains and customer's service lines. He declares that if Columbia Gas did install new customer's service lines those costs must be disallowed. Next, Mr. Culbertson alleges the service lines installed at 100 Park Lane are undersized and do not comply with the law or Commission Regulations. Finally, Mr. Culbertson claims the Revised Settlement shows that the Company did not correctly test the service lines. He alleges the policies of Columbia Gas do not follow Federal pipeline safety regulations. Culbertson April 5 Comments at 16-24.

Lastly, Mr. Culbertson makes six recommendations, which are as follows:

1. Reject the Revised Settlement as it does not fulfill the *December 2022 Order*. Mr. Culbertson claims some remedial measures were taken prior to the explosion at 100 Park Lane, however these measures did not work. He states the remedial actions need to be validated and assessed. Next, Mr. Culbertson questions why Columbia Gas will not complete some of the corrective actions until 2023. By not immediately making corrections, he claims the Company did not care to identify root causes of the incident at 100 Park Lane.
2. Use technology to detect if there is a natural gas leak inside a home. Mr. Culbertson believes an electronic natural gas sensing and reporting system should be

used to communicate with the homeowner and emergency responders.

3. Use third party auditors and experts to investigate the incident at 100 Park Lane and assess the internal controls of Columbia Gas.
4. Ensure the Commission and Columbia Gas follow PA Title 66 §§ 2203 and 2205. Additionally make the Commission and the Company use third-party certifications of applicable portions of international standards.
5. Revise Columbia Gas' employee training as Mr. Culbertson believes its current training is grossly inadequate.
6. Upgrade the investigation protocol of reportable natural gas incidents. Mr. Culbertson insists that there should be an investigation of the investigations of the 100 Park Lane and Pottstown explosions.²

Culbertson April 5 Comments at 24-26.

In his April 13 Comments, Mr. Culbertson provides additional information that he deems necessary to consider when reviewing the Revised Settlement. First, Mr. Culbertson provides the NiSource Inc. form 10-K for the fiscal year ended December 31, 2022. Mr. Culbertson also included the Deferred Prosecution Agreement (DPA) between NiSource Inc. and the United States Attorney for the District of Massachusetts that resulted from the 2018 MA Event, under which NiSource Inc. agreed to implement and adhere to the NTSB's recommendations related to the 2018 MA Event

² On May 26, 2022, an explosion at 453/455 Hale Street in Pottstown, Montgomery County, Pennsylvania, resulted in five deaths and multiple injuries and destroyed the residential structure. Pipeline Safety Inspectors from I&E's Gas Safety Division found no evidence that public utility natural gas service contributed to this event. [PUC Safety Division Concludes Investigation of May 2022 Incident in Pottstown | PA PUC.](#)

at each of its subsidiaries, including Columbia Gas. Mr. Culbertson states the incident at 100 Park Lane should have been reported to the NTSB, U.S. Attorney's office and the Justice Department to determine if NiSource and Columbia Gas violated the DPA. Culbertson April 13 Comments at 1-3.

Next, Mr. Culbertson cites an investor complaint filed in the Court of Chancery of the State of Delaware. In this complaint, Mr. Culbertson points out that the DPA required an independent monitor for Columbia Gas of Massachusetts. Mr. Culbertson states the independent monitor could not confirm that Columbia Gas MA complied with the DPA. Therefore, Mr. Culbertson argues the Commission should not trust Columbia Gas to comply with the Revised Settlement. Culbertson April 13 Comments at 3-6.

In his final comment, Mr. Culbertson stated that Columbia Gas terminated an employee who provided testimony in Columbia Gas' 2022 Rate Case. Mr. Culbertson avers the employee's rate case testimony included concerns about the integrity and implementation of Columbia's Pipeline Safety Management System. Culbertson April 13 Comments at 6-7.

B. Columbia Gas's Comments

In response to Mr. Culbertson's April 13 Comments, Columbia submitted comments. Before delving into specific Culbertson Comments, Columbia 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. Additionally, Columbia Gas generally claims that none of Mr. Culbertson's April 13 Comments erode the support of the factors provided by Columbia Gas and I&E in their Statements in Support of the Revised Settlement. Columbia Comments at 2.

Next, the Company addressed Mr. Culbertson's comments related to the DPA that resulted from the 2018 MA Event. Columbia Gas states Mr. Culbertson suggested that events leading to the incident at 100 Park Lane are a breach of the DPA. The Company argues that the incident at 100 Park Lane, which occurred on July 31, 2019, predates the February 2020 effective date of the DPA. Therefore, Columbia Gas avers it could not have breached the DPA as the incident at 100 Park Lane predates any obligations of the DPA. Columbia Comments at 2-3.

Lastly, the Company responds to Mr. Culbertson's reference to it terminating the employment of an employee who testified in Columbia Gas' 2022 Rate Case. The Company maintains the employment termination is irrelevant to the 100 Park Lane incident and the Revised Settlement. Further, Columbia Gas asserts Mr. Culbertson's suggestion that the termination was due to the employee speaking out regarding its safety practices is speculative and should not impact the Commission's review of the Revised Settlement. Columbia Comments at 3.

C. Disposition

As previously indicated, to determine whether the Settlement should be approved, we must decide whether the proposed terms and conditions are in the public interest. *See, e.g., Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. PUC v. C.S. Water and Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991); *Pa. PUC LBPS v. PPL Utilities Corporation*, Docket No. M-2009-2058182 (Order entered November 23, 2009); *Pa. PUC v. Phila. Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004); *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Order entered April 1, 1996); 52 Pa. Code § 69.1201. Our assessment of the benefits of the terms and conditions meeting the criteria of what is in the public interest need not be quantifiable. *Popowsky v. Pa. PUC*, 594 Pa. 583, 937 A.2d 1040 (2007) ("substantial" public interest standard discussed in the context of a merger reviewed under Section 1103

of the Code, 66 Pa. C.S. § 1103). We must, as the circumstances dictate, exercise our informed judgment, and evaluate the public interest so as to take into consideration the various interests and concerns of the stakeholders involved. *Id.*

1. Information Sought as a Result of the *December 2022 Order*

As noted previously our *December 2022 Order*, we denied the Original Joint Petition and referred the matter back to I&E for further development of the record specifically concerning 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 Original 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

Revised Settlement at 1-2 (citing *December 2022 Order* at 23-24).

We find the Parties addressed each of these matters in Attachments 1, 2, and 3, respectively, of the Revised Settlement. Attachment 1 contains five NTSB recommended remedial measures for NiSource/Columbia Gas stemming from the 2018 MA Event, as follows:

Revise the engineering plan and constructability review process across all of your subsidiaries to ensure that all applicable departments review construction documents for accuracy, completeness, and correctness, and that the

documents or plans be sealed by a professional engineer prior to commencing work. (NTSB Recommendation P-18-006)

Review and ensure that all records and documentation of your natural gas systems are traceable, reliable, and complete. (NTSB Recommendation P-18-007)

Apply management of change process to all changes to adequately identify system threats that could result in a common mode failure. (NTSB Recommendation P-18-008)

Develop and implement control procedures during modifications to gas mains to mitigate the risks identified during management of change operations. Gas main pressures should be continually monitored during these modifications and assets should be placed at critical locations to immediately shut down the system if abnormal operations are detected. (NTSB Recommendation P-18-009)

Review your protocols and training for responding to large-scale emergency events, including providing timely information to emergency responders, appropriately assigning NiSource emergency response duties, performing multi-jurisdictional training exercises, and participating cooperatively with municipal emergency management agencies. (NTSB Recommendation P-19-018)

Revised Settlement Attachment 1.

Additionally, Attachment 1 states that each of the remedial measures has been effectuated and describes how Columbia Gas implemented the NTSB recommendations. Revised Settlement Attachment 1.

Attachment 2 contains the corrective actions contained in Paragraph 49 of the Revised Settlement, *see supra* pp. 10-12, the status of each corrective action and the estimated completion date of the corrective actions. The Revised Settlement states each corrective action has been completed or will be completed within this calendar year.

Attachment 3 contains the type of damages and monetary amounts for each type of damage. The monetary damages resulting from the incident at 100 Park Lane totals \$3,092,710.83. Additionally, Attachment 3 states “All claims for monetary damages were paid through insurance and therefore ratepayers were not responsible for the financial liability associated with the explosion.” Therefore, we are able to evaluate if the Revised Settlement is in the public interest and is consistent with the terms of our Policy Statement and our past decisions.

2. Disposition of Comments

In addressing the comments, we are mindful that the proposed Revised Settlement before us for review and approval in the public interest involves allegations of violations of the Code and Commission Regulations. We are also cognizant of the fact that the Parties to this proceeding have engaged in lengthy negotiations to resolve these serious issues which are encompassed by the Revised Settlement terms. Both I&E and Columbia Gas have expressed their support for the positive outcomes achieved by the proposed Revised Settlement, which the Parties assert “...avoids the time and expense of litigation, which entails hearings, travel for the Company’s witnesses, and the preparation and filing of briefs, exceptions, reply exceptions, as well as possible appeals.” Joint Revised Petition at ¶ 51.

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).

We note, as did Columbia Gas in its comments, that Mr. Culbertson's comments do not claim any error in the Settlement based upon the Commission's *Policy Statement*. First, we disagree with Mr. Culbertson's recommendation that a formal investigation be conducted of the explosion at 100 Park Lane. Culbertson April 5 Comments at 4. The definition of an informal investigation is "a matter initiated by the Commission staff that may result in a formal complaint, a settlement or other resolution of the matter or termination by letter." 52 Pa. Code § 1.8(a). Here, Commission staff (Pipeline Safety Inspectors from I&E's Gas Safety Division) initiated an investigation into the incident at 100 Park Lane. Since this investigation was initiated by Commission staff, per our regulations, the investigation is defined as an informal investigation. The informal investigation resulted in a settlement, not a formal complaint leading to a formal investigation. Further, we add that it is the policy of the Commission to encourage settlements, consistent with, our Regulations at 52 Pa. Code § 5.231.

Next, we disagree with Mr. Culbertson's assertion that the Revised Settlement does not satisfactorily provide information sought in the *December 2022 Order*. Culbertson April 5 Comments at 6-7 and 14-16. We find that Attachments 1, 2, and 3 fulfil the Commission's request for additional information sought in the *December 2022 Order*. Further, we disagree with Mr. Culbertson's belief that an independent third-party inspector should validate the Company's responses to the *December 2022 Order*. Culbertson April 5 Comments at 6-7 and 14-16. Mr. Culbertson does not cite any part of the Code, the Commission's Regulations, or Commission precedent for a third-party inspector to validate the responses to a Commission Order.

In his comments specific to Attachment 3, Mr. Culbertson contends the Company's insurance payouts are less than the monetary damage amounts listed. He recommends that the persons affected by the explosion at 100 Park Lane receive restitution. Culbertson Comments at 16. We note that the Commission does not have jurisdiction over personal injury claims or property damage claims as a result of the

explosion. *See, e.g., DeFrancesco v Western Pa. Water Co.*, 499 Pa. 374, 453 A.2d 595 (1982); *Elkin v. Bell of Pa.*, 491 Pa. 123, 420 A.2d 371 (1980). These issues appropriately belong before the civil courts.

3. Analysis of the Settlement Under the Policy Statement

The Commission's *Policy Statement* sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

The Commission will not apply the factors as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases, the parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters as long as the settlement is in the public interest.” *Id.*

The first factor considers whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, or if the conduct was less egregious, such as an administrative or technical error. Conduct of a more serious nature may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(1). As noted, I&E alleged the Company's procedures were deficient by failing to identify all gas and non-gas customers within the Dewey Avenue Replacement Project, resulting in a natural gas explosion. On its part, Columbia Gas avers it recognizes that the provision of natural gas to customers is, by nature, a serious matter, and that inadvertent errors can be serious in nature in that they can result in serious property damage and/or loss of life. Consequently, the Parties agree the seriousness of these violations was considered in arriving at the proposed civil penalty in the Revised Settlement. I&E Statement in Support at 11; Columbia Gas Statement in Support at 9. We find that the Company's alleged violations are of a serious

nature in that they involve a natural gas explosion resulting in property damage and personal injuries. Accordingly, we find the proposed penalty to be fair and reasonable given the circumstances.

The second factor considered is whether the resulting consequences of Columbia Gas's alleged conduct were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(2). The Parties submit that the natural gas explosion resulted in non-fatal injuries to four individuals. In addition, the explosion destroyed the residential structure at 100 Park Lane and caused significant damage to surrounding residences and property. Accordingly, the Settlement acknowledges that serious consequences occurred, and the corrective actions are designed to enhance the safety of Columbia Gas's service and facilities. Settlement at 4; I&E Statement in Support at 11; Columbia Gas Statement in Support at 8. We find the penalty to be reasonable due to the nature of the violations and the natural gas explosion resulting in personal injuries and property damage.

The third factor to be considered under the *Policy Statement* is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). "This factor may only be considered in evaluating litigated cases." *Id.* Whether Columbia Gas' alleged conduct was intentional or negligent does not apply because this matter is being resolved via settlement of the Parties. I&E Statement in Support at 12; Columbia Gas Statement in Support at 9. Therefore, this factor does not need to be considered in this proceeding.

The fourth factor to be considered is whether the Company has made efforts to modify its practices and procedures to address the conduct at issue and prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). After the explosion at 100 Park Lane, Columbia Gas made several changes to its policies and procedures.

These modifications to the Company's procedures, which also includes additional trainings, are intended to prevent a similar incident and benefit public safety. I&E Statement in Support at 12-14; Columbia Gas Statement in Support at 9-10. As described in I&E's and the Company's Statements in Support, Columbia Gas has taken corrective actions that will safeguard against a similar incident occurring in the future. The efforts made by Columbia Gas support the proposed civil penalty.

The fifth factor to be considered relates to the number of customers affected by the Company's actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). In addition to the personal injuries and property damage caused by the incident at 100 Park Lane, the explosion resulted in the temporary interruption of natural gas service to approximately sixty (60) Columbia Gas customers. Columbia Gas Statement in Support at 10. We agree that the Settlement recognizes the consequences the explosion had on the Company's customers. For this reason, this factor weighs in support of the proposed penalty.

The sixth factor that may be considered is the compliance history of the regulated entity. 52 Pa. Code § 69.1201(c)(6). "An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty." *Id.* Between 2010 and 2022, Columbia Gas has been the subject of multiple proceedings where the Commission imposed civil penalties arising from alleged gas safety violations or rejected proposed civil penalties as being inadequate.³ I&E Statement in Support at 14-17; Columbia Gas Statement in Support at 10. Given the compliance history of Columbia Gas as it relates to allegations of gas safety violations over the past decade, we consider the substantial civil penalty of \$990,000.00 in this proceeding to be warranted.

³ See, I&E Statement in Support at 12-13 (citing Docket Nos. M-2009-1505396, C-2010-2071433, M-2014-2306076, M-2016-2378672, and M-2021-3005572).

The seventh factor to be considered relates to whether the Company cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). I&E submits that Columbia Gas cooperated in the investigation and settlement in this matter. I&E Statement in Support at 17. Therefore, we conclude that the Company's cooperation with the Commission in this matter supports that the Settlement is in the public interest.

The eighth factor we may consider is the amount of the civil penalty necessary to deter future violations. 52 Pa. Code § 69.1202(c)(8). Here, I&E submits that a civil penalty amount of \$990,000.00, which is not tax deductible, in combination with the monetary cost of the performance of all of the remedial measures is sufficient to deter the Company from committing future violations of the nature alleged here and, when viewed altogether, represents a pecuniary concession that is well above the maximum civil penalty that could have been imposed in this matter. I&E Statement in Support at 17. Accordingly, we agree, and therefore, find that the civil penalty is appropriate.

The ninth factor examines whether the results of a proposed settlement are consistent with past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). I&E submits that the instant Revised Settlement Agreement should be viewed on its own merits and is fair and reasonable. Further I&E states the Revised Settlement is consistent with past Commission actions in that a substantial civil penalty will be paid and Columbia Gas will perform numerous, costly corrective actions to address the alleged violations. I&E Statement in Support at 17-18. Columbia Gas noted that the civil penalty is the highest civil penalty that the Commission has assessed against Columbia Gas to date and will adequately deter future violations. Columbia Gas Statement in Support at 11, referencing 9-10. In looking at the relevant factors and comparing the violations in this case to pipeline safety violations in other cases, we find that this Revised Settlement is consistent with past Commission decisions and presents a fair and reasonable outcome.

The tenth standard provides that the Commission may consider “other relevant factors” in assessing a penalty. 52 Pa. Code § 69.1201(c)(10). I&E submits that an additional relevant factor – whether the case was settled or litigated – is of pivotal importance to this Settlement. A settlement avoids the necessity for the governmental agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty, or other remedial action. Both parties negotiate from their initial litigation positions. The fines and penalties, and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent economic and programmatic compromise while allowing the parties to move forward and to focus on implementing the agreed upon remedial actions. I&E Statement in Support at 18. Columbia Gas noted that it is in the public interest to settle this matter and avoid the expense and litigation. In addition, the Company states the Settlement is in the public interest because it will result in public benefits that will promote gas safety and reliability in its service territory. Columbia Gas Statement in Support at 11. We agree that it is in the public interest to settle this matter; therefore, we are of the opinion that other relevant factors weigh in favor of approval of the agreed upon civil penalty, as well as the other settlement terms, established in the Settlement.

Finally, we note that the additional information provided by the Parties as sought in the *December 2022 Order* is helpful in concluding that the Revised Settlement should be approved. Columbia Gas has provided: (1) the recommended remedial measures stemming from the 2018 MA Event and if such measures have been effectuated, (2) an estimated timeline for completion of each of the corrective actions proposed in the Original Settlement, and (3) an accounting of the monetary damage caused by the explosion and that Columbia Gas ratepayers will not be responsible for the financial liability associated with the explosion. Therefore, we conclude that the supplemental information indicates no reason to deny the Revised Settlement Agreement.

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

Conclusion

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

IT IS ORDERED:

1. That the Revised Joint Petition for Approval of Settlement filed on February 27, 2023, between the Commission's Bureau of Investigation and Enforcement and Columbia Gas of Pennsylvania, Inc. is approved in its entirety without modification.
2. That, in accordance with Section 3301(c) of the Public Utility Code, 66 Pa. C.S. § 3301(c), within thirty (30) days of the date this Order becomes final, Columbia Gas of Pennsylvania, Inc. shall pay a civil penalty of Nine-Hundred Ninety Thousand Dollars (\$ 990,000). Said payment shall be made by certified check or money

order payable to “Commonwealth of Pennsylvania.” The docket number of this proceeding shall be indicated with the certified check or money order and shall be sent to:

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

3. That the civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f), or passed through as an additional charge to Columbia Gas of Pennsylvania, Inc. customers in Pennsylvania.

4. That Columbia Gas of Pennsylvania will promptly take the corrective actions as set forth in the Revised Joint Petition for Approval of Settlement.

5. That Columbia Gas of Pennsylvania shall file a notice of compliance documentation with the Secretary of the Commission, accompanied by a verification, confirming that it has taken the corrective actions as set forth in the Revised Joint Petition for Approval of Settlement, and serve a copy of this filing on the Bureau of Investigation and Enforcement, within thirty (30) days of completion of this action.

6. That a copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Bureau of Administration.

7. That the above-captioned matter shall be marked closed upon receipt of the civil penalty and Columbia Gas of Pennsylvania's notice and verification of compliance with Ordering Paragraph No. 4 above.

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: August 3, 2023

ORDER ENTERED: August 3, 2023