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August 17, 2023

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

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

Dear Secretary Chiavetta:

Enclosed please find my Petition for Reconsideration in the above-referenced proceeding. The undersigned certifies that this filing contains no averments or denials of fact subject to verification and penalties under 52 Pa. Code Section 1.36.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,


Richard C. Culbertson Pro Se

Enclosures:

cc: Office of Special Assistants (**email only:** ra-OSA@pa.gov)
Certificate of Service

CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement

Docket No. M-2022-3012079

v.
Columbia Gas of Pennsylvania, Inc.

I hereby certify that I have this day served a true copy of the following document, Richard C. Culbertson Petition for Reconsideration, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 17 day of August 2023.

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Date: August 17, 2023



Richard C. Culbertson

Docket No. M-2022-3012079

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement

Docket No. M-2022-3012079

v.

Columbia Gas of Pennsylvania, Inc.

PETITION OF RICHARD C. CULBERTSON FOR RECONSIDERATION

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement

v.

Columbia Gas of Pennsylvania, Inc.

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code Section 5.572, I, Richard. C. Culbertson hereby submits this Petition for Reconsideration of the Opinion and Order entered on August 3, 2023 by the Pennsylvania Public Utility Commission (the Commission) approving 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) (collectively, the Parties), (Opinion and Order hereafter referred to as the Columbia Order) 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).

I, Richard C. Culbertson respectfully request that the Commission reconsider its decision and Order of August 3, 2023.

I believe there are major violations in law that make the order unlawful or deficient.

66 Pa.C.S. § 331. Powers of commission and administrative law judges.

*(a) General rule.--The commission may, on its own motion and whenever it may be necessary in the performance of its duties, investigate and examine the condition and management of any public utility or any other person or corporation subject to this part. In conducting the investigations the commission may proceed, either with or without a hearing, as it may deem best, **but it shall make no order** without affording the parties affected thereby a hearing. Any investigation, inquiry or hearing which the commission has power to undertake or hold shall be conducted pursuant to the provisions of this chapter.*

The Commission gave an order in this Docket without a hearing.

The I&E “informal investigation” is not consistent with the requirements of 66 Pa.C.S. § 331 nor PA Title 52, Chapter 69 GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES.

66 Pa.C.S. PUBLIC UTILITIES does not include the term or mention “*informal investigation*”.

With this, it should be assumed that the Commission issued an illegal order on August 3, 2023.

A word search does not produce any reference to an “informal investigation” in PA 66 Pa.C.S. nor in PA Title 52 Chapter 69; however, the Commission’s Order of August 3, 2023, refers to the

“informal investigation” eleven times!

With major occurrences, generally accepted practices in the gas distribution utilities, they are to conduct a root cause analysis. ANSI/ API 1173 Pipeline Safety Management System Requirements includes root cause analysis that is part of the standard “*Plan - Do – Check – Act*” continuous process for improvement.

The settlement is not reliable in preventing future occurrences – if root causes are not identified, that means they are not addressed. If they are not addressed the stakeholders should expect such future occurrences.

The public knows, as well as those working in the public utility industry, doing a serious, comprehensive, and reliable investigation per recognized standards takes time, diligence, free access, professional relevant experience, professional care and necessary resources, including external expertise. and expertise investigation.

Stakeholders did not get a high-quality investigation as evidenced in the PUC’s record. The explosion occurred July 31 2019 but the docket was established in March, 2022. This shows enforcement with required corrections and improvements was an afterthought. PA 66 Pa.C.S. Public Utilities includes some form of the term “safe...” 104 times, of which apply to operators and the Commission. No one knows what safety issues were not exposed by the informal investigation.

As an example in 49 CFR 192 Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards section 385, *Manual service line shut-off valve installation. (October 2016), (a) Definitions. As used in this section: Manual service line shut-off valve means a curb valve ... (b) Installation requirement. The operator must install either a manual service line shut-off valve... There can be some circumstances based upon “sound engineering analysis” where Excess Flow Valve may*

be used in lieu of a curb valve. But these do not have the same purpose or capability. Columbia through their contractor did not install curb valves on the project where the explosion occurred. It is not managerial discretion not to install curb valves.

I have direct recent experience with Columbia's practice of not installing curb valves. I recently purchased a good home at 340 Fort Couch Road, Upper Saint Clair, PA. As before in 2016, Columbia illegally abandoned my customer's service line, also not in compliance with the PUC's regulation § 59.36. Abandonment of inactive service lines. (Service lines are utility owned personal property) (First, the regulation does not apply to private property only utility property. Second, the regulation requires annual reviews of the status of prospective future use the service line, which Columbia did not do.

Columbia again forced me against my will and private property rights to replace my customer's service line. Replacing a customer's service line is an owner's prerogative based upon its condition and its suitability for use. I was not able to test the customer's service line because Columbia locked me out, with their locking pin access to my own property.

Saturday, August 12, 2023 Columbia's crew came to the property to install a new service line. I asked the crew leader, "Are you going to install a new curb valve?" His reply – "*No.*" I responded you must, based upon DOT regulation 49 CFR Section 192.385. He said their management tells them not to. Columbia's crew installed a new curb valve. From my observation Columbia's crew did a good job, for what they had to do. The old curb valve maybe under about eight inches of dirt, like my neighbors.

In good investigations, details matter. Investigations uncover latent systemic defects and other noncompliant work, which must be recognized and reacted to.

I&E's informal investigation is not publicly available – we do not know if the informal investigation was documented. It is not part of the record in the Docket.

I BACKGROUND

1. Columbia Gas of Pennsylvania (CPA) is a public utility and natural gas distribution company (NGOC) providing natural gas distribution, services to over 433,000 retail customers in portions of twenty-six counties in western, northwestern, southern, and central Pennsylvania.

2. Columbia Gas of Pennsylvania is a subsidiary NiSource of which is publicly traded on the New York Stock Exchange (NYSE) under the symbol of NI.

3. NiSource corporate issues internal gas policy that they call gas standards, which applies to each of its gas subsidiaries including CPA. Each subsidiary may deviate from the corporate gas standard when local conditions warrant. Standards are issued by recognized consensus standards organizations, such as ISO and ASTM. NiSource is not a recognized consensus standards organization. Columbia/ NiSource referring these internal policies as standards may be deceptive to the unknowing.

4. Weaknesses and deficiencies in one subsidiary maybe indicate weaknesses in other subsidiaries.

5. On September 13, 2018 Columbia Gas of Massachusetts/ NiSource caused an overpressurization event that caused one death, multiple injuries and extensive harm to property.

6. The National Transportation Safety Board issued their report on September 24, 2019 Overpressurization of Natural Gas Distribution System, Explosions, and Fires in Merrimack Valley, Massachusetts September 13, 2018.

<https://www.nts.gov/investigations/AccidentReports/Reports/PAR1902.pdf>

7. On November 14, 2018, the National Transportation Safety Board issues Safety

Recommendation Report Natural Gas Distribution System Project Development and Review (Urgent) <https://www.nts.gov/investigations/AccidentReports/Reports/PSR1802.pdf>

8. The public report is instructive to all gas public utilities and public utility commissions.

9. Up until 2018, NiSource was identified as one of the most ethical companies in the world. “NiSource Named One of the 2018 World's Most Ethical Companies® by The Ethisphere Institute for the Seventh Time” <https://www.nisource.com/news/article/nisource-named-one-of-the-2018-world's-most-ethical-companies-174-by-the-ethisphere-institute-for-the-seventh-time-20180212-1#:~:text=NiSource%20has%20been%20recognized%20seven,23%20countries%20and%2057%20industries.>

10. The Recommendation Report included recommendations that applied to NiSource and Columbia Gas of Pennsylvania and indirectly to the PA PUC. These included:

11. *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. (P-18-006) (Urgent)*

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

13. The NTSB “Closed – Acceptable Action” (P-18-007) on July 7, 2019. <https://data.nts.gov/carol-main-public/sr-details/P-18-007> just days before the incident in Washington County.

14. Doing the work of “Review and ensure that all records and documentation of your natural gas systems are traceable, reliable, and complete.” is a difficult task. It takes more than words, imagination and hope. The NiSource database may not be up to the task as it may be antiquated and not an SQL relational database, but unstructured data of scanned documents. Every service line belongs to a main line – (parent child) how many service lines of Columbia have no

parent main lines? A good relational database would provide the answer in minutes – not months or years. The NiSource/ Columbia record system may have been the root cause of the explosion. Walking around the work area to find service lines to the main is an unreliable and dangerous way to determine what work must be done.

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

16. *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. (P-18-009) (Urgent)*

17. The various bureaus of the PA PUC should have been aware of the incident in the Merrimack Valley and investigated the exposure to Columbia’s customers in Pennsylvania. When not – the innocent pays the price.

18. Immediately after the explosion on July 31, 2019 – the PA PUC may have been involved in understanding what happened but provided little or no actual credible investigation or enforcement. Later the public knows attorneys were talking to attorneys amicably and reached a settlement to avoid legal proceedings.

19. Guidance for financial and performance audits in government related efforts is included in the GAO Yellow Book – Generally Accepted Government Auditing Standards (GAGAS) as required of the Commission by 2 CFR 200 – Grants. The approach to investigations and enforcement – is not one of being amicable by one of “professional skepticism”

20. From the *GAO Yellow Book --3.21 Independence comprises the following: a. Independence of mind: The state of mind that permits the conduct of an engagement without being*

*affected by influences that compromise professional judgment, thereby allowing an individual to act with integrity and exercise objectivity and **professional skepticism**. b. Independence in appearance: The absence of circumstances that would cause a reasonable and informed third party to reasonably conclude that the integrity, objectivity, or professional skepticism of an audit organization or member of the engagement team had been compromised.*

21. 3.22 Auditors and audit organizations maintain their independence so that their opinions, findings, conclusions, judgments, and recommendations will be impartial and will be viewed as impartial by reasonable and informed third parties.

22. Culbertson is a reasonable and informed third party.

23. The PUC's Docket Number M-2022-3012079 shows the existing record with the large gap between the incident and enforcement actions. <https://www.puc.pa.gov/docket/M-2022-3012079>

24. Columbia has been aware of ANSI/ API 1173 Pipeline Safety Management System. Requirements since the industry's standard's writing vetting and publication in 2015. See article of March 13, 2019 *Former DOT Secretary to oversee NiSource safety overhaul after Mass. blasts* <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/former-dot-secretary-to-oversee-nisource-safety-overhaul-after-mass-blasts-50548867>

25. ANSI/ API 1173 Pipeline Safety Management System. Includes multiple principles including ***"The creation of a learning environment for continuous improvement is achieved by investigating incidents thoroughly, fostering non-punitive reporting systems, and communicating lessons learned"*** There is no record of Columbia nor the PUC adopting this principle.

26. On the contrary, there does not appear to be a learning environment and continuous improvement.

27. There is no indication of investigating the Washington County incident thoroughly.

28. Columbia has not fostered a non-punitive reporting system. I have learned since July 7, 2016 that this company does not learn well nor comply with various laws and regulations regarding for example jurisdictional rights, test methods and internal controls.

29. In the 2022 Rate Case of Columbia at the PUC's Public Hearing, George Milligan, a thirty-year employee of Columbia gas provided sworn testimony of his concerns of poor safety in Columbia's operations. He said his concerns "fall on deaf ears" and his concerns of safety keep him awake at night". He did not want more Washington County explosions.

30. Employees are not influenced by words and slogans, but by actions.

31. George Milligan was fired a couple months ago for trying to make Columbia Gas of Pennsylvania safer.

32. The top management of Columbia and NiSource know about this and have not taken appropriate action. Whatever safety culture that was being developed by Columbia / NiSource was probably destroyed.

33. What has the Commission done to investigate George Milligan's listed concerns in his sworn testimony?

34. As a personal note – I have testified in three PUC Public Input Hearing over the last few years one for Peoples Gas and two for Columbia gas. My sworn testimony was both in writing and verbal, providing what I believed to be operational and financial wrongs, and safety issues. The Commission's Administrative Law Judges nor its representative from the Bureau of Investigation and Enforcement never took any follow-up action or adequately considered my concerns. Opportunities for improvement lost.

35. My last Public Input Testimony, the Columbia Gas 2020 rate case was hostile! It is

described at THIRD INTERIM ORDER Denying Objections of Columbia Gas of Pennsylvania, Inc. to Portions of Public Input Testimony of Richard C. Culbertson <https://www.puc.pa.gov/pcdocs/1673258.docx> Even with this, my testimony had little or no impact on the Commission's final Order.

III. LEGAL STANDARDS (Emphasis is added)

36. The Commission did not follow Pennsylvania Public utility law, as such, due process was denied to stakeholders. The public has a right to have Columbia's systemic weaknesses and deficiencies identified and addressed so that incidents like this do not happen again. *66 Pa.C.S. § 331. Powers of commission and administrative law judges.*

*(a) General rule.--The commission may, on its own motion and whenever it may be necessary in the performance of its duties, investigate and examine the condition and management of any public utility or any other person or corporation subject to this part. In conducting the investigations the commission may proceed, either with or without a hearing, as it may deem best, but **it shall make no order without affording the parties affected thereby a hearing.** Any investigation, inquiry or hearing which the commission has power to undertake or hold **shall be conducted pursuant to the provisions of this chapter.***

37. Under the Pennsylvania Public Utility Code at 66 Pa. C.S. § 703(g), a party has a right to seek relief from a Commission final decision.¹⁴ Such requests for relief must be consistent with the Commission's regulations at 52 Pa. Code § 5.572.¹⁵ (This assumes there was a preceding before a PUC order was issued.)

38. Under the Pennsylvania Public Utility Code The Commission has a duty of enforcement. Enforcement must be reasonable and fulfil the purpose of establishing and maintaining

law and order 66 Pa. C.S. § 501. *General powers. (a) Enforcement of provisions of part --In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, **and it shall be its duty to enforce**, execute and carry out, by its regulations, orders, or otherwise, all and singular, the provisions of this part, and the full intent thereof; and shall have the power to rescind or modify any such regulations or orders. The express enumeration of the powers of the commission in this part shall not exclude any power which the commission would otherwise have under any of the provisions of this part.*

39. The purpose of enforcement is provided in the Introductory Comments of the United States Sentencing Commission Chapter Eight - SENTENCING OF ORGANIZATIONS. Considering the explosion in Washington County appears to have similarities to the incident with Columbia Gas of Massachusetts, of which was investigated and under potential prosecution under Federal authorities, the PA PUC should have considered coordinating efforts with Federal officials, which would have invoked Chapter Eight. Enforcement may have been more effective and resolved in a timelier manner if these explosions had been investigated under one coordinated effort. *“This chapter is designed so that the sanctions imposed upon organizations and their agents, taken together, will provide just punishment, adequate deterrence, and incentives for organizations to maintain internal mechanisms for preventing, detecting, and reporting criminal conduct.*

40. The Commission’s policy to encourage settlements 52 Pa. Code §§ 5.231 with public utilities does not supersede Pennsylvania Public utility law to enforce under 66 Pa.C.S. § 331. Considerations settlement should never be made prior to a competent and comprehensive investigation identifying wrongs and root causes of an incident. Settlements for the purpose of limiting the investigation should never occur. The commission should never seek expediency over due process and justice for those harmed. Targeting a settlement truncates and impedes investigations.

41. The Commission should strongly consider if its regulation and policy 52 Pa. Code § 5.231 to encourage settlements 52 Pa. Code §§ 5.231 is taken to extreme and violates “66 Pa. C.S. § 501 General Powers (b) Administrative authority and regulations. --The commission shall have general administrative power and authority to supervise and regulate all public utilities doing business within this Commonwealth. The commission may make such regulations, not inconsistent with law,” It would be inconsistent with law for the Commission to seek settlements over proper investigations and enforcement. Seeking settlements is not absolute but proper and effective enforcement that leads to prevention, detection and response.

42. Public utility assertions of safe and compliant operations, as well as what is in the best interest of stakeholders may be fraudulent, as legally defined.

43. Guidance or requirement of the GAO document Framework for Managing Fraud Risks in Federal Programs A Framework for Managing Fraud Risks in Federal Programs should be used. <https://www.gao.gov/assets/gao-15-593sp.pdf>

44. The duty to enforce would start with investigating the incident and was caused by criminal violations included under 66 Pa. C.S. § 3302. *Criminal penalties for violations. Any person, including an officer, agent or employee of any public utility, or any corporation, who or which shall knowingly fail, omit, neglect or refuse to obey, observe, and comply with any regulation or final order, direction, or requirement of the commission, or any order of the commission prescribing temporary rates in any rate proceeding, or any final order or decree of any court, or who shall knowingly procure, aid, or abet any such violation, omission, failure, neglect, or refusal, shall be guilty of a misdemeanor of the first degree.* The incident was not an act of God, so what happened, who or what caused it?

45. 49 CFR 192.7 - What documents are incorporated by reference [IBR] partly or wholly in this part? (5) ASME/ANSI B31.8S-2004, “Supplement to B31.8 on Managing System Integrity of Gas Pipelines,” 2004. This standard the is incorporated by reference 49 CFR 192 would have provided a good

start in evaluating Columbia operations that may have cause the occurrence. This includes: A8 *INCORRECT OPERATIONS THREAT A8.1 Scope Paragraph A8 provides an integrity management plan to address the threat, and methods of integrity assessment and mitigation, for incorrect operations. Incorrect operations are defined in this context as incorrect operating procedures or failure to follow a procedure.*

46. 66 Pa. C.S. § 501. *General powers. (c) Compliance.--Every public utility, its officers, agents, and employees, and every other person or corporation subject to the provisions of this part, affected by or subject to any regulations or orders of the commission or of any court, made, issued, or entered under the provisions of this part, **shall observe, obey, and comply with such regulations** or orders, and the terms and conditions thereof.* The Commission's Bureau of Investigation and Enforcement should investigate the extent of compliance with this Pennsylvania law.

IV. RECONSIDERATION IS WARRANTED

47. The requirements of Pennsylvania laws were not met. The Commission issues an Oder on August 3, 2023 without a proceeding. The "informal investigation" by the Bureau of Investigation and Enforcement of the Washington County explosion on July 3, 2019 was not consistent with 66 Pa.C.S. § 331. *Powers of commission and administrative law judges. (a) General rule. ... In conducting the investigations the commission may proceed, either with or without a hearing, as it may deem best, **but it shall make no order without affording the parties affected thereby a hearing.** Any investigation, inquiry or hearing which the commission has power to undertake or hold **shall be conducted pursuant to the provisions of this chapter.***

V. REQUESTED RELIEF

48. I, Richard C. Culbertson submit that, because the Commission overlooked the requirements to afford parties a PUC hearing and the "informal investigation" by the PUC's Bureau of Investigation and Enforcement was not conducted consistently with Pa Title 66, the

Order must be rescinded to provide justice to those harmed a to protect stakeholders from recognized and unrecognized weaknesses and deficiencies in Columbias internal controls.

49. Take the necessary steps to restore the public’s confidence in the workings and internal controls of the Pennsylvania Public Utility Commission and Columbia’s Gas of Pennsylvania.

VI. CONCLUSION

VII. I, Richard C, Culbertson respectfully request that the Commission grant this Petition for Reconsideration and make necessary corrections to the investigation of the incident, the aftermath, the proceedings processes and provide stakeholders their due.

Respectfully submitted,



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