

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

Public Meeting held August 24, 2023

Commissioners Present:

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

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

M-2021-3005572

v.

Columbia Gas of PA, 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 (Petition, Settlement Agreement, or Settlement) filed on March 17, 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. The Petition contains terms and conditions representing a comprehensive Settlement, along with Statements in Support of the Settlement, with respect to an informal investigation conducted by I&E regarding

alleged overpressurization events. The Commission’s Opinion and Order entered April 20, 2023 at this docket (*April 2023 Order*), sought comments from interested parties regarding the proposed Settlement Agreement between I&E and Columbia. Comments to the proposed Settlement were received on June 1, 2023, from Mr. Richard C. Culbertson (Mr. Culbertson).¹ The Parties request that the Commission approve the proposed Settlement, as revised, because it 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*. Settlement at 15. For the reasons set forth herein, we shall approve the Joint Petition, consistent with this Opinion and Order based on our finding that the Settlement is in the public interest.

I. History of the Proceeding

This matter concerns alleged overpressurization events that occurred on Columbia Gas’ Fayetteville and Rimersburg distribution systems. I&E initiated an informal investigation of Columbia Gas on February 8, 2019, as a result of information provided by its Safety Division relating to these allegations. Specifically, the alleged overpressurizations occurred between January 9, 2018 and January 12, 2018 on Columbia Gas’ Fayetteville distribution system and between May 16, 2018 and June 12, 2018 on Columbia Gas’ Rimersburg system. Petition at 5, 6-8.

I&E conducted multiple inspections of the sites and interviews with Columbia Gas employees. As part of its investigation, I&E also served one set of Data

¹ The *April 2023 Order* was published in the *Pennsylvania Bulletin* on May 6, 2023, at 52 Pa. B. 2505. The *April 2023 Order* required comments to be filed within 25 days of the publication of the Order, or May 31, 2023. On June 7, 2023, the Commission issued a Secretarial Letter stating that although Mr. Culbertson’s Comments were untimely filed, Mr. Culbertson’s comments would be placed on the record of the docket and published on the PUC’s website under Docket No. M-2021-3005572.

Requests to Columbia Gas on February 8, 2019, to which Columbia Gas responded on March 8, 2019. Petition at 5.

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 originally filed a Petition for Approval of Settlement on June 8, 2021, at the above docket.

By Opinion and Order entered February 3, 2022, and consistent with the requirement of 52 Pa. Code § 3.113(b)(3), the Commission directed publication of the initial Settlement in the *Pennsylvania Bulletin* to provide an opportunity for interested parties to file comments regarding the proposed initial Settlement. Comments to the proposed initial Settlement were received on February 24, 2022, from Mr. Culbertson, and on March 16, 2022, from the Pennsylvania Office of Consumer Advocate (the OCA), and on March 17, 2022 from Columbia Gas. By Opinion and Order entered May 20, 2022 (*May 2022 Order*), the Commission denied the initial Petition and referred the matter back to I&E for further proceedings to further develop the following:

- (1) more specificity regarding the facilities that required replacement;
- (2) clarity regarding the parties' positions on Columbia Gas's ability to recover/seek recovery of the cost of replacement facilities in rate base; and
- (3) clarity regarding what damage to customer property resulted due to the overpressure events.

Petition at 1, n. 1 (citing *May 2022 Order* at 21-22).

Additional collaboration between I&E and Columbia Gas following the entry of the *May 2022 Order* formed the basis for a Revised Settlement Agreement.

Petition at 5-6. The Revised Joint Petition for Approval of Settlement was filed on March 17, 2023.

As noted, the Commission issued the *April 2023 Order* requesting comments regarding the proposed Revised Settlement Agreement on April 20, 2023. To be considered timely, the Commission directed those comments be filed no later than twenty-five (25) days after the date that the *April 2023 Order* and the Joint Petition and the Statements in Support thereof were published in the *Pennsylvania Bulletin*, or by May 31, 2023. On June 1, 2023, comments to the proposed Settlement were received from Mr. Culbertson. On June 7, 2023, the Commission issued a Secretarial Letter stating that although Mr. Culbertson's Comments were untimely filed, Mr. Culbertson's comments would be placed on the record of the docket and published on the Commission's website under Docket No. M-2021-3005572.

II. Background

A. The Rimersburg Distribution System

As described more fully in the Settlement, the first system, Rimersburg, serves 420 active customers, and was overpressurized daily for nearly a month, from May 16, 2018 to June 12, 2018, when the bypass valve at Regulator Station 4046 allowed the system to overpressure thirteen inches of water column above the maximum allowable operating pressure (MAOP). It was determined that this overpressure occurred because dried grease on the bypass valve to the main pipeline prevented the valve from sealing when a technician had applied new grease to the valve. Petition at 6 and n. 3-4.

B. The Fayetteville Distribution System

The distribution system in Fayetteville serves 966 active customers. I&E found that between January 9, 2018 and January 12, 2018, the Ausherman Regulator Station, R-3523, located in Fayetteville, was overpressurized because a Columbia Gas technician failed to fully close the bypass valve after the valve had been opened to address a supply shortage. Petition at 7 and n. 5. During the three (3) overpressure events, the open bypass valve allowed upstream pressure to the R-3523 Station to bypass the regulator set and cause the system to exceed the MAOP of 45 pounds per square inch gauge (psig), reaching a pressure of 107 psig, which is 160% of the MAOP. Petition at 7. I&E stated its understanding that three (3) overpressure events occurred on the following occasions:

- a. On January 9, 2018 the pressure exceeded the MAOP of 45 psig for two hours, reaching approximately 77 psig.
- b. On January 10, 2018, the pressure exceeded the MAOP of 45 psig for two hours, reaching approximately 52 psig.
- c. From January 11, 2018 to January 12, 2018, the pressure exceeded the MAOP of 45 psig for twenty-one hours, reaching approximately 107 psig.

Petition at 7 and n. 5.

The Petition further states that on January 2, 2018, Columbia Gas detected low gas flow from the supplier, Texas Eastern, in the Fayetteville gas system. Columbia Gas responded and increased the flow by manually operating the bypass valve of this station to supply the system. On January 12, 2018, a Columbia Gas technician determined that the system was overpressurized when repairing a meter that was struck by a vehicle. I&E Pipeline Safety inspectors were contacted by a Columbia Gas Compliance Manager and notified of an overpressure in the Fayetteville area system.

Columbia Gas personnel informed the I&E inspectors of the overpressure, reported that the system was a two-way feed, and that no outages were reported due to the overpressure. The I&E Pipeline Safety inspectors alongside Columbia Gas personnel then inspected Station R-3523 and reviewed the pressure chart. It was discovered that when the chart was previously changed, the chart recorded the inlet pressure in the system which caused the time to be marked incorrectly and required the chart to be read several hours ahead of time. The R-3523 Station operates with an inlet MAOP of 125 psig, and outlet MAOP of 45 psig. With Columbia Gas' assistance reading the chart, it was determined that overpressure events occurred on three (3) occasions from January 9, 2018 to January 12, 2018. Petition at 7, n. 5.

As noted in the Petition, Columbia Gas reported that subsequent to discovering the overpressure events, from January 12, 2018 to January 26, 2018, it received sixty-two (62) odor of gas calls, both from the public and self-generated. Petition at 8. Importantly, of the 62 calls, 21 calls were deemed "Grade 1" leaks, or hazardous leaks requiring immediate repair. On February 16, 2018, following a leak survey, Columbia Gas reported a total of 193 leaks had been found in the Fayetteville system. Columbia Gas also indicated that the majority of identified leaks were from mechanical fitting failures for meter sets. I&E found that this exceedance of MAOP from an engineering view compromised the integrity of the system and warranted an evaluation of the condition of the total system to determine whether and how much of the system warranted replacement.² Accordingly, Columbia Gas conducted comprehensive leakage surveys and developed a targeted plan to replace approximately 45,000 feet of compromised facilities, or over one-third of the total system. A detailed record of the replaced facilities is included in the Revised Joint Settlement as Columbia Gas Attachment 1. Petition at 8.

² The total system is approximately 25 miles of pipeline consisting of 3,173 feet of bare steel, 43,463 feet of coated steel, and 85,790 feet of plastic. Included in the plastic pipe is a possible 3,050 feet of Aldyl-A. Petition at 8, n. 6.

III. Terms and Conditions of the Settlement

The Parties submit that the Settlement with the inclusion of the additional information sought by the Commission in the *May 2022 Order* has been filed to resolve all issues related to I&E's informal investigation and represents a compromise by both I&E and Columbia Gas of their competing positions. The Parties further state that the Settlement constitutes a carefully crafted package representing reasonably negotiated compromises on the issues addressed therein. Petition at 16-17. The Parties urge the Commission to approve the Settlement in its entirety and without modification, as being in the public interest and consistent with the Commission's Policy Statement at 52 Pa. Code § 69.1201 governing settled proceedings involving violations of the Public Utility Code (Code) and the Commission's Regulations. Petition at 15.

The Settlement consists of the Revised Joint Petition for Approval of Settlement containing the terms and conditions of the Settlement, 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). The Settlement provides that the Commission's *May 2022 Order* sought additional detail and referred the matter back to I&E. The Parties state that they have provided: (1) enhanced language to the body of the Settlement, (2) the Statements in Support, and (3) Columbia Attachment 1 that clarify the positions of the Parties on the topics of concern to the Commission. Petition at 5.

The essential terms of the Settlement are set forth in Paragraphs 25-26 of the Petition. Petition at 10-14. These terms and conditions are excerpted in relevant part, as follows:

25. Pursuant to the Commission’s policy of encouraging settlements that are reasonable and in the public interest,³ the Parties held a series of discussions that culminated in the original settlement. Subsequent to the entry of the Commission’s May 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, as revised, for which the Parties seek Commission approval, are set forth below.
26. 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, as revised, without modification shall create the following rights and obligations:

a. Civil Penalty

Columbia Gas will pay a civil penalty in the amount of **\$535,000**.⁴ 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 “Commonwealth of Pennsylvania.” The docket number of this proceeding shall be included on the

³ See, 52 Pa. Code § 5.231(a).

⁴ The following civil penalty terms are consistent with the Federal pipeline safety regulations under 49 U.S.C. § 60101 *et seq.*, and implemented in 66 Pa. Code § 3301, which at the time of the overpressure incidents set forth a \$209,002 maximum civil penalty for each violation for each day the violation continues, with a maximum penalty not to exceed \$2,090,022 for a related series of violations. 49 U.S.C. § 60101 *et seq.*

certified check or money order and the payment shall be sent to:

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

Columbia Gas will not seek recovery of any portion of the total civil penalty amount of \$535,000 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 has taken or will take the following steps to voluntarily modify the following practices and procedures to prevent similar occurrences in the future:

- 1) In 2019, Columbia Gas implemented the Safety Management System (“SMS”), which is a comprehensive approach to managing safety, emphasizing continual assessment and improvement and mitigating potential risks before they happen. Columbia Gas has included the issues of bypass valves in its SMS process (including determining whether they are opened or closed, active monitoring, remote access and pressure relief on its regulator stations that include bypass valves). Columbia Gas will update I&E on its findings and proposed process changes that result from SMS;
- 2) As part of its Gas Distribution Integrity Management Program (“DIMP”), Columbia Gas has included the issues of bypass valves (including the determination of whether bypass valves are opened or closed, active monitoring, remote access and pressure relief on its regulator stations that include bypass valves) in

its identification and ranking of risk, segment by segment, across its system.

- a) As part of the process to integrate the valves into the DIMP plan, Columbia Gas is conducting an inventory of all bypass valves in its system in Pennsylvania. The inventory first focused on regulator stations on low pressure stations (completed as of December 31, 2021) and stations with greater than 125 psig inlet pressure (completed as of March 31, 2022). Columbia Gas will complete inventory of the remaining systems within one (1) year from the effective date of the settlement order;
- b) In this inventory, Columbia Gas shall identify, at a minimum, manufacture[r], installation year, size, and whether the valve has a way to identify the position of the valve (whether it is on or off);
- c) This inventory shall also include inlet and outlet pressures of the station;
- d) From this list, Columbia Gas shall develop a process to rank the risk specifically on the bypass valves across the distribution system, and;
- e) Columbia Gas shall develop a replacement schedule or preventative and mitigative measures to prevent bypass valves from bleeding th[r]ough or failing.

- 3) Columbia Gas shall abide by its newly implemented procedures regarding the use of bypass valves so that technicians properly determine whether bypass valves are opened or closed and in proper working order;⁵
- 4) In addition to the above-mentioned procedures regarding bypass valves, Columbia Gas shall also abide by the following Operational Notice issued by NiSource Inc.:
 - a) Operational Notice 19-05: there is a minimum 30-minute requirement to monitor downstream pressure at the end of all work performed in a regulator station when that work has involved bypassing the station to ensure the downstream pressure has stabilized. This work shall always be performed with two qualified metering and regulation (“M&R”) personnel.
 - b) If a bypass valve is operated, Columbia Gas shall observe and record the downstream pressure on the following day and observe and record the downstream pressure. This process should occur on all stations with bypass

⁵ Such procedures, which include specific steps relating to verification of closed valves, have been added to Columbia Gas’ bypass valve operation procedures. Those steps include:

- Screwing the control regulator all the way down (wide open);
- Determining the monitor regulator set-point as indicated in the regulator inspection record;
- Adjusting the bypass valve to achieve an outlet pressure setting lower than the desired monitor regulator and set-point;
- Slowly increasing the monitor regulator set-point and have the bypass valve operator start to close the bypass valve as the monitor regulator picks up the load on the system;
- Verifying that the bypass valve is *fully* closed; and
- Adjusting the control regulator to its desired set-point.

valves until non-primary reliefs or remote pressure monitoring can be installed at these stations, at which time Columbia Gas should reevaluate the need to continue this process.

- 5) Columbia Gas has improved its active monitoring, remote access and non-primary reliefs on its regulator stations that include bypass valves.
 - a) With regard to low pressure systems, Columbia Gas will continue the program initiated in 2019, under which the Company began installing monitor regulators that are designed to slam shut when the pressure is either too low or too high for the systems to function correctly.
 - b) In addition to these slam shut regulators, on its low pressure systems Columbia Gas will continue to install remote monitoring devices that communicate directly with gas control that have set parameters that allow Columbia Gas to respond should pressure exceed either the high or low set points.
 - c) Regarding its entire distribution network, Columbia Gas has initiated a program to install remote electronic pressure monitoring devices which will warn Columbia Gas when pressures increase. Under that program, Columbia Gas will also:
 - (i) Install a non-primary relief for each system that utilizes a bypass valve to prevent future overpressures and prevent similar instances while giving Columbia

Gas more information and time to respond to events;

- (ii) Prioritize systems identified as higher risk for installations of non-primary relief valves, and;
 - (iii) Provide I&E with a timeframe for the installation of downstream monitors, slam shut regulators and bypass valves;
- 6) Columbia Gas has added fields to its inspection forms regarding bypass valves to record pressure measured at the beginning and end of the monitoring period established under Operational Notice 19-05.
- 7) Beginning April 27, 2021, Columbia Gas has implemented pilot Standard Operating Procedures regarding shut down and start up of District Regulator Stations. Following those standard operating procedures, Columbia Gas will ensure that the following items will be observed as part of each inspection:
- a) Does the regulator station include a bypass valve? Y/N
 - b) Is the bypass valve marked to indicate when it is fully closed, Y/N, or does it have a stop? Y/N
 - c) How is the valve marked to indicate that it is fully closed?

Upon Commission approval of the Settlement, as revised, in its entirety 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 were subject of I&E's investigation. I&E Statement in Support at 10.

The proposed Settlement is conditioned on the Commission's approval without modification of any of its terms or conditions. If the Commission does not approve the proposed Settlement or makes any change or modification to the proposed Settlement, either Party may elect to withdraw from the Settlement. Petition at 14-15.

IV. Comments and Disposition

A. Mr. Culbertson's Comments

Mr. Culbertson's comments, which were received on June 1, 2023, include: (1) comments regarding the Revised Settlement; and (2) the comments he filed on February 24, 2022 regarding the originally proposed Settlement which was filed on June 8, 2021. The comments filed on June 1, 2023 also include several issues that Mr. Culbertson raised in Columbia's 2021 base rate case at Docket No. R-2021-3024296.⁶ Those comments will not be addressed here.

1. Culbertson Comments Submitted on June 1, 2023 That Were Not Part of the Original Comments Submitted on February 24, 2022

In his more recent comments in this proceeding, Mr. Culbertson avers that the Commission should not approve the proposed Settlement because it is not in the

⁶ Several of the issues Mr. Culbertson addressed in his comments that were received June 1, 2023 were litigated in Columbia's 2021 rate case at Docket No. R-2021-3024296 and were denied in an order issued on December 16, 2021. Mr. Culbertson filed a Petition for Review in the Commonwealth Court to challenge the Commission's December 16, 2021 Order (*Richard C. Culbertson v. PA PUC*, Case No. 152 CD 2022 (Pa. Cmwlth. 2022)). Columbia Comments filed March 16, 2022 at 2-3.

public interest and will not prevent similar occurrences in the future. Comments at 1. Mr. Culbertson contends that there are weaknesses in Columbia's management systems and the public cannot expect the Settlement to protect them until these weaknesses are addressed. Mr. Culbertson continues by identifying weaknesses he views in the proposed Settlement and his proposed solutions. Mr. Culbertson avers that the Settlement weakens the Commission's authority to supervise Columbia Gas and the Commission should re-examine its settlement provisions. Culbertson Comments at 1-2.

According to Mr. Culbertson there are "cultural problems" at the Commission and Columbia Gas that have allowed non-compliant and unsafe behavior. Mr. Culbertson recommends a "formal root cause analysis" to address the "systemic deficiencies." Mr. Culbertson notes that many of the corrective actions agreed to by Columbia Gas are in the future. *Id.*

Mr. Culbertson states that damage to property and restoration costs are Columbia's responsibility and should not be recoverable in rates. Mr. Culbertson contends that the issue should be settled in this proceeding and not in a future rate case. Culbertson Comments at 2. Mr. Culbertson recommends that the Commission should not address the overpressurization costs as individual occurrences but rather as systemic deficiencies. *Id.* Mr. Culbertson contends that Columbia's legal department experiences a conflict of interest when it receives concerning compliance reports. According to Mr. Culbertson the legal department is tasked with protecting the Company and may not be correcting or improving the Company. Mr. Culbertson recommends that the Commission "place Columbia on probation" with a person experienced in various operations and financial compliance matters. Culbertson Comments at 3.

Mr. Culbertson avers that Columbia Gas should adopt safety procedures for overpressurization at least consistent with the Occupational Safety and Health

Administration's Lockout/Tagout. Culbertson Comments at 3 (citing to 29 CFR Part 1910.147).

Mr. Culbertson takes issue with Columbia's financial approach.

Mr. Culbertson contends that Columbia Gas tends to "take multiple actions to spend on projects [th]at increase their rate base – thus corporate profits." Culbertson Comments at 3.

2. Culbertson Comments Originally Submitted on February 24, 2022 and Resubmitted on June 1, 2023

Mr. Culbertson's earlier comments begin with an assertion that the penalty that was agreed upon in the Settlement should have been set using the United States Sentencing Commission's 2018 Sentencing Manual. Mr. Culbertson provides several quotes from Chapter 8 of this manual. Culbertson Comments at 5-6.

Mr. Culbertson avers that the Commission should consider what he has termed Exhibits 1-12 to establish the correct fine amount. Culbertson Comments at 6-10. The comments regarding Exhibits 1-12 generally relate to the following main issues:

1. The September 2018 overpressurization incident relating to Columbia Gas of Massachusetts, the National Transportation Safety Board (NTSB) Accident Report and Recommendations, and the Deferred Prosecution Agreement relating to the Massachusetts case.⁷ We note that this issue was addressed in the Settlement between I&E and Columbia Gas in *Pa. PUC, Bureau of Investigation and Enforcement v. Columbia Gas of Pennsylvania*,

⁷ *United States v. Bay State Gas Company, d/b/a Columbia Gas of Massachusetts*, Docket No. 20-cr-10066-FDS (*U.S. v. Columbia Gas MA*).

at Docket No. M-2022-3012079 (Opinion and Order entered August 3, 2023) (*August 3rd Order*). Culbertson Comments at 7-8.

2. Mr. Culbertson cites to regulatory requirements of 49 C.F.R. § 192.605, *Procedural manual for operations, maintenance, and emergencies*, to note that this manual is required to be followed in the normal course of business, including incorrect pipeline operations. *Id.* at 7 (citing 49 C.F.R. § 192.605(a), (b)(5)). Regulatory Requirements of 49 CFR § 192.195 regarding *Protection against accidental overpressuring* to aver that overpressuring devices have been required to be in place for a long time. *Id.* at 8 (citing 49 C.F.R. § 192.195(a)). Mr. Culbertson cites to *Joint Statement of Mr. Joe Hamrock, Chief Executive Officer, NiSource, et al., Before the United States Senate Committee on Commerce, Science and Transportation, November 26, 2018*, to assert that NiSource did not comply with 49 CFR § 192.195 until after the Massachusetts overpressurization incident. Culbertson Comments at 8.
3. Mr. Culbertson provides information regarding a Washington County Columbia Gas overpressurization incident. Mr. Culbertson avers that no investigation occurred until after his comments were made in this case. We note that this is the subject of the Settlement between I&E and Columbia Gas which the Commission addressed in the *August 3rd Order*. Culbertson Comments at 9.
4. Mr. Culbertson also addresses *Pa. PUC, Bureau of Investigation and Enforcement v. Columbia Gas of Pennsylvania, Inc.*, Docket No. M-2016-2378672 (Opinion and Order entered December 7, 2017) (*2017 Columbia Gas Case*), which involved an injury to a contract crew worker who was working on a plastic gas mainline during a steel main

replacement. Mr. Culbertson contends that “the time of the accident and the settlement in that case is unreasonable and shows a disregard for the safety of workers on the part of Columbia and the Commission.”

Culbertson Comments at 10.

5. Mr. Culbertson references an Action News Channel 4 online story about Columbia Gas workers authorizing a strike as a result of concerns about unsafe work by contractors. Mr. Culbertson acknowledges that there is no public information regarding these concerns but contends that gas leaks in homes can put homeowners and their property at risk. Culbertson Comments at 10.
6. Mr. Culbertson cites Section 335(d) of the Code, 66 Pa. C.S. § 335(d), to question the documents relied upon in determining the total civil penalty of \$535,000. Culbertson Comments at 11-12.

Mr. Culbertson also included what he termed “Backup Exhibits.” These Backup Exhibits include further information including online news articles, pictures, web addresses, and the texts of regulations regarding his first twelve exhibits. Culbertson Comments at 15-34.

B. Disposition of the Culbertson Comments

A number of Mr. Culbertson’s comments are quite broad and do not appear to be focused on the overpressurization events on the Rimersburg and Fayetteville systems. We will consider Mr. Culbertson’s comments in this matter that are related to the Settlement terms and conditions. Those matters that have come before the Commission in other cases where Mr. Culbertson has sought relief and/or are now part of pending appellate proceedings will not be re-litigated here.

To the extent that Mr. Culbertson asserts conduct by Columbia Gas or NiSource which is outside of the scope of this proceeding (*i.e.*, conduct before or after the time period that was the focus of I&E’s investigation, or not relevant to the circumstances that are the focus of the instant proceeding), Mr. Culbertson’s Comments do not assert a basis to deny the Settlement. Similarly, Mr. Culbertson’s averments of conduct by the Commission which is outside of the scope of this proceeding (*i.e.*, impertinent to the focus of the instant proceeding), do not assert a basis to deny the Settlement.

Finally, we will address Mr. Culbertson’s inquiry regarding the “documents” relied upon in reaching the total civil penalty of \$535,000. Culbertson Comments at 6-7. The total civil penalty of \$535,000 represents an agreed-upon amount based on the terms set forth in Paragraph 25 of the Settlement. As discussed herein, the Commission’s Policy Statement at 52 Pa. Code § 69.1201 sets forth the guidelines that the Commission uses when evaluating whether, and to what extent, a civil penalty is warranted.

V. Information Sought as a Result of the *May 2022 Order*

In the *May 2022 Order*, the Commission denied the original Petition for Settlement and referred the matter back to I&E for further proceedings to further develop the following:

- (1) more specificity regarding the facilities that required replacement;
- (2) clarity regarding the parties’ positions on Columbia Gas’s ability to recover/seek recovery of the cost of replacement facilities in rate base; and
- (3) clarity regarding what damage to customer property resulted due to the overpressure events.

Petition at 1, n. 1 (citing *May 2022 Order* at 21-22).

The Rimersburg pipeline section that was overpressurized was replaced. The Parties assert that this was not due to the overpressure event but due to the age and condition of the facilities. I&E Statement in Support at 2. In the Fayetteville System, Columbia Gas replaced approximately 45,000 feet of compromised facilities. A detailed record of the replaced facilities can be found in Columbia Attachment 1. Settlement at 8.

I&E clarified that Columbia Gas is not precluded from seeking recovery of the costs incurred from the replacement of facilities resulting from the overpressurization incidents in rate base. I&E contends that the determination of cost recovery is best suited for a rate case. I&E avers that whether Columbia Gas will or will not seek or has or has not sought recovery of costs is not a necessary component of this Settlement. I&E Statement in Support at 11-12. I&E provided that subsequent to the events at issue that occurred in 2018, Columbia Gas filed base rate cases in 2020 (Docket No. R-2020-3018835, 2021 (Docket No. R-2021-3024296) and 2022 (Docket No. R-2022-30312111). I&E Statement in Support at 12, n. 5.

The Parties maintain that no personal injury or customer property damage occurred as a result of the overpressurization events. I&E Statement in Support at 12 (citing I&E original Statement in Support at 18, Columbia original Statement in Support at 11). Columbia Gas notes that a shutdown in service of a cumulative seven hours to twelve customers was required in Rimersburg to relight some customer appliances. I&E Statement in Support at 12.

VI. 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).

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements. The Commission must 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). In this regard, the Commission's *Policy Statement* at 52 Pa. Code § 69.1201 sets forth ten factors that we may consider in evaluating whether a civil penalty for violating a Commission Order, Regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest. The *Policy Statement* sets forth ten factors we use when determining whether, and to what extent, a civil penalty is warranted in litigated and non-litigated settled cases. In settled cases, while many of the same factors may still be considered, the settling parties "will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest." 52 Pa. Code § 69.1201(b). Based on our review of the Settlement, we find, as discussed in more detail below, that the application of these factors supports approval of the Settlement.

The first factor considers whether the conduct at issue was of a serious nature, such as 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 civil penalty while conduct that is less egregious warrants a lower amount. 52 Pa. Code § 69.1201(c)(1). According to I&E, the alleged conduct in this matter involves overpressure events at two locations, one of which occurred over a course of twenty-six (26) days from May 16, 2018 to June, 12, 2018, at the Company's Rimersburg System and the other occurred over a course of four (4) days at the Company's distribution system in Fayetteville, Pennsylvania. I&E concluded that both of these incidents occurred due to inadequate use and maintenance of bypass valves, and the

subsequent leak of gas from such bypass valves causing the systems to overpressurize. Although, I&E noted that no individual was harmed during the overpressure events, nor did any customer property damage occur as a result of those events, I&E reasoned that the potential for harm to the public occurred. I&E Statement in Support at 13-14.

I&E found that the overpressure incidents at Columbia Gas' Rimersburg and Fayetteville systems, including the duration of the incidents and the serious nature of the actions that led to the incidents, put members of the public at grave risk of injury. I&E considered the consequences of the overpressure incidents to be of a serious nature as safe and adequate service to the public is a major concern when gas safety incidents occur, which warrants a higher civil penalty. I&E Statement of Support at 14.

Columbia Gas provided that when it became aware of the overpressure events, the Company apprised the Commission's Safety Division of these matters immediately. Columbia Gas avers, *inter alia*, that while the issues of line pressurization and gas valve operations are, by nature, serious matters, its conduct at issue was not of a serious nature within the meaning of the *Policy Statement*, since it did not involve willful fraud or misrepresentation. Columbia Gas Statement in Support at 12. While the overpressurization events resulted from operator error rather than fraudulent or willful acts, they were of a serious nature. We find that the conduct involved – the overpressure events at two locations that put members of the public at risk – was the result of conduct of a serious nature and, accordingly, we find the proposed penalty to be fair and reasonable given the circumstances.

The second factor considers whether the resulting consequences of the Company'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). I&E provided that no personal injury or customer property damage occurred as a result of the alleged violations.

Nonetheless, due to the overpressure incidents at Columbia Gas' Rimersburg and Fayetteville systems, including the duration of the incidents and the serious nature of the actions that led to the incidents, members of the public were put at risk. I&E Statement of Support at 14-15.

Columbia Gas explained that while the overpressure incidents involved pressure excursions in excess of the MAOP, those excursions did not result in any injury to person or property. According to Columbia Gas, there was an oil seal at the regulator station at issue which continually relieved pressure on the Rimersburg system during the event, which functioned as designed and prevented injury to persons or property. Columbia Gas explained further that at Fayetteville, each service line on that system has a service regulator that is rated to at least 125 psig, which protected customers when the pipeline exceeded the MAOP but did not exceed 125 psig. Columbia Gas Statement in Support at 12-13. We find the penalty reasonable due to the nature of the violations and resulting overpressurizations as we find the potential consequences of a serious nature.

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's alleged conduct was intentional or negligent does not apply since this matter is being resolved by settlement of the Parties. I&E Statement of Support at 15.

The fourth factor to be considered is whether Columbia Gas has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). Columbia Gas has cooperated with I&E's investigation in order to address and correct the alleged violations stemming from the incidents at the Rimersburg system and Fayetteville system. Columbia Gas cooperated with safety recommendations from I&E Pipeline Safety inspectors, including, *inter alia*, maintaining weekly or monthly leak surveys, repairing all leaks that were detected in the system, and

continuing daily odorant level verifications. In regard to the Fayetteville system, Columbia Gas has replaced 3,748 feet of bare steel, 38,613 feet of coated steel, and 6,597 feet of plastic with 40,500 feet of polyethylene medium pressure plastic ranging in size from 2 to 6 inches. *See*, Columbia Gas Attachment 1. Regarding the Rimersburg system, Columbia Gas removed the Regulator Station R-4046 on Cherry Run Road. In December of 2018, Columbia Gas replaced the overpressurized pipe sections in the Rimersburg system with a medium pressure system, to ensure safe operation. I&E provided that the replacement was necessitated by age and condition of those facilities, rather than the overpressure event. I&E Statement of Support at 16, n. 6. According to I&E, these replacement activities represent significant facilities improvements that will improve the safety profiles of the two systems. I&E Statement of Support at 15-16.

Columbia Gas provided that it implemented several of its corrective measures prior to the submission of the Settlement Agreement for the Commission's consideration, such as:

- (a) the 2019 implementation of the Safety Management System;
- (b) the newly implemented procedures regarding the use of bypass valves so that technicians properly determine whether bypass valves are opened or closed and in proper working order;
- (c) the implementation of NiSource Inc.'s Operational Notice 19-05;⁸
- (d) the program initiated in 2019, under which the Company began installing monitor regulators that are designed to slam shut when the pressure is either too low or too high for the systems to function correctly;

⁸ *See*, Petition at ¶ 26(b)(4)(a).

- (e) the April 2021 implementation of pilot Standard Operating Procedures regarding shut down and start up of District Regulator Stations.

Columbia Gas Statement in Support at 13. Columbia Gas' implementation of corrective measures supports the proposed 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). The Company's Rimersburg system served 420 active customers and its Fayetteville system served 966 active customers at the time of the events. While no customers were harmed by the overpressure incidents, I&E reasoned that such customers were affected by the adequacy and safety of gas service from Columbia Gas' systems and the dangers the overpressure events posed over the course of days and weeks. I&E Statement of Support at 16. For this reason, this factor weighs in support of the proposed penalty.

The sixth factor to be considered relates to the compliance history of Columbia Gas. 52 Pa. Code § 69.1201(c)(6). An isolated incident from an otherwise compliant company may result in a lower penalty, whereas frequent, recurrent violations by a company may result in a higher penalty. I&E noted that, when reviewing the compliance history of Columbia Gas, previous overpressure incidents allegedly occurred in 2014. *Id.* citing *Pa. PUC, Bureau of Investigation & Enforcement v. Columbia Gas of Pennsylvania*, No. M-2014-2306076, 2014 WL 2644843 (June 5, 2014). This compliance history was considered when reaching an amicable civil penalty. I&E Statement of Support at 16. We thus determine that this factor weighs in favor of the proposed penalty.

The seventh factor to be considered relates to whether the Company cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7).

Columbia Gas has cooperated with I&E's investigation in order to address and correct the violations stemming from the incidents at the Rimersburg system and Fayetteville system. According to I&E, Columbia Gas has replaced 3,748 feet of bare steel, 38,613 feet of coated steel, and 6,597 feet of plastic with 40,400 feet of polyethylene medium pressure plastic ranging in size from 2 to 6 inches in the Fayetteville system. Regarding the Rimersburg system, Columbia Gas removed the Regulator Station R-4046 on Cherry Run Road. I&E provided that Columbia Gas has replaced the overpressurized pipe sections in the Rimersburg system with a medium pressure system, to ensure safe operation. Columbia Gas has further cooperated with safety recommendations from I&E Pipeline Safety inspectors, including, *inter alia*, maintaining weekly or monthly leak surveys, repairing all leaks that were detected in the system, and continuing daily odorant level verifications. In the Company's Fayetteville system, over one-third of the pipeline facilities were replaced. I&E Statement of Support at 16-17. This factor weighs in favor of the proposed penalty amount.

The eighth factor to be considered is the appropriate settlement amount necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). I&E submits that a civil penalty amount of \$535,000, which is not tax deductible, in addition to business practice changes/modifications to be implemented by the Company is substantial and sufficient to deter future overpressure incidents at Columbia Gas' Rimersburg and Fayetteville systems, including the duration of the incidents and the serious nature of the actions that led to the incidents. Columbia Gas also agrees that the civil amount of \$535,000, in conjunction with the operational modifications that the Company has undertaken, will adequately serve to deter future violations. Columbia Gas Statement of Support at 14. Accordingly, we agree, and therefore find that the civil penalty is appropriate and sufficient to deter Columbia Gas from committing future violations. I&E Statement of Support at 17.

The ninth factor to be considered relates to past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). Maximum civil penalties were settled upon or imposed by the Commission when overpressure incidents lead to a death. *See, Pa. PUC, Bureau of Investigation and Enforcement v. UGI Utilities, Inc.*, Docket No. C-2012-2308997, (Order entered February 19, 2013) (finding that a higher, maximum penalty is warranted from an incident involving a gas explosion where life was lost and fire resulted in property damage). However, in these overpressure incidents in the instant case, there were no personal injuries or fatalities, and no customer property was damaged. I&E averred that a maximum civil penalty is not necessary here.⁹ The Commission has also imposed lesser penalties to resolve various federal and state gas safety violations. *See, e.g., Pa. PUC L. Bureau Prosecutory Staff v. UGI Utilities, Inc.*, No. C-2009-2120601, 2010 WL 4809927 (Nov. 19, 2010) (Order entered November 19, 2010). I&E Statement of Support at 17-18. We note the corrective measures in the Settlement are in the public interest and we agree with I&E that a maximum penalty is unnecessary here.

The tenth factor considers “other relevant factors.” 52 Pa. Code § 69.1201(c)(10). In support of the \$535,000 civil penalty, I&E noted that Columbia Gas has been credited for retiring over 45,000 feet of pipe upon request from I&E safety inspectors to resolve the overpressure incidents and mitigate further overpressure incidents. I&E provided that a maximum civil penalty is unnecessary because Columbia Gas promptly complied and cooperated with I&E to resolve the issues that included a large replacement of their Fayetteville pipeline, and Columbia Gas does not have an

⁹ I&E states that under 49 USC. § 60101, the allowable civil penalty for this matter is \$209,002 for each violation for each day the violation continues, with a maximum penalty not to exceed \$2,090,022 for a related series of violations. This means that the maximum civil penalty could potentially be applied to the Rimersburg and Fayetteville incidents separately, or a total of \$4,180,044. I&E Statement of Support at 18, n. 7.

extensive history of being noncompliant with Commission Regulations. I&E Statement of Support at 18-19.

I&E further provided that the civil penalty is appropriate given that Columbia Gas' overpressure incidents neither resulted in a fire or explosion nor caused personal injury or property damage. As consequences of a serious nature did not ensue, alongside Columbia Gas cooperating with I&E's investigation and the Company's replacement of more than 45,000 feet of its Fayetteville system pipeline, I&E contended that this factor weighs in favor of an agreed upon civil penalty of \$535,000. *Id.* at 19 citing *Cf., Pa. PUC, Bureau of Investigation & Enforcement v. Sunoco Pipeline, L.P.*, No. C-2018-3006534, 2019 WL 7403545 (December 18, 2019) (imposing civil penalty of \$200,000 when Sunoco experienced a leak due to corrosion, which only potentially affected very few customers). I&E argued that these factors, in addition to the allegations brought forth that initiated I&E's informal investigation, fully support the civil penalty amount and the modification of operational practices to be taken by Columbia Gas and are in the public interest. *Id.*

Columbia Gas, on its part, submits that it is in the public interest to settle this matter so as to avoid the expense of litigation. Moreover, according to Columbia Gas, the Settlement is in the public interest because it will result in public benefits that will promote gas safety and reliability in the Company's service territory. Columbia Gas Statement of Support at 15. We find that the corrective actions will provide a public benefit to all of Columbia Gas' customers. We also 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.

We note that the additional information provided by the Parties as a result of the *May 2022 Order* is helpful in making a decision regarding the Settlement.

Columbia Gas has provided the details of the facilities replaced in the Rimersburg system as a result of age and condition and those in the Fayetteville system that resulted from the overpressure incident. The Parties acknowledge that Columbia Gas is not prohibited from recovery of costs of these facilities in rate base. Additionally, we note that no damage to customer equipment resulted from the overpressurization events. The supplemental information indicates no reason to disapprove the Settlement. For the reasons set forth above, after reviewing the terms of the Settlement, we find that approval of the Settlement is in the public interest and is consistent with the terms of our *Policy Statement* and our past decisions.

VII. 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 Settlement. Based on our review of the record in this case and the Commission's Regulations and policy statements, we find that the proposed Settlement between I&E and Columbia Gas 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 Settlement Petition for Approval of Settlement filed on March 17, 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 Five-Hundred Thirty-Five Thousand Dollars (\$535,000). 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, in addition to the civil penalty, Columbia Gas of Pennsylvania, Inc. agrees to promptly take the numerous corrective actions as expressly set forth in the Settlement Agreement that have yet to be implemented, if any.

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 Settlement Agreement, 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 Nos. 4 and 5 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 24, 2023

ORDER ENTERED: August 24, 2023