

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No.
)	
NiSOURCE, Inc.)	
)	
Defendant.)	
)	

DEFERRED PROSECUTION AGREEMENT

1. Andrew E. Lelling, United States Attorney for the District of Massachusetts (by Assistant U.S. Attorneys Neil J. Gallagher, Jr. and Evan Gotlob) (the “Government”); and defendant NiSource, Inc. (“NiSource”) (by counsel Alejandro N. Mayorkas, Esq., Wilmer-Hale, LLP and NiSource Chief Executive Officer Joseph Hamrock) hereby enter into the following Deferred Prosecution Agreement (“Agreement”).

2. It is the intention of the parties that this Agreement will cover any and all of NiSource’s federal criminal liability in the District of Massachusetts arising from the conduct of its wholly-owned subsidiary, Bay State Gas Company, d/b/a Columbia Gas of Massachusetts (“CMA”), or any of NiSource’s conduct that is related to the conduct alleged in the criminal information filed against CMA (“the CMA Criminal Information”), attached to this Agreement as **Exhibit A**, and covered by the plea agreement dated February 24, 2020 between the Government and CMA (“the CMA Plea Agreement,” attached to this Agreement as **Exhibit B**), or that is in any other way related to the Merrimack Valley Over-Pressurization Event on September 13, 2018 (hereinafter, “the Event”), including CMA’s and NiSource’s restoration work in the Merrimack Valley following the Event that is currently known to the Government.

3. This Agreement is effective for a period beginning on the date on which this Agreement is signed (“Effective Date”) and ending thirty-six (36) months from the Effective Date (the “Term”).

4. The Government enters into this Agreement based upon the individual facts and circumstances of this case, including:

- a. NiSource’s agreement to use reasonable best efforts to sell CMA or CMA’s gas distribution business, to a qualified third-party buyer consistent with the requirements of M.G.L. c. 164, § 96 and Interlocutory Order on Standard of Review, D.P.U. 10-170 and upon the completion of any such sale, to cease and desist any and all gas pipeline and distribution activities in the District of Massachusetts;
- b. In the event that CMA or its gas distribution business is sold within CMA’s three (3) year term of probation, NiSource’s agreement to forfeit and pay a monetary penalty equal to the total amount of any profit or gain from the sale of CMA or CMA’s gas distribution business;
- c. NiSource’s prior voluntary payments of restitution to the victims of the Event including, but not limited to, payments to the individuals, businesses and municipalities affected;
- d. NiSource’s agreement to seek to resolve all pending civil claims, including NiSource’s agreement to seek to settle the claims filed by the Massachusetts Department of Public Utilities (“MA DPU”);
- e. NiSource’s acknowledgement that, based on the allegations in the CMA Criminal Information, the Government has sufficient basis to allege that NiSource is responsible for CMA’s conduct as alleged in the CMA Criminal Information; and
- f. NiSource’s commitment to fulfill all of the terms of this Agreement.

5. The Government agrees that so long as NiSource adheres to and complies with the provisions of this Agreement, the Government will not file criminal charges against NiSource, either for NiSource’s conduct or CMA’s conduct, related to the allegations in the CMA Criminal Information, the Event, or CMA’s and NiSource’s restoration work in the Merrimack Valley following the Event that is currently known to the Government. In the event

of a breach of this Agreement, the Government reserves the right to prosecute NiSource for the conduct related to the allegations in the CMA Criminal Information, the Event, or CMA's and NiSource's restoration work in the Merrimack Valley following the Event that is currently known to the Government or any other conduct the Government in its sole discretion deems appropriate.

6. In consideration of the Government's agreement described above in paragraph 5, NiSource waives its right to a speedy trial pursuant to the Sixth Amendment to the United States Constitution and Rule 48(b) of the Federal Rules of Criminal Procedure. NiSource also expressly waives and will not plead, argue, or otherwise raise any statute of limitations or other similar defenses to any criminal charges brought by the Government related to the allegations in the CMA Criminal Information, the Event, or CMA and NiSource's restoration work in the Merrimack Valley following the Event, except to the extent to which such a defense would have been available had charges been brought on or before the date on which this Agreement is executed.

NISOURCE'S OBLIGATIONS

7. NiSource acknowledges that, based on the allegations in the CMA Criminal Information, the Government has sufficient basis to allege that NiSource is responsible for CMA's conduct alleged in the CMA Criminal Information. NiSource will not, through any person authorized to speak on its behalf, make any public statement, in litigation or otherwise, contradicting in whole or in part NiSource's acknowledgement set forth above.

8. NiSource agrees that it will use reasonable best efforts to sell CMA or CMA's gas distribution business to a qualified third-party buyer consistent with the requirements of M.G.L. c. 164, § 96 and Interlocutory Order on Standard of Review, D.P.U. 10-170, and, upon the

completion of any such sale, NiSource will cease and desist any and all gas pipeline and distribution activities in the District of Massachusetts.

9. In the event of a sale of CMA or CMA's gas distribution business following the execution of a definitive purchase and sale agreement within the three (3) year period of probation under the terms of the CMA Plea Agreement, within thirty (30) days of the later of the sale becoming final or the date on which post-closing adjustments to the purchase price are finally determined in accordance with the agreement to sell CMA or its gas distribution business, NiSource will forfeit and pay a monetary penalty equal to the total amount of any profit or gain from the sale of CMA or its gas distribution business.

10. Upon request of the Government, NiSource will also promptly provide any and all records regarding the sale including but not limited to audited financial statements and income tax returns of NiSource, to the extent required to verify the accuracy of any profit, gain or loss amount that resulted from the sale of CMA or CMA's gas distribution business.

11. NiSource also agrees, as to each of its subsidiaries involved in the distribution of gas through pipeline facilities in Massachusetts, Indiana, Ohio, Pennsylvania, Maryland, Kentucky and Virginia to implement and adhere to each of the recommendations from the National Transportation Safety Board ("NTSB") related to NTSB Accident ID PLD18MR003 regarding the Event.

GOVERNMENT'S OBLIGATIONS AND RIGHTS

12. If NiSource fully complies with all of its obligations under this Agreement, the Government will not file any criminal charges against NiSource related in any way to the allegations in the CMA Criminal Information, the Event, or CMA's and NiSource's restoration work in the Merrimack Valley following the Event currently known to the Government.

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

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

15. NiSource also agrees that, in the event that the Government determines, in its sole discretion, that NiSource has violated any provision of this Agreement, an extension of the Term of the Agreement may be imposed by the Government, in its sole discretion, for up to a total additional time period of twelve (12) months. Any extension of the Agreement extends all terms of this Agreement throughout the extension period.

16. In the event the Government determines that NiSource has breached this Agreement, the Government agrees to provide NiSource with written notice of such breach prior to instituting any prosecution resulting from such breach. Within thirty (30) days of receipt of such notice, or within any longer period of time the Government agrees to in writing, NiSource may respond to the Government in writing to present its position regarding whether a breach has in fact occurred; whether any breach was material; whether any breach was knowingly or willfully committed; and any other facts and circumstances that NiSource submits are relevant to

the Government's determination of breach. The Government agrees to consider NiSource's written submission in determining whether a breach occurred and, if so, whether to institute a prosecution of NiSource.

17. In the event the Government institutes a prosecution due to its determination that NiSource has breached this Agreement: (a) all statements made by or on behalf of NiSource or CMA to the Government or to the Court and any testimony given by or on behalf of NiSource before a grand jury, a court, or any tribunal, or at any legislative hearings, whether before or after this Agreement, will be admissible in any criminal proceedings brought by the Government against NiSource; and (b) NiSource will not assert any claim under Rule 11(f) of the Federal Rules of Criminal Procedure; Rule 410 of the Federal Rules of Evidence; or any other federal rule that any such statements or testimony made by or on behalf of NiSource or CMA before or after this Agreement, are inadmissible.

18. NiSource acknowledges that the Government has made no representations, assurances, or promises concerning what sentence may be imposed by the Court if NiSource breaches this Agreement, the Government pursues criminal charges, and this matter proceeds to judgment. NiSource further acknowledges that any such sentence is solely within the discretion of the Court and that nothing in this Agreement binds or restricts the Court in the exercise of its discretion.

19. NiSource also agrees that in the event that CMA's guilty plea is not accepted by the Court or is withdrawn for any reason, or if CMA should fail to perform an obligation under the CMA Plea Agreement prior to the sale of CMA or its gas distribution business, the Government may, at its sole option, render this Agreement null and void.

20. This Agreement is between NiSource and the United States Attorney's Office for the District of Massachusetts. This Agreement does not bind any other federal, state, or local prosecuting authorities. Furthermore, this Agreement does not prohibit the United States, any agency thereof, or any third party from initiating or prosecuting any civil or administrative proceedings directly or indirectly involving NiSource, including, but not limited to, proceedings by the Internal Revenue Service relating to potential civil tax liability.

21. Any notice, certification, resolution, or report to the Government under this Agreement will be given by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, addressed to:

Chief, Public Corruption and Special Prosecutions Unit
U.S. Attorney's Office for the District of Massachusetts
John Joseph Moakley Federal Courthouse
One Courthouse Way, Suite 9200
Boston, MA 02210

22. Any notice to NiSource under this Agreement will be given by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, addressed to:

Alejandro N. Mayorkas, Esq.
Wilmer-Hale LLP
1875 Pennsylvania Avenue NW
Washington, DC 20006

Carrie J. Hightman
Chief Legal Officer
801 East 86th Avenue
Merrillville, IN 46410

23. Notice will be effective upon actual receipt by the Government or NiSource.

24. The Government's acceptance of delivery of any notice, certification, resolution, or report referenced in this Agreement, or the absence of any response thereto, is not, and will

not be construed as, evidence of compliance with this Agreement or any other applicable laws, policies, or procedures.

25. This Agreement, to become effective, must be signed by all of the parties listed below. No promises, agreements, terms, or conditions other than those set forth in this Agreement will be effective unless memorialized in writing and signed by all parties or confirmed on the record before the Court.

FOR THE UNITED STATES

ANDREW E. LELLING
UNITED STATES ATTORNEY

By: 

Neil J. Gallagher, Jr.
Evan Gotlob
Assistant United States Attorneys

FOR NISOURCE, INC.

By: _____
Joseph Hamrock
Chief Executive Officer
NiSource, Inc.

By: _____
Carrie J. Hightman
Executive Vice President and Chief Legal Officer
NiSource, Inc.

By: _____
Alejandro N. Mayorkas, Esq.
WilmerHale, LLP
Counsel for NiSource, Inc.