

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	Docket No. C-2011-2278312
<i>Complainant,</i>	:	
	:	
v.	:	
	:	
Philadelphia Gas Works,	:	
<i>Respondent.</i>	:	

**PHILADELPHIA GAS WORKS'
STATEMENT IN SUPPORT
OF
JOINT PETITION FOR SETTLEMENT**

Philadelphia Gas Works (“PGW” or “Company”) hereby submits this Statement in Support of the Joint Petition for Settlement (“Settlement Agreement”) entered into between PGW and the Commission’s Bureau of Investigation and Enforcement (“I&E”) in the above-captioned proceeding.

As discussed in greater detail herein, PGW submits that the Settlement: (a) resolves all of the issues raised by the I&E Complaint; (b) is in the public interest; (c) represents a fair, just, reasonable and equitable resolution of this proceeding; and (d) should be approved by the Commission – with one revision concerning the allocation of settlement funds.

The incident underlying the Settlement Agreement is the gas leak and explosion in the Tacony section of Philadelphia on January 18, 2011. A PGW employee tragically lost his life that night, and several other employees were injured. This incident was traumatic for the Company, its employees, their families, neighborhood residents, and the entire City of Philadelphia. As a community, PGW is deeply saddened that loss of life and injuries occurred. In order to resolve this matter, and move forward cooperatively with the Commission’s Gas

Safety Division (“GSD”) as well as I&E, PGW has elected to amicably resolve the I&E Complaint. It did so by agreeing to satisfy all of the requests for relief and to pay the full amount originally demanded in the I&E Complaint, the only open issue being the extent to which the payments should be used as a forfeiture or penalty – in the form of a payment to the General Fund – or are used to fund worthy programs that will benefit the Philadelphia community and to which PGW is not presently contributing. Accordingly, there can be no question that the Settlement is in the public interest.

While the incident was traumatic for all involved, PGW submits that the conduct of its employees and senior officials during the incident was lawful and appropriate and in compliance with the Public Utility Code, the Pennsylvania Public Utility Commission’s (“PUC” or “Commission”) regulations and the United States Department of Transportation’s (“DOT”) gas safety regulations. Moreover, after a careful review, PGW similarly believes that its emergency procedures and directives at the time of the incident complied with applicable state and federal regulations and directives from the PUC’s GSD. In short, PGW has substantial factual and legal defenses to each of the claimed violations of law. Those defenses and responses are summarized on a count by count basis in Appendix “1” hereto.

PGW recognizes, however, that all aspects of its operations, including gas safety, can be enhanced and that it sometimes takes difficult events to identify those areas and the ways in which its procedures can be improved or clarified. Here, PGW initiated its own investigation immediately after the incident. As a result of that investigation, and with the assistance of the I&E and the GSD, PGW identified areas of its operations and procedures that could be improved, clarified or better communicated. As a part of this Settlement, PGW formally

committed to those improvements or confirmed that it has already made them.¹ Indeed, most if not all of these improvements have already been completed prior to the filing of the I&E Complaint. Accompanying the Settlement Agreement is a binder (“Appendix A”), that provides a detailed explanation of each of the operational improvements that PGW has implemented, together with extensive supporting material. Appendix A consisting of hundred pages of documentation and explanation, shows how fully and comprehensively PGW has responded to the incident in the spirit of improving its operations, and that it has fully responded to the items that I&E requested as remedies in the Complaint’s “Prayer for Relief.”

In addition to making these improvements, the agreed-upon Settlement provides that PGW will make a financial payment of \$500,000 -- \$400,000 as a civil settlement amount and \$100,000 as a contribution to an existing Philadelphia Fire Department (“PFD”) program to assist homeowners’ installation of smoke detectors (unless the Commission orders a different allocation). This contribution plainly provides benefits to the City’s residents.

This allocation of funds is where PGW respectfully requests the Settlement be revised. In the past, this Commission, in recognition of PGW’s unique status as a non-shareholder utility, has declined to impose substantial fines on PGW. Those fines, the Commission recognized, harm PGW’s ratepayers, not its “shareholders” as would be the case in most utilities (since it has no shareholders). Clearly a \$500,000 payment is substantial, and PGW has agreed to it and, indeed, has agreed not to challenge the amount of the payment (as has I&E). PGW agreed to the payment for three primary reasons: (1) the paramount need to bring this event to a close within the Company; (2) the fact that the Settlement reflects a compromise between I&E and PGW concerning the claims raised in the I&E Complaint and makes no factual findings or conclusions

¹ See, Settlement Agreement, ¶ 23(a) – (s).

of law, makes no finding that PGW violated any provision of the Public Utility Code, PUC regulations or the DOT regulations and conserved both PGW's and the Commission's resources; and, (3) permits both parties to move forward in a cooperative manner, focusing their attention on assuring safe, adequate and reliable natural gas service for PGW's customers rather than assigning blame.

But PGW did reserve in the Settlement the right to challenge the allocation of the \$500,000, to ask the Commission to allocate less funds to the General Fund as a civil settlement amount and more to natural gas or fire safety programs. It does so below. The beneficiaries of these natural gas or fire safety programs would in substantial part be PGW ratepayers. Allocating funds to those programs would thus mitigate the harm to ratepayers. A revised allocation would, in turn, bring the penalty here far closer to the Commission's established position vis-a-vis PGW than does the present allocation. Accordingly, PGW proposes that \$350,000 of total civil settlement payment be made to deserving programs, as follows:

- \$100,000 contribution to the PFD's smoke detector program (as presenting contemplated);
- \$107,000 to assist with furnace repair or replacement of damaged or malfunctioning heaters for low income citizens of Philadelphia;
- \$36,000 for mailing special safety information bill-stuffers to residential customers describing safe natural gas safety practices at home; and
- \$107,000 in funds for programs designed to improve public education on gas safety. This program would be an adjunct to a current program offered by the PFD and aimed at educating fourth and fifth graders in elementary and middle schools in Philadelphia.²

The Commission could either direct that PGW remit the remaining amount – \$150,000 – as a civil settlement amount (for a total of \$500,000), or the Commission could determine to direct

² More details about each of these additional proposed programs are set forth in Appendix 2, attached.

the entire \$500,000 to fund helpful programs for the benefit of PGW customers and Philadelphia citizens (who in most respects, are one and the same).

Below, PGW more fully: 1) provides the background of the incident as well as PGW's perspective on the alleged violations of PUC and DOT regulations set forth in the I&E Complaint; 2) explains why, in PGW's view, the Settlement is in the public interest; 3) discusses the Commission's standards for evaluating settlements and explains why, in PGW's view, the Settlement fully meets these standards; and 4) presents PGW's basis for urging the Commission to approve the agreed upon \$500,000 financial payment but to allocate all or a substantial amount of this agreed upon payment to worthy programs that would benefit the citizens of the City rather than remitting the majority of the payment to the General Fund as a forfeiture.

I. BACKGROUND

PGW is the nation's largest municipally-owned gas utility. PGW purchases, sells and distributes gas within the entire 129 square mile area contained within the boundaries of the City.

PGW is not a legal entity under applicable Pennsylvania law, except for certain purposes. PGW operates on a cash-flow ratemaking basis,³ and has no shareholders. It is a collection of real and personal assets owned by the City and used for the acquisition, storage, processing, and distribution of natural gas within the City. It is also a "city natural gas distribution operation" as defined in Section 102 of the Public Utility Code.

The underlying incident is the gas leak and explosion in the Tacony section of Philadelphia on January 18, 2011. A high-pressure main broke shortly before 7:30 p.m. on the 6900 block of Torresdale Avenue. The PFD determined that the explosion was caused by a furnace turning on in the basement, as a result of an automatic turn-on device, which ignited the

³ 52 Pa. Code § 69.2703 (ratemaking procedures and considerations for PGW).

natural gas that had leaked out of the high-pressure main. PGW workers were in the process of trying to ventilate the premises and confirm that there were no civilians in the building when the explosion occurred. A PGW employee, Crew Member Four, tragically lost his life in the explosion. This incident was traumatic for the Company, its employees, their families, neighborhood residents, and the entire City. As a community, PGW is deeply saddened that injuries and loss of life occurred.

On December 16, 2011, I&E filed its 334 count Formal Complaint against PGW. PGW filed a timely Answer and New Matter. Both the Complaint and the Answer have both public and proprietary versions.

If the I&E Complaint were litigated, I&E would have sought to prove that PGW violated requirements in the Public Utility Code and PUC and federal regulations. PGW, in turn, would have shown that the accident, while tragic, was not caused by, and did not result in, any violations of the Public Utility Code or federal or state regulations. Moreover, PGW would have shown that the majority of the alleged violations were based on factually incorrect information. A count by count summary of the allegations and defenses is included in the Settlement Agreement⁴ and Appendix 1 hereto.

Accordingly, in agreeing to the Settlement PGW is not accepting the validity of the allegations set forth in the Complaint; it does reflect a compromise between I&E and PGW concerning the claims raised in the I&E Complaint, that makes no factual findings or conclusions of law, and that makes no finding that PGW violated any provision of the Public Utility Code, PUC regulations or the DOT regulations. These aspects of the Settlement reflect that this matter has been resolved amicably and without any final adjudication of the claims and defenses raised

⁴ Settlement Agreement, ¶ 16(a)-(y).

in this proceeding. Completing this proceeding without full litigation furthered the public interest because it conserved both PGW's and the Commission's resources and allowed both parties to move forward in a cooperative manner, focusing their attention on assuring safe, adequate and reliable natural gas service for PGW's customers rather than attempting to assign blame in a protracted proceeding.

Notwithstanding PGW's firm belief that it would have prevailed on most if not all of the allegations in the I&E Complaint if this matter were litigated, PGW engaged in serious settlement negotiations and agreed upon the terms embodied in the Settlement. Among those terms are that:

- none of the provisions of the Settlement is or may be used as an admission or finding of any fact or liability or culpability or unlawful behavior of PGW in any subsequent proceeding;
- nothing in the Settlement shall adversely affect the Commission's authority to receive and resolve any informal or formal complaints filed by any affected party (other than any Commission entity) with respect to this incident; and
- the settlement is made without any admission against, or prejudice to, any position that any party may adopt in any subsequent litigation of these proceedings or in any other proceeding, except that no further civil penalties may be imposed or any other terms or conditions directed by the Commission for any action or inaction identified in the I&E Complaint.

II. THE COMMISSION SHOULD APPROVE THE SETTLEMENT AS IN THE PUBLIC INTEREST AND CONSISTENT WITH APPLICABLE STANDARDS

A. Introduction

The Commission seeks to promote settlements. 52 Pa. Code § 5.231(a). The primary criteria for approval of a settlement is whether it is in the public interest. *PUC v. PGW*, Docket No. M-00031768 (Order entered March 7, 2005); 52 Pa. Code § 69.1201 ("The parties in settled

cases will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest.”).

In determining if a settlement (or the judgment in a litigated case) is in the public interest, the Commission frequently considers factors and standards set forth at 52 Pa. Code § 69.1201(c). The Commission uses these factors and standards in determining if a fine for violating a regulation or statute is appropriate, as well as if a proposed settlement is reasonable and in the public interest. *Id.*

We initially discuss the overall “public interest” factor, then discuss the more specific factors and standards in 52 Pa. Code § 69.1201(c).

B. The Settlement Is In The Public Interest

For a number of reasons, PGW submits that the settlement set forth in the Settlement Agreement is in the public interest. First and foremost, the remedies that PGW has agreed in the Settlement satisfy the 19 requested operational changes designed to improve or clarify PGW’s emergency procedures that were set forth in the I&E Complaint. Appendix A to the Settlement Agreement summarizes those specific steps. Because PGW has satisfactorily addressed all of the issues raised by the I&E Complaint, resolution of this proceeding by settlement (rather than by formal litigation) is in the public interest.

Next, notwithstanding that there has been no finding of wrongdoing, liability or violations and no finding that PGW’s actions either caused or contributed to the incident, PGW has agreed to pay a total of \$500,000. That total payment is consistent with the maximum civil

penalty under 66 Pa. C.S. § 3301(c), as applicable at the time of the incident,⁵ which is the total amount that the Commission could have collected if each and every one of the alleged violations were found to be justified (an unlikely result).

Importantly, PGW's agreement to make the \$500,000 is not a reflection of or an admission to the validity of the Complaint's allegations. On the contrary, PGW respectfully states that it has adequately responded to each of the 334 allegations, as more fully set out in Appendix 1 to this Statement. To cite a few examples:

- Count 1 alleges that PGW did not maintain an adequate report on the condition of an exposed main in violation of 49 C.F.R. § 192.491(c). However, the allegation is factually incorrect because the pipe in question had not been exposed, and, therefore, no report was required.⁶
- Count 2 asserts that PGW did not provide sufficient detail to demonstrate the adequacy of corrosion control measures for the pipe in question, which I&E alleged violated 49 C.F.R. §192.605(b)(2). But the regulation at issue expressly excludes cast iron mains, which this main was, from its scope.⁷
- Counts 43-44 alleges that PGW did not have a written procedure to establish a safety perimeter for leak investigations and emergency responses. Not only did PGW have an established policy to that effect, it maintained the policy on a laminated card that all emergency responders were required to keep with them and that had been prepared at the direction of the GSD.⁸
- Counts 47-224 (174 counts) assert that PGW did not inspect, repair and keep adequate records about a valve located near the incident. In fact, PGW's records show that, to the contrary, the valve had been inspected as required by federal and PUC regulations and repaired so that it met required standards, and all required records were maintained and provided to I&E prior to the filing of the Complaint.⁹

⁵ This section of the Code has since been modified to increase the maximum civil penalties but those increases only apply to incidents occurring after the amendment. Act 11 of 2012 (H.B. 1294), P.L. 72, § 7, approved February 14, 2012, effective in 60 days.

⁶ PGW Answer to Complaint, ¶ 13(a).

⁷ PGW Answer to Complaint, ¶ 13(b).

⁸ PGW Answer to Complaint, ¶ 13(o); Answer at 3.

⁹ PGW Answer to Complaint ¶¶ 13(q), (r), (s), and (t).

Also of note are Counts 9-14, which generally assert that PGW did not comply with its emergency procedures that required actions be directed towards protecting *people first and then property* in that four PGW employees entered the building after detecting gas readings greater than 40% LEL and after the building had allegedly been evacuated. In fact, PGW employees, as first responders often do, put themselves at risk to try to protect the people *inside the building*. Placing the public's safety above all else is precisely what federal regulations require. PGW employees made a real-time determination, with knowledge of the LEL readings in the building, that the building might still have occupants and that they could search the site without excessive risk. There are times when first responders place themselves at risk to save others. This was such a time. PGW believes that its employees' actions were not only consistent with regulatory requirements, but what society should expect from its first responders.

Accordingly, PGW agreed to the Settlement not because it accepts the allegations as valid (as can be seen, it does not) but because it made a decision that it would be in the best interests of its employees and customers to put this matter behind it, to avoid the costs of full litigation and to move forward cooperatively with GSD and I&E to work together to insure the safest and most reliable natural gas distribution system for the City of Philadelphia.

Another reason that the Settlement is in the public interest is that it provides funding for a deserving program that enhances fire safety for citizens of the City. As noted, the Settlement permits PGW to urge the Commission to allocate additional amounts to public programs. PGW suggests that doing so would further enhance the public benefits of the settlement.

As discussed below, the Settlement, as it has been initially agreed to by PGW and I&E, provides that the payment would be made in accordance with the following:

- (a) PGW will pay to the Commission a civil penalty in the amount of \$400,000 and PGW will not make any claim for any portion of this amount in any future rate proceeding.¹⁰
- (b) PGW will contribute \$100,000 to the existing PFD program to assist with homeowners' installation of smoke detectors.

The PFD smoke detector program is operated by the PFD in partnership with The Citizens for Fire Prevention Committee ("CFPC"), a 501(c)(3) non-profit corporation formed by the PFD for education and fund raising activities.¹¹ This program, which is funded by donations, seeks to save lives by providing smoke alarms free of charge to people who would not otherwise have them and meet certain criteria. The smoke detectors feature lithium batteries that last 10 years. PGW has not previously provided funds to this program and thus the contribution is not something PGW would have done anyway.

Lastly, the Settlement was accomplished cooperatively through PGW's work with the I&E and the GSD. PGW submits that approving the Settlement will avoid significant time, expense and delay involved with formal litigation of this proceeding. The avoidance of litigation expenses by settlement of this proceeding serves the interests of the public, I&E, the Company, and PGW customers.

C. The Settlement Satisfies The Standards And Factors In 52 Pa. Code § 69.1201(c).

In addition to considering settlements on the basis of a general public interest standard, the Commission frequently evaluates agreements on the basis of the factors set forth in 52 Pa

¹⁰ PGW has reserved the right to request that the Commission allocate some or all of this civil settlement fund deserving public safety programs, and presents its argument for doing so below.

¹¹ <http://freedomfromfire.com/id21.html>.

Code § 69.1201(c). PGW is confident that this proposed settlement adequately satisfies all of those relevant standards.

1. Nature Of The Conduct

The conduct at issue deals with public safety, a most serious subject. PGW's first responders acted bravely and, as I&E recognizes, "diligently" both during and after the incident. I&E has made allegations and PGW has refuted many of them, as summarized earlier. Without fully litigating the issues, it is impossible to determine who would have prevailed.

Accordingly, the nature of the conduct was and remains in dispute. Notably, the Settlement Agreement specifically states that: "[t]he Parties agree that PGW's first responders acted bravely and diligently both during and after the incident. The parties further agree that "these employees acted pursuant to PGW's then-existing emergency procedures, which the Company submits were issued pursuant to applicable federal and state regulations."¹² As noted, "there has been no finding of wrongdoing, liability, or violations and ...no finding that PGW's actions either caused or contributed to the incident."¹³ In light of these facts, PGW submits that the terms of the Settlement, in which PGW has agreed to do all that the Complaint requests if all of its requests for relief had been granted, is plainly reasonable.

2. The Resulting Consequences

The accident, while tragic, was not caused by, violations of the Public Utility Code, the PUC regulations or the DOT regulations. There has been no finding that PGW's actions either caused or contributed to the incident.

3. Unintentional Conduct

¹² Settlement Agreement, ¶ 21.

¹³ *Id.* at ¶ 22(a).

Whether the conduct was intentional or unintentional is a factor that pertains only to litigated proceedings, 52 Pa. Code § 69.1201(c)(3), but there has been no suggestion of intentional wrongdoing by anyone.

4. Internal Practice and Procedures

Safety is PGW's ultimate priority – around the clock, year-round. PGW is continually focused on providing its customers with safe, reliable natural gas service and is especially focused in keeping its more than 6,000 miles of service lines and distribution mains delivering natural gas to approximately 519,000 customers in a safe and reliable manner. It continually works to improve these efforts, and welcomes recommendations on how it can improve.

Without waiting for the Commission, PGW acted immediately after the incident to conduct its own exhaustive analysis of all aspects of the incident. Based on its analysis, PGW modified and improved its internal practices and procedures in a variety of areas. PGW also met with I&E and GSD to discuss ways that its procedures, policies, and training, and those of NGDCs generally, can be improved based on “lessons learned” from the incident. PGW made further efforts to improve its practice and procedures based on those meetings. A detailed description of the operational enhancements PGW has implemented, together with extensive documentation, are set forth in “Appendix A” to the Settlement Agreement.

5. Impact on Customers

The fifth factor relates to the number of customers affected and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). Following the incident, the natural gas infrastructure was made safe and only a handful of customers were without service for a short period of time.

6. Compliance History of PGW

PGW makes good faith efforts to comply with the Public Utility Code, the PUC and DOT regulations, and submits that it has an excellent safety record with the Commission. Insofar as PGW is aware, PGW's record of safety meets or exceeds industry standards.

7. Cooperation by PGW

PGW fully cooperated with I&E and GSD and its response to the incident was forthright and transparent. None of the facts establish bad faith, active concealment of violations, or attempts to interfere with the investigations of I&E or GSD. PGW's efforts to cooperate have been shown at every step of the pre-and post-Complaint process.

8. Deterrence Of Future Violations by PGW

The penalty amount is more than sufficient to deter future violations. 52 Pa. Code § 69.1201(c)(8). In truth, no payment amount is necessary to ensure PGW's compliance with heightened safety standards. PGW notes that how the penalty is allocated does not alter its amount or its impact on PGW.

9. Consistent With Commission Precedent

To PGW's knowledge, the Settlement is consistent with past Commission decisions.

10. Other Relevant Factors

PGW is not aware of any other relevant factors.

III. THE COMMISSION SHOULD REDIRECT ADDITIONAL PORTIONS OF THE AGREED-UPON PENALTY TO GAS SAFETY PROGRAMS¹⁴

PGW has agreed to a \$500,000 total payment, \$400,000 of which will, absent Commission action, be treated as a civil settlement amount and directed to the General Fund.

¹⁴ I&E does not join in PGW's proposed redirection of the civil penalty, but the settlement specifically provides that PGW may make this argument.

The Commission may, however, reallocate the civil settlement amount to direct a greater portion to programs that would enhance natural gas and/or fire safety in Philadelphia. The Settlement specifically authorizes PGW to request this reallocation, so long as the total payment remains at \$500,000. For the following reasons, PGW respectfully submits that the Commission should revise the allocation set forth in the Settlement, and direct that all or a substantial portion of the financial payment to fund worthwhile programs benefitting the citizens of the City.

A. PGW is Unique

Unlike investor owned utilities, PGW is municipally owned and has no shareholders in the typical sense. More precisely, its “shareholders” are the citizens of the City of Philadelphia, which owns the Gas Works. PGW has agreed that it will not request recovery of any portion of the \$500,000 payment in a future rate case. However, because PGW is a cash-flow regulated company, the payment will affect its current cash flow and, therefore, at some point, will necessarily affect its “shareholders,” the citizens of Philadelphia.¹⁵

The Commission has previously recognized this reality and has led the Commission to modify its normal rules on imposing penalties on a utility. In *Malisa Alexander v. PGW*, Docket No. C-20077389 (Nov. 6, 2008), the Commission refrained from imposing a penalty upon PGW in a gas leak complaint case, noting that, as a municipally-owned entity, any fine imposed would eventually affect PGW’s customers. The Commission reaffirmed this position in 2010 and 2012. In *Thea Jones v. PGW*, Docket No. F-2009-2138367 (Dec. 16, 2010), the Commission upheld

¹⁵ PGW is obligated to make an annual, \$18 million payment to the City of Philadelphia, *see* 66 Pa. C.S. §2212(f). Even if were legally possible to reduce that payment to account for the financial payment agreed to here, the payment would nonetheless affect the citizens of Philadelphia by reducing the amount of support provided to the City by the Gas Works’ operations.

the ALJ's legal conclusion that PGW violated Section 1501 of the Code but modified the ALJ's decision by removing the civil penalty. The Commission recognized that the ALJ had "properly evaluated the evidence and concluded that PGW should be assessed a civil penalty" but explained that "given PGW's status as a municipally owned gas utility, we cannot justify the additional burden on the ratepayers." *Id.* In 2012, in *Nia Peterson v. PGW*, Docket No. F-2010-2215379 (Jan. 27, 2012), the Commission adopted the Initial Decision of ALJ Vero¹⁶ which had sustained part of the customer's complaint (but refused to impose a civil penalty for the reasons stated in *Alexander, supra*, and *Jones, supra*).

Thus, the imposition of the substantial fine here would be inconsistent with the Commission's general approach as to PGW. In other circumstances, PGW would have argued against any fine and argued that the important revisions to PGW's emergency procedures were a sufficient and appropriate resolution to the case. It does not do so here for the many reasons discussed above.

But PGW believes if there is to be a financial payment, let alone one of this magnitude, it is appropriate and far more consistent with the Commission's prior actions as to PGW to reallocate the payments in ways that provide benefits to PGW customers, who are also its "shareholders." PGW's proposal to do so, which it reserved in the Settlement the right to raise, is to allocate less payment funds to the General Fund as a civil settlement amount and more (or, all) to natural gas or fire safety programs. The beneficiaries of these natural gas or fire safety programs would in substantial part be PGW ratepayers and all would be PGW "shareholders."

Allocating funds to those programs would thus mitigate potential future harm to ratepayers and

¹⁶ See also *Mary Kingcade v. PGW*, Docket No. C-2009-2134662, Opinion and Order of November 8, 2012, denying Kingcade's exceptions to the Initial Decision of May 8, 2012 (wherein the Commission agreed with the ALJ Vero that no fine should be imposed upon PGW under the circumstances presented).

bring the penalty here far closer to the Commission's established position vis-a-vis PGW than does the present allocation.

B. Funding Programs Rather Than Fining PGW Will Create Positive Benefits From This Tragedy

As noted, the incident was traumatic for the Company, its employees, their families, neighborhood residents, and the entire City of Philadelphia. The loss of the life of a young PGW employee, as well as the injuries to several other PGW personnel, was particularly hard for the Company and its employees. Structuring PGW's payment so that it enhances public safety would be a far more fitting and appropriate memorial to those who were so dramatically and adversely affected. A civil penalty provides no such positive benefit. The Commission thus has the opportunity to have good come out of this tragedy and to have a close fit between that good and the issues at hand.

C. A Payment To The General Fund Would Not Create Any Additional Incentives To PGW To Maintain Its Distribution System At The Highest Possible Level Of Safety

As noted, PGW is a municipal utility with no conventional shareholders. Thus, a penalty or fine will not create a disincentive for future incidents by reducing shareholder return or the company's share price. Moreover, making PGW pay a large amount of fine will not make PGW employees work harder to avoid these kinds of problems in the future in order to avoid financial consequences to shareholders. The tragic events of January 18, 2011 were penalty enough for PGW. It has done everything within its power to try to assure no repeat of this type of incident. Forcing the Company to remit a large sum of money – with no attendant benefit to ratepayers – will not provide any further incentive.

D. Conclusion

Based on the foregoing, PGW submits that the public interest would be better served by assigning a greater portion of the agreed-upon civil penalty amount to programs that would benefit the citizens of Philadelphia and improve gas safety. In addition to PFD's smoke detector program, PGW suggests the following as ideal projects to receive funds:

- \$107,000 to assist with furnace repair or replacement of damaged or malfunctioning heaters for low income citizens of Philadelphia;
- \$36,000 for mailing special safety information bill-stuffers to residential customers describing safe natural gas safety practices at home; and
- \$107,000 in funds for programs designed to improve public education on gas safety. This program would be an adjunct to a current program offered by the PFD and aimed at educating fourth and fifth graders in elementary and middle schools in Philadelphia.

Additional details about each of these programs is provided in Appendix "2". Notably, none of these programs is currently being funded by PGW. The only program that would use internal personnel and resources is the proposed mailing to customers about natural gas safety.

Under this proposed redirection, PGW would pay \$150,000 as a civil settlement agreement and continue to make the agreed-upon \$100,000 contribution to the PFD's smoke detector program. However, PGW certainly would support a PUC decision to allocate the entire \$500,000 payment to fund working programs, and the terms of the Settlement Agreement would permit a PUC decision to that effect.

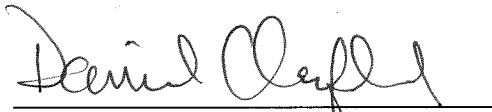
IV. CONCLUSION

The Settlement provides a reasonable means of resolving all of the issues raised by this proceeding. It also reduces the administrative burden on the Commission and the litigation costs of all of the active parties. Accordingly, for the reasons set for the above and in the Settlement Agreement, PGW submits that the Settlement is in the public interest, and should be approved by the Commission.

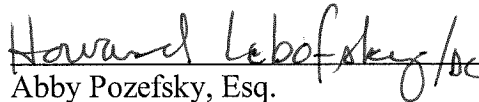
PGW respectfully requests the ALJ and the Commission:

- a) expeditiously review and approve the Settlement Agreement;
- b) After providing appropriate notice and an opportunity to be heard, dismiss or mark closed the Complaint filed by I&E;
- c) Take any other action deemed to be in the public interest, such as redirecting all or part of that agreed-upon civil penalty to programs that would provide new funding to assist Philadelphia citizens with natural gas or fire safety.

Respectfully submitted,



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Dated: November 14, 2012

Appendix 1
Summary of I&E Allegations and PGW Response

	I&E ALLEGATION	RESPONSE
Count 1	PGW failed to maintain an adequate exposed main condition report in violation of 49 C.F.R. § 192.491(c).	Pipe in question had not been exposed in the failure location and, therefore, no report was required. ¹
Count 2	PGW failed to provide sufficient detail to demonstrate the adequacy of corrosion control measures for the pipe in question, which I&E alleged violated 49 C.F.R. § 192.605(b)(2) with respect to § 192.491(c).	Regulation at issue expressly excludes cast iron mains from the requirement to take corrosion control measures. ² As noted, the main in question was constructed of cast iron. ³
Counts 3-5 (3 counts)	PGW violated several federal regulations and its own procedures by using drill bits prone to spark while attempting to ventilate the street near the failed pipe.	PGW employees took appropriate and required steps to minimize sparking, including using rotary drills (that GSD requires Natural Gas Distribution Companies to use) in a manner to minimize sparking, (by operating them at low speeds), and then using non-sparking equipment when feasible. ⁴ In fact, GSD had previously <i>directed</i> PGW to drill bar holes (for ventilation and to detect where the leak is located) in all outdoor gas leak investigations, and power tools are the only way to start to drill such bar holes in a paved street. ⁵

¹ PGW Answer at ¶ 13(a).

² PGW Answer at Exhibit 27.

³ PGW Answer at ¶ 13(b).

⁴ PGW Answer at ¶ 13(c).

⁵ PGW Answer at Exhibit 29.

	I&E ALLEGATION	RESPONSE
Counts 6-8 (3 counts)	PGW violated federal regulations and its own emergency procedures by failing to contact PECO Energy to shut off electric supply.	Neither the federal rules nor PGW's procedures mandated contacting the electric company for electric turn off every time there was a gas leak. ⁶ GSD had frequently reviewed PGW's emergency procedures prior to the incident and had never noted any deficiency or issued a general advisory requiring Natural Gas Distribution Companies (NGDCs) to have such a rule. ⁷ (In fact, more than 15 months after the incident, GSD issued a directive to all NGDCs to <i>add</i> such a rule if they did not have one.) ⁸ PGW took what it believed at the time to be all reasonable measures to minimize all sources of ignition, which is what the Gas Safety Regulations require.
Counts 9-14 (6 counts)	PGW failed to comply with its emergency procedures that required actions be directed towards protecting people first and then property in that four PGW employees entered the building after detecting gas readings greater than 40% LEL inside the building and after the PFD had evacuated the building. The Complaint further alleges that the Distribution Supervisor was aware of readings above 40% LEL but that this was	In fact, the four PGW employees were following the PGW procedure which calls for employees to enter a premises, sample the atmosphere, evacuate if necessary, eliminate or minimize all sources of ignition, shut off the supply of gas if possible and ventilate. ⁹ PGW Bulletin 212 explicitly prioritizes life over property. ¹⁰ PGW employees had been made aware of the LEL readings but made a determination based on the evidence available at

⁶ PGW Answer at ¶ 13(d).

⁷ PGW Answer at Exhibit 35.

⁸ Letter of May 17, 2012 from Paul T. Diskin (Director, Technical Utility Services) to NGDCs regarding Emergency Communications.

⁹ PGW Answer at ¶ 13(e).

¹⁰ PGW Answer at Exhibit 17.

	I&E ALLEGATION	RESPONSE
	not communicated to the two PGW employees who were permitted to enter the building.	the time that the building might still have occupants and therefore entered it in an effort to save lives. They were, regrettably, unaware that the PFD had evacuated the building. The Answer also points out that the federal requirement “to protect people first and then property” <i>requires</i> gas company emergency responders to place the public’s safety above all else, and that is precisely what PGW’s employees did. ¹¹
Counts 15-20 (6 counts)	PGW employees endangered themselves and violated federal regulations and PGW’s procedures by entering and opening windows to ventilate the building after being made aware of high gas readings outside the building.	PGW’s employees actually entered the building in order to ascertain whether any occupants remained and, if so, to evacuate them. ¹² Indeed, in order to place people first before the safety of property, PGW’s procedures require such action when there is a reasonable basis to believe the entry into a premises is necessary in order to assure the safety of the public. ¹³
Counts 21-22 (2 counts)	PGW violated its emergency procedures because PGW employees did not effectively communicate among its Distribution divisions.	In fact, PGW’s investigation revealed that PGW staff did communicate among themselves on location, and did so in a manner consistent with its emergency procedures. ¹⁴

¹¹ PGW Answer at ¶ 13(e).

¹² PGW Answer at ¶¶ 13(e). (f).

¹³ PGW Answer at Exhibit 17.

¹⁴ PGW Answer at ¶ 13(g), Exhibit 17.

	I&E ALLEGATION	RESPONSE
Counts 23-24 (2 counts)	PGW's written procedures for emergency plans failed to require prompt and effective notice to and response by Pressure Force – the PGW division that is specifically trained to close or turn down high pressure mains --	PGW's investigation revealed that Pressure Force was notified within 4 minutes after PGW Dispatch was notified. PGW's written emergency procedures provide specific instructions to appropriate and qualified Pressure Force personnel to deal with an emergency situation in an expeditious and safe manner. ¹⁵
Counts 25-26 (2 counts)	PGW personnel failed to wear a hard hat while working in an excavated trench at the southeast corner of Torresdale Avenue and Disston Street,	PGW has no information that would verify this claim. ¹⁶
Counts 27-32 (6 counts)		Mere restatement of Counts 9-14. ¹⁷
Counts 33-35 (3 counts)	PGW's written procedures for emergencies are deficient in that they do not include explicit requirements that its employees detect gas readings at doorways, foundations, windows, or other structure openings prior to entering a building during an outside leak and do not require that evacuation take priority over ventilation.	In fact, PGW's emergency procedures clearly prioritize life over property by first requiring PGW first responders to evacuate occupants inside endangered premises before engaging in ventilation activities designed to avoid property damage. More specifically PGW's Bulletin 212 calls for PGW first responders to protect people first and only then property by requiring them to check inside the premises for gas readings, and, if a gas leak is confirmed, eliminate all sources of ignition, shut off the supply of gas if

¹⁵ PGW Answer at ¶ 13(h).

¹⁶ PGW Answer at ¶ 13(i).

¹⁷ PGW Answer at ¶¶ 13(e), (i).

	I&E ALLEGATION	RESPONSE
		possible, and ventilate the premises. ¹⁸ By doing so, PGW first responders are protecting the public first, even if this procedure places them at greater risk. However, PGW employees are instructed not to reenter the property if all of these steps are completed and gas levels are not reduced, in order to protect their own safety, once the danger to the public has been minimized. ¹⁹
Counts 36-37 (2 counts)	PGW lacked a written procedure to automatically notify the division in charge of reducing pressure and shutting off mains and that this deficiency violates federal regulatory requirements.	In fact, PGW's almost 90% of PGW's mains have pressures of less than 10 psig (where pressure normally cannot be reduced) and written procedures provide for the emergency shutdown and pressure reduction of higher pressure mains in any section of the pipeline system necessary to minimize hazards to life or property, and reduce any actual or potential hazard to life or property. ²⁰

¹⁸ PGW Answer at Exhibit 17.

¹⁹ *Id.* PGW Answer at ¶ 13(k).

²⁰ PGW Answer at ¶ 13(l).

	I&E ALLEGATION	RESPONSE
Counts 38-41 (3 counts)	PGW failed to have a written procedure in its emergency response plan regarding how to distinguish between a controllable and non-controllable incident and the necessary actions to be taken in each, and suggests this violates federal and state regulations.	No regulatory rule requires a written procedure as to these points. ²¹ Notwithstanding that fact, PGW's written procedures provide for, among other things, receiving, identifying and classifying those events that require immediate response by the operator, promptly and effectively responding to a notice of each type of emergency, including those in which gas is detected inside or near a building, and actions directed toward protecting people first and then property. ²²
Count 42	PGW violated federal rules by failing to have a written procedure to require a PGW liaison to maintain constant communication with the Commission's Gas Safety Inspectors on site during a reportable incident investigation.	In fact, there is no such requirement. ²³ Federal rules require that an NGDC's written procedures provide for "[e]stablishing and maintaining adequate means of communication with appropriate fire, police, and other public officials." ²⁴ This includes PUC personnel. PGW's written emergency procedures contain such directives. ²⁵

²¹ PGW Answer at ¶ 13(m).

²² PGW Answer at Exhibit 17.

²³ PGW Answer at ¶ 13(n).

²⁴ PGW Answer at Exhibit 34.

²⁵ PGW Answer at Exhibit 17.

Counts 43-44 (2 counts)	PGW failed to adequately protect its employees and the general public in that it did not have a written procedure to establish a safety perimeter for leak investigations and emergency responses.	This is incorrect; ²⁶ PGW had, and continues to have, a written procedure that specifically directs the establishment of a safety perimeter in the event of a gas emergency; at the prior direction of GSD, ²⁷ PGW even had this policy printed on a laminated card carried by PGW personnel. ²⁸
Counts 45-46 (2 counts)	PGW did not have a written procedure establishing minimum training criteria and operator qualifications for work crew members who respond to emergency situations.	PGW maintains such written criteria, they meet the requirements of federal and PUC regulations ²⁹ and PGW does, in fact, train and supervise its personnel to ensure that they are prepared to respond to emergency situations and verifies that the training is effective. ³⁰
Counts 47-48 (2 counts)	PGW failed to maintain valve inspection reports and/or records for Valve No. 788 for calendar years 2007 and 2008	those reports were in fact maintained (and provided in attachments to the Answer). ³¹
Counts 49-50 (2 counts)	PGW failed to prepare and/or follow written maintenance procedures for remediation of Valve No. 788 when that valve was allegedly found to be inoperable at PGW's inspection on July 30, 2010 and February 25, 2011.	In fact, the valve was not found to be inoperable but had been serviced on those days and left in operable condition. ³²

²⁶ PGW Answer at ¶ 13(o).

²⁷ PGW Answer at Exhibit 29.

²⁸ PGW Answer at Exhibit 25.

²⁹ PGW Answer at ¶ 13(o), Exhibit 25.

³⁰ PGW Answer at ¶ 13(p).

³¹ PGW Answer at ¶ 13(q), Exhibit 24.

³² PGW Answer at ¶ 13(r), Exhibit 24.

<p>Counts 51-52 (2 counts)</p>	<p>PGW failed to service Valve No. 788 at least once each calendar year when that valve had been found to be inoperable upon inspection.</p>	<p>As noted above, the value was, in fact, serviced and left operable in accordance with the time frames authorized by federal rules.³³</p>
<p>Counts 53-224 (171 counts)</p>	<p>PGW failed to take prompt remedial action to correct Valve No. 788 or to designate an alternative valve when that valve was found to be inoperable at PGW's inspection on July 30, 2010 and that this violation continued up to and including the day of the explosion, January 18, 2011.</p>	<p>As noted above, this is incorrect.</p>
<p>Counts 225-227 (3 counts)</p>	<p>PGW failed to have and/or follow a written qualification program in that it failed to ensure that the PGW employee who died in the explosion was qualified to perform the covered task. These counts further allege that the employees was not qualified to perform the task nor was he directed and observed by an individual who was qualified to do so.</p>	<p>PGW had an Operator Qualification Plan ("OQ Plan") and training procedures that state in pertinent part that a worker either be trained to perform a covered task or be supervised by a qualified individual.³⁴ GSD reviewed those policies and plans prior to the incident and copies were provided to GSD during their investigation.³⁵ Consistent with these procedures, the employee who died had been trained prior to the incident, and was under the direct supervision of highly qualified and experienced supervisors at all times during the incident.³⁶</p>

³³ PGW Answer at ¶ 13(s), Exhibit 24.

³⁴ PGW Answer at Exhibit 13.

³⁵ PGW Answer at Exhibit 35.

³⁶ PGW Answer at ¶¶ 13(u), (v) and Exhibits 20, 21 and 23.

Counts 227-229 (3 counts)	PGW failed to train the PGW employee who died in the explosion.	Employee was trained by three experienced supervisors in all tasks that he performed during the incident, and that two of whom were standing within several feet of the employee when he died. ³⁷ This training and supervision regime is completely consistent with federal and state requirements.
Counts 230-264 (35 Counts)	PGW failed to conduct post-accident drug testing for 35 PGW employees who were on site and who could not be completely discounted as a contributing factor to the incident, and that the failure to do so violated federal rules.	PGW made a good faith attempt to drug test relevant employees, set criteria for testing that was consistent with the rule, and tested the 18 employees who it determined could have contributed to the accident. ³⁸
Counts 265-299 (35 counts)	PGW failed to conduct post-accident alcohol testing for 35 PGW employees who were on site and who could not be completely discounted as a contributing factor to the incident.	Again, PGW made a good faith attempt to drug test relevant employees, set criteria for testing that was consistent with the rule, and tested the 18 employees who it determined could have contributed to the ³⁹
Counts 300-334 (35 counts)	PGW failed to prepare and maintain on file a record stating the reasons the post-accident testing was not promptly administered on the 35 employees referred to above.	PGW prepared and maintained records stating the reasons the post-accident testing was not promptly administered to all 35 employees

³⁷ *Id.*

³⁸ PGW Answer at ¶ 13(w).

³⁹ PGW Answer at ¶ 13(x).

Appendix 2

Description of Programs Proposed to be Funded or Administered By PGW with a portion of Settlement Financial Payment

I. Additional Funds To Assist With Furnace Repair Or Replacement Of Damaged Or Malfunctioning Heaters.

PGW proposes to make a \$ 107,000 grant to the Philadelphia Housing Development Corporation (PHDC) for their "Home Heater Hotline Program." PGW has not previously provided funds to this Program. The contact for this PHDC program is Guy Porcella, 215-448-3151.

The PHDC's Home Heater Repair Program provides free emergency heater repairs for low-income homeowners and is carried out by the Energy Coordinating Agency (ECA),¹ a non-profit non-governmental organization, under contract to PHDC.² Specifically, this independent program is available to low income customers and repairs and/or replaces furnaces and boilers in residential properties where these appliances are in need of immediate replacement or repair. The program covers all fuels.

Typically customers contact this service after PGW "red-flags" (i.e., prevents it from being used) a service to get the home system up and running again. Through Heater Hotline, ECA repairs or replaces over 5,000 old and inefficient heating systems each year.³ Customers can enroll by phone (i.e., the Heater Hotline), and they must be homeowners. There is a \$2,500 per home spending limit. So, the program mostly performs repairs (as opposed to full replacements). The average expense per home is \$500.

Generally speaking, this program and ECA's other low income programs have reduced utility bills for families by 20 to 30%, allowing them to stay in their homes and creating safer, healthier indoor environments. Intake for most of ECA's programs is available through ECA's 15 Neighborhood Energy Centers.⁴

A \$150,000 grant could result in the replacement of furnaces for approximately 60 homes (@ \$2500 per home) or the repair of an additional 300 homes.

¹ <http://ecasavesenergy.org/>.

² <http://phdchousing.org/programs.htm>.

³ <http://ecasavesenergy.org/services/low-income-services/heater-hotline>.

⁴ <http://ecasavesenergy.org/services/low-income-services>.

II. Contribute To Existing Programs To Assist With Homeowners' Installation Of Smoke Detectors And/Or Carbon Monoxide Detectors.⁵

PGW has agreed to provide a \$100,000 grant to the existing smoke alarm program operated by the Fire Prevention Division⁶ of the Philadelphia Fire Department (PFD). This program is operated in partnership with The Citizens for Fire Prevention Committee (CFPC), a 501 non-profit corporation formed by the PFD for education and fund raising.⁷ This continuing program is funded by donations to CFPC. PGW has not previously provided funds to this Program.

The program's goal is to save lives by providing smoke alarms to warn people at the earliest signs of smoke, giving them time to escape. Under the existing program, the PHD installs smoke alarms (free of charge) for residents of Philadelphia (who contact the smoke alarm hotline) that meet these requirements:⁸ (A) resident of the City of Philadelphia ; (b) living in a one or two family owner occupied dwelling; (c) that cannot otherwise afford to purchase smoke alarms.

The smoke alarms feature lithium batteries which remain charged for 10 years, thus substantially reducing the risk of non-working alarms due to battery failure.

Cost = \$15 per smoke detector

⁵ PGW and I&E have already agreed to fund this program at the \$100,000 level. The PUC could choose to add to the funding.

⁶ http://www.phila.gov/fire/units_and_services/units_tech_fireprevention.html.

⁷ <http://freedomfromfire.com/id21.html>.

⁸ <http://freedomfromfire.com/id6.html>.

III. Mail Safety Information Letters To Residential Customers Using Best Practices To Describe Natural Gas Safety Practices At Home.

PGW has gas safety⁹ and efficiency information¹⁰ on its website. PGW's customer newsletter, Good Gas News, features items of interest concerning gas usage, safety and energy assistance. But, PGW does not have a comprehensive gas safety pamphlet. The newsletter is distributed with bills as a separate insert.

To provide a single comprehensive source of gas safety information, PGW proposes to create a gas safety pamphlet. This pamphlet would be similar to the pamphlet, entitled "Natural Gas Safety at Home."¹¹

PGW proposes to distribute this pamphlet as a bill stuffer, which is the method currently used to distribute PGW's customer newsletter. The gas safety pamphlet would be distributed to all residential customers.

If authorized to do so, PGW would incur costs of up to \$36,000 to prepare and distribute these bill stuffers.

⁹ <https://www.pgworks.com/index.aspx?NID=355>.

¹⁰ <https://www.pgworks.com/index.aspx?nid=334>.

¹¹ http://www.socalgas.com/documents/safety/natural_gas_safety_home.pdf.

IV. Fund A Program Designed To Improve Public Education On Gas Safety. This Program Would Be Aimed At Educating Students In Elementary And Middle Schools In Philadelphia.

PGW proposes to spend \$107,000 to provide a grant to the Philadelphia Fire Department (PFD) to enable them to provide a “gas safety module” to their existing elementary school education efforts. PGW has not previously provided funds to this Program.

Currently, PFD offers a variety of programs and contests during the school year specifically designed to heighten awareness of fire and burn safety among the school-aged children in Philadelphia.¹² Each of these programs reinforce the good lessons of fire prevention, safety, and the responsibility of community. They are available to each and every school in Philadelphia at no cost.

The PFD targets home fire safety issues for 4th to 6th grades. The gas safety issues would complement the home fire safety presentations already in use by the PFD. PGW would fund and provide technical support and supplemental materials related to gas safety to the PHD. These materials would encourage teachers and their students to think about gas safety, talk about gas safety. PGW would also make speakers available to accompany presentations by the PFD, if requested by the PHD.

PGW would either create materials for the presentations or would use of educational materials published by the National Energy Foundation (NEF),¹³ which is a non-profit educational organization dedicated to the development, dissemination and implementation of supplementary education materials, programs and services.¹⁴

¹² http://www.phila.gov/FIRE/units_and_services/services_education.html.

¹³ *See PUC v. UGI Utilities, Inc.*, Docket No. C-20066664. UGI provided gas safety education programs to fourth and fifth graders in elementary and middle schools in its service territory using material published by the National Energy Foundation.

¹⁴ <http://nefl.org/natural-gas-fulfillment/>.