

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**BUREAU OF INVESTIGATION AND ENFORCEMENT  
STATEMENT IN SUPPORT OF  
JOINT PETITION FOR SETTLEMENT**

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PRESIDING ADMINISTRATIVE LAW JUDGE  
ANGELA T. JONES:

The Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement (“I&E”) submits this Statement in Support of Joint Petition for Settlement (“Settlement Agreement”) at the above docket. The specific terms of the Settlement Agreement, comprised of both monetary and non-monetary relief, are found at Paragraphs 19 through 25 of the Settlement Agreement. I&E submits that the settlement as memorialized by the Settlement Agreement was amicably reached by the Parties after extensive discussions, in-person meetings and review of multiple drafts of the settlement documents, including an extensive appendix detailing PGW’s operational modifications resulting from the settlement. The settlement fairly and equitably balances the duty of

the Pennsylvania Public Utility Commission (“Commission”) to protect the public interest, the Company’s customers, and the Company. The Settlement Agreement is in the public interest, generally, and in the interest of PGW’s customers and the communities it serves, specifically. If approved without modification, the Settlement Agreement fully and completely resolves all issues related to the I&E Complaint involving an explosion and fire on January 18, 2011, in Philadelphia, Pennsylvania which injured five PGW employees and took the life of another.

The terms of this settlement include an amount to be contributed by PGW. While it is normally the position of I&E to support fines and oppose any contribution(s) this contribution is structured so that none of it circles back to the Company and, more importantly, **HAS THE REAL POTENTIAL TO SAVE LIVES**. For these reasons and the reasons set forth below, the settlement as memorialized in the Settlement Agreement is fair, just and reasonable and, therefore, should be approved. I&E respectfully requests that Administrative Law Judge Angela T. Jones, assigned by the Commission to preside over this formal proceeding, recommend approval of, and the Commission approve, the Settlement Agreement in its entirety, without modification.

The Settlement Agreement sets forth the following terms, summarized as follows:

- a. PGW agrees to pay a total settlement amount of \$500,000, in accordance with the following allocation:
  - i. PGW will pay a civil settlement amount of \$400,000, and shall not make any claim whatsoever for recovery of any portion of this \$400,000 in any future proceeding; and

- ii. PGW will contribute \$100,000 to the existing smoke alarm program operated by the Fire Prevention Division of the Philadelphia Fire Department.

In addition to the monetary relief, as allocated above, PGW agrees to additional “non-monetary relief” in the form of modifications to its operating procedures as sought by I&E in the “Requested Relief” portion of its formal complaint. The Parties acknowledge and agree that PGW has already implemented many of these changes to its operating procedures as sought by I&E in its formal complaint and as set forth below. The specific details of these “operational modifications” which have been or will be made are set forth in “Appendix A” to the Settlement Agreement. Appendix A is a three-ring binder comprised of multiple segments designated “App. A-1” through “App. A-19”, and their subparts. Each tabbed segment contains a “top sheet” which summarizes the steps that PGW has already taken or has agreed to take to address that specific operational issue, followed by tabbed subparts which contain the actual page(s) from the various PGW operations manuals where the referenced modifications or additions are located, as well as any other supporting documentation. The operational modifications set forth in Appendix A address all of the non-monetary action items in the formal complaint’s prayer for relief, and are as follows:

- PGW has re-qualified all work crews as to PGW’s procedures for not entering a building when more than 40% LEL is discovered inside the building (*see* Appendix A-1);
- PGW has revised a written procedure that establishes the parameters and steps needed to be taken by PGW field supervisors in notifying the electric

utility to shut off the electric power during emergency situations (*see* Appendix A-2);

- PGW has coordinated a meeting between PGW, PECO Electric, and the Philadelphia Fire Department to address the electric power shut off procedure, as set forth in the preceding paragraph (*see* Appendix A-3);
- PGW has revised its written procedure by reflecting in a bulletin existing minimum training criteria and operator qualification for work crew members that respond to emergency situations which had formerly been reflected in its Operator Qualification training material (*see* Appendix A-4);
- PGW has retrained and re-qualified all work crews as to personal protection equipment needed to be worn and equipment required at an excavation site and for emergency response (*see* Appendix A-5);
- PGW has revised its emergency procedures to describe how and when an Incident Command System is established, retrained all emergency responders and field supervisors to address the Incident Command System and coordinate a meeting between PGW and the Philadelphia Fire Department to review Incident Command requirements (*see* Appendix A-6);
- PGW has revised its written procedure by reflecting in a bulletin its existing risk management policy of establishing a PGW liaison to maintain constant communication with the Commission Gas Safety Inspectors on site during a reportable incident investigation (*see* Appendix A-7);
- PGW has revised its existing procedures to expedite the dispatch of qualified pressure force personnel when an incident involves or is suspected of involving a high pressure (10-35 psig) main. (*see* Appendix A-8);
- PGW has verified that it will continue to follow its policy of annually inspecting all main control valves and street regulator station valves, continuing to identify all non-operable emergency valves and continuing to provide a schedule to make such valves operable (*see* Appendix A-9);
- PGW has revised its existing written procedure that establishes a safety perimeter for leak investigations and emergency response and has re-qualified PGW emergency responders and field supervisors to these procedures (*see* Appendix A-10);

- PGW has revised its written procedure to require appropriate categories of PGW emergency responders and field supervisors to receive National Incident Management System (“NIMS”) training and a schedule of this training (*see* Appendix A-11);
- PGW has revised its existing written procedure to include information on how to recognize a controllable and non-controllable incident and appropriate actions that should be taken (*see* Appendix A-12);
- PGW has re-qualified all work crews, emergency responders and field supervisors as to protecting the public, PGW workers, and property during emergencies, with emphasis on the requirement that responders not enter a building with 40% LEL or higher (*see* Appendix A-13);
- PGW is revising its written procedures to define and distinguish ventilating a building from ventilating a street and to stop ventilating when a building has gas at or above the explosive range (*see* Appendix A-14);
- PGW has reviewed and modified its written procedures to require Pressure Force to respond to: a) every “Prospect Emergency” (high priority) leak or odor complaint call/report which is located on a street block where there is a high pressure main (above 10 psig) installed, or b) for all other leaks or odor complaint calls/reports where a PGW emergency responder believes that a high pressure main is or could be involved (*see* Appendix A-15);
- PGW has reviewed its Operator Qualification program to determine whether its program required modification to address issues described above (*see* Appendix A-16);
- PGW has modified its emergency procedures to include a section related to “blowing gas” (*see* Appendix A-17);
- PGW has re-trained its Pressure Force work crews regarding the use of critical valves (*see* Appendix A-18);
- PGW will confirm to the Commission within sixty (60) days of the date of the Order approving this Settlement Agreement that it has consolidated emergency procedures into one manual that covers responsibilities for all departments involved (*see* Appendix A-19).

PGW has agreed to pay a civil settlement amount totaling \$400,000 and to provide a first-time contribution of \$100,000 to the Philadelphia Fire Department's smoke alarm program, for a total monetary settlement of \$500,000. Moreover, PGW has agreed to implement modifications to its operating procedures related to every concern raised by I&E in its formal complaint. Through the expedited implementation of these procedural modifications, the Commission is acting to deter unsafe practices and improve emergency response procedures. Consequently, it is the position of I&E that the resulting Settlement Agreement achieves all of the goals sought to be attained through the filing of its formal complaint in an administratively efficient and economically effective manner, resulting in palpable modifications and additions to existing utility operating procedures that will serve to benefit the public in general as a stalwart example of improved emergency response and, importantly, the customers and the employees of PGW.

First, the total monetary settlement amount of \$500,000 reached in this case is equivalent to the maximum civil penalty allowed for any related series of gas pipeline safety violations pursuant to 66 Pa. C.S. § 3301(c).<sup>1</sup> Thus, had this matter been litigated, I&E could not have sought and the Commission could not have assessed a larger monetary civil penalty than that which PGW has agreed to pay in this settlement.

Second, \$100,000, or twenty percent of the \$500,000 settlement amount, has been allocated as a contribution by PGW to the Philadelphia Fire Department's existing smoke

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<sup>1</sup> The incident that was the subject of this formal complaint preceded the effective date of Act 2012-11 which, *inter alia*, increased the maximum civil penalty for any related series of gas pipeline safety violations from \$500,000 to \$2,000,000, as set forth in 66 Pa. C.S § 3301(c). The PGW Torresdale explosion occurred on January 18, 2011. Act 11 was approved on February 14, 2012 and took effect 60 days thereafter.

alarm program. As stated previously, this is a worthwhile – and lifesaving – venture that will directly impact PGW’s residential customers. As for the non-monetary relief, every operational shortfall uncovered by I&E gas safety inspectors in the process of their investigation of the January 2011 in the relief section of I&E’s formal complaint, has been addressed by PGW in this Settlement Agreement.

The Settlement Agreement, taken as a whole, achieves all of the results sought to be obtained by I&E by the filing of its formal complaint. The Settlement Agreement allows the Parties to avoid the time and expense of litigation, including but not limited to, discovery, preparation of witness testimony, incident, and reiterated as action items hearings, briefs, exceptions and appeals. Without the need for an extended, labor-intensive evidentiary proceeding, the Company is now free to concentrate on the implementation of the many new and/or improved safety policies. As a result of all of the above, the Settlement Agreement should be found by this Commission to be in the public interest.

In *Rosi v. Bell Atlantic Pennsylvania Inc., et al.*, 94 PA PUC 103, Docket No. C-00992409 (Order entered March 16, 2000), as set forth in *Pennsylvania Public Utility Commission v. NCIC Operator Services*, Docket No. M-00001440 (December 20, 2000), the Commission adopted and utilized standards for determining whether a particular enforcement outcome is in the public interest. The standards set forth in *Rosi* were reviewed by the Parties. The Parties submit that this Settlement Agreement does not violate the requirements for settlements found in *Rosi* and that the terms of the Settlement Agreement are in the public interest.

Approval of this Settlement Agreement is consistent with the Commission's Policy Statement, *Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations – statement of policy*, at 52 Pa. Code § 69.1201 ("Policy Statement"). Under the Policy Statement, while many of the *Rosi* standards may still be applied, the Commission specifically recognized that in settled cases the 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).

The Commission's Policy Statement provides for ten (10) factors and standards to be considered by the Commission. The first standard addresses whether the conduct at issue was of a serious nature. 52 Pa. Code § 69.1201(c)(1). While there has been no allegation of willful wrongdoing, the act of responding to an emergency such as that which unfolded here is, in and of itself, inherently serious in nature and was considered in arriving at the penalty to be assessed. I&E's formal complaint alleged that the Company's operating procedures related to its response to this incident may have been inadequate. The terms and conditions of this Joint Petition for Settlement acknowledge the seriousness of the incident and are designed to enhance the Company's emergency response and the overall safety and reliability of its service.

The second standard addresses whether the resulting consequence of the conduct in question was of a serious nature. 52 Pa. Code § 69.1201(c)(2). There is no dispute that the resulting consequences of this tragic incident, which included property damage, personal injury, and death is of a serious nature.



The third standard addresses whether the conduct was intentional or unintentional. 52 Pa. Code § 69.1201(c)(3). Since this standard may apply to litigated proceedings and this matter has instead resulted in an amicable Settlement Agreement, it is not applicable here.

The fourth standard addresses whether the Company made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). As set forth in the “Settlement Terms” section of the Settlement Agreement, PGW has implemented or is implementing several modifications to its operating procedures, as described therein and detailed in Appendix A, appended to the Settlement Agreement, so as to preferably avoid, or at least minimize, a recurrence of this kind of event. PGW’s voluntary election to work hand-in-hand with the Commission’s Gas Safety Division to address each and every operational issue raised in I&E’s formal complaint is representative of the Company’s commitment to public safety and is consistent with the Commission’s charge to ensure that natural gas facilities in Pennsylvania are fully capable of providing safe and reliable service to their customers. As such, I&E is satisfied that the Company is taking important steps to address I&E’s concerns and decrease the likelihood of similar incidents in the future.

In the process of negotiating this Settlement Agreement, the remaining factors in the Policy Statement were also considered. Specifically, the Parties reviewed the number of customers affected, the compliance history of the Company, the Company’s cooperation with the Commission, and the monetary penalty necessary not only to deter future violations, but to recognize alleged violations in the past. The Settlement

Agreement was amicably negotiated and recognizes the Respondent's good faith efforts to comply with the Commission's regulations.

I&E submits that settlement of this proceeding avoids the necessity for the prosecuting agency to prove elements of each violation. In return, the opposing party in a settlement generally avoids the possibility of a greater fine or penalty or realizes other benefits related to avoiding a litigated proceeding. Both parties negotiate from their initial litigation positions. The fines and penalties in a litigated proceeding, such as *Rosi*, are generally different from those that result from a settlement. This is the reason that *Rosi* listed whether penalties arise from a settlement or a litigated proceeding as one of its tests.

The instant Settlement Agreement is in the public interest because it effectively addresses the allegations identified by I&E's formal complaint, avoids the time and expense of litigation which entails discovery, hearings, filings of briefs, exceptions, reply exceptions, and possible appeals. For example, in this case, the discovery process alone would have been tedious and complex, requiring multiple sets of interrogatories to be answered by the Company as well as numerous depositions of key Company employees involved in the incident. The Company has also agreed to pay a fair and equitable civil settlement amount and to improve its operational procedures to better respond in the event of a gas safety emergency. Moreover the Settlement Agreement clearly meets the standards set forth in the Commission's Policy Statement at 52 Pa. Code § 69.1201.

Commission Rules and Regulations encourage the settlement of proceedings. For this matter in particular, I&E emphasizes that, with the tragic incident that was the

subject of this formal complaint, it was in the public interest to allow PGW to move forward in the implementation of operational modifications that would act to enhance the safety of the public as well as PGW employees and bolster PGW's efforts to adhere to state and federal gas safety regulations. Consequently, PGW and I&E convened frequent and extensive conferences and discussions during the course of this proceeding. These discussions ultimately resulted in the foregoing Settlement Agreement which incorporates modifications to company policies and practices that are expected to further enhance the safety and reliability of PGW's service and is a full and final resolution of the Commission's investigation. The Parties have asserted that approval of this settlement 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 – statement of policy*.

In addition to the foregoing reasons, based upon I&E's analysis of these matters, acceptance of this proposed settlement is in the public interest because resolution of this case by settlement rather than litigation will avoid the substantial time and expense involved in continuing to formally pursue all allegations in this proceeding. Moreover, acceptance of the Settlement Agreement at this time will ensure that the Company will immediately implement any and all operational modifications that have yet to be implemented as enumerated in the Settlement Agreement instead of at the end of what could be protracted litigation.

**WHEREFORE**, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission represents that it supports the settlement of this matter as memorialized by the Joint Petition for Settlement as being in the public interest and respectfully requests that the presiding Administrative Law Judge recommend approval of, and the Commission approve, the foregoing Settlement Agreement, including all terms and conditions contained therein, without modification.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "W. Scott", written over a horizontal line.

Wayne T. Scott, First Deputy Chief Prosecutor  
Michael L. Swindler, Prosecutor  
Carrie B. Wright, Prosecutor  
Bureau of Investigation and Enforcement

Dated: November 14, 2012