

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

JOINT PETITION FOR SETTLEMENT

PRESIDING ADMINISTRATIVE LAW JUDGE
ANGELA T. JONES:

Pursuant to 52 Pa. Code § 69.1201, the Pennsylvania Public Utility Commission's ("Commission") Bureau of Investigation and Enforcement ("I&E") and Philadelphia Gas Works ("PGW" or "Company") hereby submit this Joint Petition for Settlement ("Settlement Agreement") to resolve all issues related to the I&E complaint involving the explosion and fire on January 18, 2011 in Philadelphia, Pennsylvania. As part of this Settlement Agreement, the Parties request that Your Honor issue an initial decision or recommended decision approving the settlement, without modification. This Settlement Agreement is accompanied by a binder, identified as Appendix A, which sets forth in detail all of the operational modifications to the Company's emergency procedures that have been or will be implemented as part of this settlement. In addition, individual

Statements in Support of this Settlement Agreement setting forth the views of I&E and of PGW are attached.

I. Introduction

1. The parties to this Settlement Agreement are the Commission's I&E by its counsel, with a mailing address of P.O. Box 3265, Harrisburg, PA 17105-3265, and PGW, with its principal place of business at 800 W. Montgomery Avenue, Philadelphia, PA 19122. There are no other parties in this matter.

2. The Commission is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate utilities within this Commonwealth pursuant to the Public Utility Code ("Code"), 66 Pa.C.S.A. §§ 101, *et seq.*, and city natural gas distribution operations within their municipal limits that provide public utility service pursuant to Section 2212 of the Code, 66 Pa.C.S.A. § 2212.

3. Section 501(a) of the Code, 66 Pa.C.S.A. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code.

4. The Commission has delegated its authority to initiate proceedings that are prosecutory in nature to I&E, as well as other bureaus with enforcement responsibilities. *Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities*, 1994 WL 932350, Docket No. M-00940593 (Order entered September 2, 1994), as amended by Act 129 of 2008, 66 Pa.C.S.A. § 308.2(a)(11).

5. Section 3301 of the Code, 66 Pa.C.S.A. § 3301, authorizes the Commission to impose civil penalties on any public utility or on any other person or corporation

subject to the Commission's authority for violations of the Code or Commission regulations or both. Section 3301 further allows for the imposition of a separate fine for each violation and each day's continuance of such violation(s).

6. Pursuant to the Commission's regulations at 52 Pa. Code § 59.33, I&E's Gas Safety Division ("GSD") has the authority to enforce the federal gas pipeline safety regulations set forth at 49 U.S.C. §§ 60101, *et seq.*, and implemented in 49 CFR Parts 191-193 and 199.

7. PGW is a collection of real and personal assets owned by the City of Philadelphia ("City" or "Philadelphia") and used for the acquisition, storage, processing, and distribution of natural gas within the City. PGW is a jurisdictional "city natural gas distribution operation" as defined by 66 Pa.C.S.A. § 102 and is engaged in, *inter alia*, the provision of public utility service for compensation as a natural gas distribution company ("NGDC") within Philadelphia.

8. PGW, as a provider of public utility service for compensation as a city natural gas distribution operation, is subject to the power and authority of the Commission pursuant to Section 2212(c) of the Code, 66 Pa.C.S.A. § 2212(c).

9. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter and the actions of PGW related to public utility service being furnished or rendered for compensation as a city natural gas distribution operation.

10. As a result of serious and thoughtful negotiations between I&E and PGW (hereinafter "Parties"), the Parties have amicably agreed to resolve their differences as

they relate to the above-docketed complaint, as encouraged by the Commission's policy to promote settlements. *See* 52 Pa. Code § 5.231. The duly authorized Parties executing this Settlement Agreement agree to the deliberate and carefully considered settlement terms as set forth in detail herein and, as attached hereto and pursuant to 52 Pa. Code § 5.232(d), urge Administrative Law Judge Angela T. Jones, assigned by the Commission to preside over this matter, to prepare an initial decision or recommended decision approving the Settlement Agreement as submitted as being clearly in the public interest.

II. Background

11. At or about 20:35 (8:35 pm) on January 18, 2011, a two-story row home located on a corner lot at 6932 Torresdale Avenue, Philadelphia, Pennsylvania was destroyed by a natural gas explosion. The building, which housed a chiropractor's office on the first floor and two apartments on the second floor, was leveled when natural gas migrating from a ruptured twelve-inch cast iron main located underground near the intersection of Torresdale Avenue and Disston Street came in contact with an ignition source located in the building's basement. In addition to the building at 6932 Torresdale Avenue, several other surrounding properties were damaged, as well as six vehicles, including a PGW truck that had responded to the leak incident. Further, this incident resulted in the injury of five PGW employees and the death of a 19-year-old employee, all of whom were in the process of responding to the massive gas leak that resulted from

the broken high pressure main and eventually led to the explosion. The incident is summarized as follows:¹

- a. At or about 19:19 (7:19 pm), 911 received the initial call regarding a strong odor of natural gas on the 6900 block of Torresdale Avenue. According to the Philadelphia Fire Department (“PFD”) call log, within approximately two minutes of receiving the 911 call, the PFD and the Philadelphia Police Department (“PPD”) responded to the call. According to the PFD dispatch log, upon arriving at the scene, PFD and PPD began immediate evacuations of 6932 Torresdale Avenue and other buildings in the immediate vicinity. In addition, PFD immediately set up an incident command center to manage the incident.
- b. At or about 19:23, PGW was called by PFD regarding the odor of natural gas. PGW began the dispatch of personnel and equipment to the scene, the first arriving at or about 19:38. PGW and PFD personnel continued to evacuate the area while others worked to control the release of natural gas from the broken high pressure main.
- c. At or about 19:56, PGW personnel on the scene called for immediate pressure reduction and the dispatch of Pressure Force personnel to reduce pressure and cut off main line valves.

¹ In addition to I&E’s formal complaint, details concerning the incident can be found in PGW’s Answer, paragraphs 12(a) through 12(z).

- d. At or about 20:35, the structure at 6932 Torresdale Avenue exploded and a fire ensued. Four PGW employees were hospitalized due to injuries received in the blast, one PGW employee was treated and released and a 19-year-old PGW employee was killed.
- e. At or about 21:25, PGW notified Commission Gas Safety Chief Paul Metro and Commission Gas Safety Inspector Terri Cooper Smith of the explosion. Inspector Cooper Smith arrived at the scene at or about 21:40.
- f. At or about 21:48 to 21:51, PGW Pressure Force completed the closure of the main valves that cut off the flow of natural gas to the broken high pressure main.
- g. Several hours after the explosion, Commission Gas Safety Inspector Cooper-Smith observed PGW work crews entering an excavated trench and saw at least one PGW crew member did not have all required PGW personal protection equipment. The Complaint further states that Inspector Cooper Smith observed that the trench did not utilize the required shoring.
- h. Following the incident, PGW conducted drug and alcohol testing. The I&E Complaint states that PGW tested only three of the employees who were on site. Those employees tested were Distribution Department employees. The I&E Complaint states that no Field Tech employees who were emergency responders or Pressure Force personnel were drug or alcohol tested.

- i. Following the incident, the PFD issued a Fire Marshal's Office Formal Report dated April 13, 2011 regarding the January 18, 2011 fire at 6932 Torresdale Avenue ("Fire Marshal Report"). The Fire Marshal Report concluded that the cause of the fire was an explosion of natural gas vapors with the ignition source being the glow plug from the fixed heater located in the basement of the building at 6932 Torresdale Avenue.
 - j. Following the incident, I&E's gas safety inspectors assigned to the incident conducted a thorough investigation, which included, but was not limited to, conducting several field investigations, conducting and/or attending interviews of various PGW personnel, attending testing and analysis of failed pipe, submission and review of multiple sets of data requests to Company, requesting and analyzing physical evidence and Company data, meeting with PFD personnel to review accounts and data logs maintained by PFD personnel, photographing the incident scene, participating in meetings with PGW distribution and legal personnel, review of the PFD Fire Marshal Report and attachments, preparation of a written summary and timeline of the incident and drafting of interim stop-gap measures for PGW in the early stages of the investigation.
12. PGW conducted its own thorough investigation which included its own interviews of employees and a review of all of its emergency rules and procedures, resulting in improvement and clarification of many of them. PGW also retrained all of its

emergency personnel and responders on the existing rules, as well as the clarifications and enhancements.

13. Based on the results of its investigation, I&E prepared a formal complaint against PGW setting forth in detail its allegations that the Company violated various state and/or federal gas pipeline safety regulations. The violations alleged in I&E's complaint against PGW were contained in 334 counts and resulted in a recommended total civil penalty of \$500,000,² as well as other, non-monetary relief.

14. On December 15, 2011, I&E filed and served its formal complaint, *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Philadelphia Gas Works*, docketed at C-2011-2278312. After being granted a 30-day extension, PGW filed its Answer and New Matter on February 2, 2012. I&E filed a Reply to New Matter on February 27, 2012.

III. Alleged Violations

A. Position of I&E

15. I&E carefully and thoroughly reviewed the actions and operating procedures of PGW with respect to this incident. As set forth in I&E's formal complaint, had this matter been litigated, I&E would have alleged that PGW violated certain provisions of the Pennsylvania Code, the Code, and the Code of Federal Regulations with regard to natural gas pipeline safety. The specific allegations are set forth in the I&E Complaint, paragraphs 13(a) through 13(y).

² According to 66 Pa.C.S.A. § 3301(c) in effect at the time of the PGW Torresdale incident on January 18, 2011, \$500,000 was the maximum civil penalty that could be assessed for any related series of violations.

A summary of the allegations in the I&E complaint is as follows:

- a. PGW failed to maintain an adequate exposed main condition report for the damaged pipe in that the Company did not record details of each inspection performed on the pipe in sufficient detail. Specifically, details of graphitization, coating disbondment, pitting, cathodic potential reads, etc., were not recorded on the inspection form to show what PGW inspected. (Count 1) I&E posits that, if proven, this is a violation of 49 CFR § 192.491(c).
- b. PGW failed to provide sufficient detail to demonstrate the adequacy of corrosion control measures for the pipe in question in that PGW's current procedure for its exposed main condition report only reports 'satisfactory' or 'unsatisfactory' which is not "sufficient detail to demonstrate the adequacy of corrosion control measures" for the pipe in question. (Count 2) I&E posits that, if proven, this is a violation of 49 CFR § 192.605(b)(2) with respect to § 192.491(c).
- c. PGW failed to take the required steps to minimize the danger of accidental ignition of gas in an area where the presence of gas constituted a hazard of fire or explosion and failed to comply with Bulletin 212 of the Company's manual of written procedures, *Leak Response and Investigation Procedure*, in that the Company used drill bits prone to sparking while attempting to ventilate the street above the cracked main even though its procedure states that PGW must eliminate ignition sources during gas emergencies and by so doing PGW failed to reasonably protect the public from danger. (Counts 3-5) I&E posits that, if proven, this is a violation of 49 CFR §§ 192.751(a), 192.605(a), and 52 Pa. Code § 59.33.
- d. PGW failed to take the required steps to minimize the danger of accidental ignition of gas in an area where the presence of gas constituted a hazard of fire or explosion and failed to comply with Bulletin 212 of the Company's manual of written procedures, *Leak Response and Investigation Procedure*, in that the Company failed to contact PECO Energy to shut off electric supply to the affected area even though its procedure states that PGW must eliminate ignition sources during gas emergencies and by so doing PGW failed to reasonably protect the public from danger. (Counts 6-8) I&E posits that, if proven, this is a violation of 49 CFR §§ 192.751(a), 192.605(a), and 52 Pa. Code § 59.33.

- e. PGW failed to comply with its emergency procedures that require actions be directed towards protecting people first and then property in that four PGW employees, each acting under their scope of employment, all entered 6932 Torresdale Avenue after detecting gas readings greater than 40% LEL inside the building and after the PFD had evacuated the building. Moreover, the Distribution Supervisor was aware of readings above 40% LEL in 6932 Torresdale Avenue. This was not communicated to two PGW employees who were permitted to enter even though the PFD had evacuated the building. (Counts 9-14) I&E posits that, if proven, this is a violation of 49 CFR §§ 192.615(a)(5), and 192.605(a), with respect to § 192.615(a)(5).

- f. In regard to two employees, PGW failed in two separate actions to comply with its emergency procedures that require actions be directed towards protecting people first and then property in that two PGW employees, each acting under their scope of employment, put themselves in danger by remaining in the building, operating the meter valve inside the building and ventilating the building by opening windows after they detected 70% LEL in the basement of the building. Moreover, PGW did not effectively communicate between its employees on site in that, although the Distribution Supervisor was aware of readings above 40% LEL in 6932 Torresdale Avenue, this was not communicated to the two PGW employees who were permitted to enter even though the PFD had evacuated the building. These two employees, acting under their scope of employment, re-entered 6932 Torresdale Avenue after one employee had obtained readings of 80% gas at the second floor exterior doorway. The two PGW employees endangered themselves by entering and opening windows to ventilate. (Counts 15-20) I&E posits that, if proven, each separate action constitutes a violation of 49 CFR §§ 192.605(a) and 192.615(a)(5).

- g. PGW violated Bulletin 212, *Leak Response and Investigation Procedure*, Section III.C.1, wherein Outside Leak Investigation requires exchanging information with PGW employee(s) already on location in that PGW did not effectively communicate among its Distribution divisions. There were also discrepancies, based on Gas Safety Inspector interviews, in the communication between PGW employees regarding the 70% LEL reading. All of the above resulted in an increased danger to the public. (Counts 21-22) I&E posits that, if proven, this is a violation of 49 CFR § 192.605(a) and 52 Pa. Code § 59.33.

- h. PGW's written procedures for emergency plans were deficient in that they failed to require prompt and effective response by Pressure Force to an incident of this type, resulting in a delay in the operation of the main line valves necessary to reduce pressure in the failed main. (Counts 23-24) I&E posits that, if proven, this is a violation of 49 CFR § 192.615(a)(3)(i) and (a)(6).
- i. PGW failed to follow the procedures set forth in its Foreman's Handbook when it failed to use shoring, make available or ready for use a fire extinguisher, and where an employee did not wear a hard hat, all while working in an excavated trench at the southeast corner of Torresdale Avenue and Disston Street. (Counts 25-26) I&E posits that, if proven, this is a violation of 49 CFR § 192.605(a) and (b)(9).
- j. PGW failed to establish written procedures to minimize the hazard resulting from a pipeline emergency and failed to reasonably protect the public from danger in that PGW Bulletin 212, *Leak Response and Investigation Procedure*, Section III.B.2, fails to include explicit provisions in the procedures to contact the Company's electric supplier to shut off electric supply to the affected area during a gas emergency. (Counts 27-32) I&E posits that, if proven, this is a violation of 49 CFR §§ 192.615(a)(5), (7), and (8), 192.615(c)(3)-(4), and 52 Pa. Code § 59.33.
- k. PGW's written procedures for emergency plans are deficient in that PGW Bulletin 212, *Leak Response and Investigation Procedure*, fails to include explicit requirements that PGW employees first detect gas readings at doorways, foundations, windows, or other structure openings prior to entering a building during an outside leak investigation. Moreover, in Section III.B.3 of the evacuation procedure, employees are told to evacuate and ventilate at the same time. PGW Bulletin 258, *Laminated Reference Card to be Used When Responding to an Emergency*, does not protect people first because it does not require that evacuation take priority over ventilation. (Counts 33-35) I&E posits that, if proven, this is a violation of 49 CFR § 192.615(a)(5) and (7) and 52 Pa. Code § 59.33.
- l. PGW Bulletin 63, *Notification Procedure of a Potential Emergency Involving a Pressure Operation*, was deficient in that the procedure only requires Pressure Force to be notified and dispatched in the event of a leak on a 35 psig or higher main or service. There was no

written procedure for emergency pipeline pressure reduction under 35 psig but greater than inches water column. (Counts 36-37) I&E posits that, if proven, this is a violation of 49 CFR § 192.615(a)(6)-(7).

- m. PGW failed to adequately protect the public in that the Company did not have a written procedure included in its emergency response plan regarding how to recognize a controllable and non-controllable incident and the necessary actions to be taken. (Counts 38-41) I&E posits that, if proven, this is a violation of 49 CFR § 192.615(a)(1), (3)(i), and (5) and 52 Pa. Code § 59.33.
- n. PGW did not have a written procedure to require a PGW liaison to maintain constant communication with the Commission Gas Safety Inspectors on site during a reportable incident investigation. (Count 42) I&E posits that, if proven, this is a violation of 49 CFR § 192.615(a)(2).
- o. PGW failed to adequately protect its employees and the general public in that the Company did not have a written procedure to establish a safety perimeter for leak investigations and emergency response. (Counts 43-44) I&E posits that, if proven, this is a violation of 49 CFR § 192.615(a)(5) and 52 Pa. Code § 59.33.
- p. PGW failed to adequately protect the public in that the Company did not have a written procedure that establishes a minimum training criteria and operator qualification for work crew members that respond to emergency situations. (Counts 45-46) I&E posits that, if proven, this is a violation of 49 CFR § 192.615(b)(2) and 52 Pa. Code § 59.33.
- q. PGW failed to maintain valve inspection reports and/or records for Valve No. 788 for calendar years 2007 and 2008. (Counts 47-48) I&E posits that, if proven, this is a multiple violation of 49 CFR § 192.603(b).
- r. PGW failed to prepare and/or follow written maintenance procedures for remediation of Valve No. 788 when that valve was found to be inoperable upon inspection by the Company on July 30, 2010 and February 25, 2011. (Counts 49-50) I&E posits that, if proven, this is a multiple violation of 49 CFR § 192.605(b)(1).

- s. PGW failed to service Valve No. 788 at least once each calendar year when that valve was found to be inoperable upon inspection by the Company on July 30, 2010 and February 25, 2011. (Counts 51-52) I&E posits that, if proven, this is a multiple violation of 49 CFR § 192.747(a).
- t. 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 upon inspection by the Company on July 30, 2010 and continued to be inoperable for 172 days and up to and including the day of the explosion, January 18, 2011, and beyond; each day consisting of a separate violation herein. (Counts 53-224) I&E posits that, if proven, this is a multiple violation of 49 CFR § 192.747(b).
- u. PGW failed to have and/or follow a written qualification program in that the Company failed to ensure that the PGW employee fatally injured in the explosion was qualified to perform the covered task when, in fact, he was not qualified to perform the task nor was he directed and observed by an individual that was qualified to perform the task and in so doing, PGW failed to adequately protect the public. (Counts 225-227) I&E posits that, if proven, this is a violation of 49 CFR § 192.805(b)-(c) and 52 Pa. Code § 59.33.
- v. PGW failed to train the PGW employee fatally injured in the explosion, to assure that he was knowledgeable of emergency procedures and to verify that the training was effective and, in so doing, failed to adequately protect the public. (Counts 228-229) I&E posits that, if proven, this is a violation of 49 CFR § 192.615(b)(2) and 52 Pa. Code § 59.33.
- w. PGW failed to conduct post-accident drug testing for 35 of the PGW employees who were on site and who could not be completely discounted as a contributing factor to the incident; the failure to test each of the employees constituting a separate violation herein. (Counts 230-264) I&E posits that, if proven, this is a multiple violation of 49 CFR § 199.105(b).
- x. PGW failed to conduct post-accident alcohol testing for 35 of the PGW employees who were on site and who could not be completely discounted as a contributing factor to the incident; the failure to test each of the employees constituting a separate violation herein.

(Counts 265-299) I&E posits that, if proven, this is a multiple violation of 49 CFR § 199.225(a)(1).

- y. PGW failed to prepare and maintain on file a record stating the reasons the post-accident testing was not promptly administered on any of the 35 employees referred to above; the failure to prepare and maintain such records on each employee constituting a separate violation herein. (Counts 300-334) I&E posits that, if proven, this is a violation of 49 CFR § 199.225(a)(2).

B. Position of PGW

16. On February 6, 2012, in response to I&E's Complaint, PGW submitted an Answer and New Matter. The Answer denied each of the alleged violations of the Commission's regulations, the Code or federal law. The New Matter, *inter alia*, claimed that, if a violation was determined by the Commission to have been committed, it would not be reasonable or in the public interest to fine PGW for the offense.

A summary of the responses in the PGW Answer is as follows:

- a. PGW's Answer to Count 1 points out that the pipe in question had not been exposed in the failure location and, therefore, no report was required.³
- b. PGW's response to Count 2 states that the regulation cited expressly excludes cast iron mains from the requirement to take corrosion control measures.⁴ As noted, the main in question was constructed of cast iron.⁵
- c. PGW's Answer to Counts 3-5 states that its employees took appropriate and required steps to minimize sparking, including using rotary drills (required by GSD) in a manner to minimize sparking – by operating them at low speeds, and then using non-sparking equipment when feasible.⁶

³ PGW Answer at ¶ 13(a).

⁴ PGW Answer at ¶ 13(b); Exhibit 27.

⁵ PGW Answer at ¶ 13(b).

⁶ PGW Answer at ¶ 13(c).

- d. PGW's response to Counts 6-8 stated that neither the federal rules, PUC rules nor PGW's procedures mandated contacting the electric company for electric turn off every time there was a gas leak⁷ and that GSD had frequently reviewed PGW's emergency procedures prior to the incident and had never noted any deficiency.⁸
- e. PGW responded to Counts 9-14 by stating that the four PGW employees were following PGW procedures which call 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 and, if possible, ventilate.⁹ Its Answer further stated that PGW's emergency procedure explicitly prioritizes life over property.¹⁰ It went on to explain that PGW employees had been made aware of the LEL readings but made a determination based on the evidence available at 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 previously evacuated the building. The Answer states that the federal requirement "to protect people first and then property" requires gas company emergency responders to place the public's safety above all else, and that is precisely what PGW's employees did.¹¹
- f. PGW's Answer to Counts 15-20 states that its employees actually entered the building in order to, among other things, ascertain whether any occupants remained and, if so, to evacuate them,¹² consistent with PGW's procedures.¹³
- g. PGW's response to Counts 21-22 states that, upon investigation, PGW staff did communicate among themselves on location, and did so in a manner consistent with its emergency procedures.¹⁴
- h. PGW's Answer to Counts 23-24 states that Pressure Force was notified within 4 minutes after PGW Dispatch was notified and that PGW's written emergency procedures provide specific instructions

⁷ PGW Answer at ¶ 13(d).
⁸ *Id.* PGW Answer at Exhibit 35.
⁹ PGW Answer at ¶ 13(e).
¹⁰ *Id.* PGW Answer at Exhibit 17.
¹¹ PGW Answer at ¶ 13(e).
¹² PGW Answer at ¶¶ 13(e), (f).
¹³ *Id.* PGW Answer at Exhibit 17.
¹⁴ PGW Answer at ¶ 13(g); Exhibit 17.

to appropriate and qualified personnel to deal with an emergency situation in an expeditious and safe manner.¹⁵

- i. PGW's Answer to Counts 25 and 26 indicated that it had no information that could confirm or deny this claim.¹⁶
- j. PGW's Answer to Counts 27-32 states that neither federal nor state rules directed PGW to maintain explicit language in its written procedures to call the electric service provider to cut off electric supply in a gas emergency.¹⁷
- k. PGW's Answer to Counts 33-35 states that its 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. PGW also stated that employees are instructed not to reenter a property if all of the steps required upon gas detection are completed and gas levels are not reduced, in order to protect their own safety, once the danger to the public has been minimized.¹⁸
- l. PGW's Answer to Counts 36-37 points out that 88% of PGW's mains have pressures of less than 10 psig (where pressure normally cannot be reduced) and its 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 make safe any actual or potential hazard to life or property.¹⁹
- m. PGW responded to Counts 38-41 by stating that no regulatory rule requires a written procedure as to these points.²⁰ Notwithstanding that fact, PGW's written procedures did 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.²¹

¹⁵ PGW Answer at ¶ 13(h).

¹⁶ PGW Answer at ¶ 13(i).

¹⁷ PGW Answer at ¶ 13(j).

¹⁸ *Id.* PGW Answer at ¶ 13(k).

¹⁹ PGW Answer at ¶ 13(l).

²⁰ PGW Answer at ¶ 13(m).

²¹ *Id.* PGW Answer at Exhibit 17.

- n. The PGW Answer to Count 42 states that 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 [which would include Commission personnel],"²² and that PGW's written emergency procedures contain such directives.²³
- o. PGW responded to Counts 43 and 44 by pointing out that it had, and continues to have, a written procedure that specifically directs the establishment of a safety perimeter in the event of a gas emergency²⁴ and that, at the prior direction of GSD,²⁵ PGW had this policy printed on a laminated card carried by PGW emergency personnel.²⁶
- p. PGW stated in its Answer to Counts 45-46 that it maintains such written criteria, that they meet the requirements of federal and Commission regulations²⁷ 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.²⁸
- q. In answer to Counts 47 and 48, PGW stated that the reports in question were in fact maintained (and provided in attachments to the Answer).²⁹
- r. The Answer to Counts 49-50 states that the valve in question was not found to be inoperable by PGW on those days but had been serviced and left in operable condition.³⁰
- s. In answer to Counts 51-52 and, as noted above (paragraph r), PGW stated that the valve was, in fact, serviced and left operable in accordance with the time frames authorized by federal rules.³¹

²² PGW Answer at ¶ 13(n); Exhibit 34.

²³ *Id.* PGW Answer at Exhibit 17.

²⁴ PGW Answer at ¶ 13(o).

²⁵ PGW Answer at 3; Exhibit 29.

²⁶ PGW Answer at ¶ 13(o); Exhibit 25.

²⁷ PGW Answer at ¶ 13(p); Exhibit 25.

²⁸ PGW Answer at ¶ 13(p).

²⁹ PGW Answer at ¶ 13(q); Exhibit 24.

³⁰ PGW Answer at ¶ 13(r); Exhibit 24.

³¹ PGW Answer at ¶ 13(s); Exhibit 24.

- t. As noted above, (See paragraphs r and s) PGW's Answer to Counts 53-224 states that the allegation is not consistent with PGW's understanding of the facts.³²
- u. PGW's Answer to Counts 225-227 states that PGW had an Operator Qualification Plan ("OQ Plan") and training procedures that provides in pertinent part that a worker either be trained to perform a covered task or be supervised by a qualified individual.³³ The Answer further states that, 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.³⁴
- v. PGW's Answer to Counts 228-229 states in response that this employee was trained by an experienced supervisor in all tasks that he performed during the incident, and that two supervisors were standing within several feet of the employee when he died.³⁵ PGW alleged that this training and supervision regime is completely consistent with federal and state requirements.³⁶
- w. PGW states in answer to Counts 230-264 that it made a good faith attempt to drug test relevant employees, set criteria for testing that was consistent with the rule, and tested the employees who it determined could have contributed to the accident and were available to test.³⁷
- x. PGW's Answer to Counts 265-299 states that it made a good faith attempt to alcohol test relevant employees, set criteria for testing that was consistent with the rule, and tested the available employees who it determined could have contributed to the incident.³⁸
- y. Finally, in answer to Counts 300-334, PGW stated that it had prepared and maintained records stating the reasons the post-accident testing was not promptly administered to all employees.³⁹

³² PGW Answer at ¶ 13(t); Exhibit 24.

³³ PGW Answer at ¶ 13(u); Exhibit 13.

³⁴ PGW Answer at ¶¶ 13(u), (v); Exhibits 20, 21 and 23.

³⁵ *Id.*

³⁶ *Id.*

³⁷ PGW Answer at ¶ 13(w).

³⁸ PGW Answer at ¶ 13(x).

³⁹ PGW Answer at ¶ 13(y).

17. Throughout the entire I&E investigation and post-complaint settlement discussions, I&E and PGW have remained active in informal discovery and have continued to work cooperatively toward a desired goal of resolving this matter without the need for litigation, which effort ultimately culminated in this Settlement Agreement. During the entire process, PGW has worked cooperatively to comply with all I&E requests for information and documentation and to maintain ongoing communications.

18. I&E acknowledges that PGW has fully cooperated with this Commission's investigation and the Parties' post-complaint settlement discussions.

IV. Settlement Terms

19. PGW and I&E desire to (i) resolve I&E's formal complaint at Docket No. C-2011-2278312 and (ii) settle this matter completely without further litigation.

20. Although PGW disputes or disagrees with the alleged violations as set forth in I&E's formal complaint, the Company fully acknowledges the seriousness of the allegations. PGW also recognizes the need to prevent such violations and the numerous benefits of amicably resolving the formal complaint.

21. The Parties agree that PGW's first responders acted bravely and diligently both during and after the incident. These employees acted pursuant to PGW's then-existing emergency procedures, which the Company submits, were issued pursuant to applicable federal and state regulations.

22. PGW and I&E, intending to be legally bound and for consideration given, desire to resolve the above-captioned proceeding and agree to the following terms solely for the purposes of this Settlement Agreement:

- a. Notwithstanding that there has been no finding of wrongdoing, liability, or violations and notwithstanding that there has been no finding that PGW's actions either caused or contributed to the incident, PGW agrees to pay a total settlement amount of \$500,000, in accordance with the following allocation:
 - i. PGW will pay to the Commission, by certified check (or other agreed method), a civil settlement amount of \$400,000 made by certified check to "Commonwealth of Pennsylvania" and presented to the Commission within thirty (30) days of the entered date of the Commission Order approving this Settlement Agreement. PGW shall not make any claim whatsoever for recovery of any portion of this \$400,000 amount in any future proceeding; and
 - ii. PGW will contribute \$100,000, within one (1) year of the issuance of the Commission's Order approving this Settlement Agreement, to the existing smoke alarm program operated by the Fire Prevention Division of the PFD. This program is operated in partnership with The Citizens for Fire Prevention Committee ("CFPC"), a non-profit corporation

formed by the PFD for education and fundraising. This continuing program is funded by donations to CFPC. PGW has not previously provided funds to this program.

23. In addition to the above allocation, PGW has implemented, or agrees to implement, a series of modifications with respect to its operating procedures (“Operational Modifications”) addressing the actions 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 the changes to its operating procedures as sought by I&E, and these changes address all the non-monetary action items in the formal complaint’s prayer for relief. The specific details of the Operational Modifications made or to be made are set forth in detail in Appendix A, attached hereto. In summary the Operational Modifications made (or, with respect to items (n) and (s), to be made) by PGW are as follows:

- a. 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);
- b. 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);

- c. PGW has coordinated a meeting between PGW, PECO Electric, and PFD to address the electric power shut off procedure, as set forth in the preceding paragraph (*see* Appendix A-3);
- d. PGW has revised its written procedures by reflecting in a bulletin existing minimum training criteria and operator qualifications for work crew members that respond to emergency situations, which had formerly been reflected in its Operator Qualification training materials (*see* Appendix A-4);
- e. PGW has retrained and requalified 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);
- f. 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 coordinated a meeting between PGW and the PFD to review Incident Command requirements (*see* Appendix A-6);
- g. PGW has revised its written procedures 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);

- h. 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);
- i. PGW has verified that it will continue to follow its policy of annually inspecting all main control valves and street regulator stations valves, continuing to identify all non-operable emergency valves and continuing to provide a schedule to make such valves operable (*see* Appendix A-9);
- j. 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);
- k. 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);
- l. 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);

- m. 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);
- n. 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);
- o. 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);
- p. PGW has reviewed its Operator Qualification Program to determine whether its program required modification to address issues described above (*see* Appendix A-16);
- q. PGW has modified its emergency procedures to include a section related to “blowing gas” (*see* Appendix A-17);

- r. PGW has re-trained its Pressure Force work crews regarding the use of critical valves (*see* Appendix A-18); and
- s. 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).

24. In consideration of the Company's payment of a civil settlement amount and contribution as ultimately directed by the Commission,⁴⁰ and modifications to its operating procedures, as specified herein, I&E agrees to forbear from instituting any further complaint relating to PGW's conduct as described in this Settlement Agreement or in the Formal Complaint referenced herein. None of the provisions of this Settlement Agreement are 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.

25. Nothing contained in this Settlement Agreement shall adversely affect the Commission's authority to receive and resolve any informal or formal complaints filed by any affected party with respect to the incident. The proposed settlement is made without any admission against, or prejudice to, any position 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 actions, terms or conditions directed by the Commission for any action or inaction identified in the formal complaint.

⁴⁰ See, ¶ 35 of the Settlement Agreement, below.

V. Joint Statement on Applicability of the Commission’s *Rosi* decision and its Policy Statement, *Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations*

26. In *Rosi v. Bell Atlantic Pennsylvania, Inc., et al.*, 94 PA PUC 103, Docket No. C-00992409 (Order entered March 16, 2000), the Commission adopted a test for evaluating an enforcement outcome in a slamming case to determine whether it was in the public interest. In *Pennsylvania Public Utility Commission v. NCIC Operator Services*, Docket No. M-00001440 (2000 WL 33300688, December 21, 2000), the Commission adopted the *Rosi* standards for review of all violations of the Public Utility Code and Commission regulations. The *Rosi* standards were reviewed by the Parties in this case. The Parties submit that this Settlement Agreement conforms to the requirements for settlements found in *Rosi* and that the terms of this Settlement Agreement are in the public interest.

27. The Parties further assert that 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 Policy Statement also indicates that: “[w]hen applied in settled cases, these factors and standards will not be applied in as strict a fashion as in a litigated proceeding.” 52 Pa. Code § 69.1201(b).

28. The Settlement Agreement meets the standards set forth in the Commission’s Policy Statement at 52 Pa. Code § 69.1201 because:

a) PGW, while disputing the allegations that its policies and procedures did not comply with the Commission’s regulations, the Code and federal gas safety regulations, nonetheless has taken actions to expand, revise, clarify or confirm its existing emergency procedures in conformance to the requests for operational modifications set forth in the Prayer for Relief of the I&E Complaint. I&E believes that PGW’s actions and agreements satisfactorily address all of the actions requested in its Prayer for Relief.

b) While disputing the allegations that its policies and procedures did not comply with the Commission’s regulations, the Code, and federal gas safety regulations, or that any of its actions, or those of its employees, were not in compliance with existing regulatory or legal requirements, and while there has been no finding that PGW’s actions either caused or contributed to the incident, PGW nonetheless has agreed to remit \$500,000, apportioned as aforesaid, or as ultimately directed by the Commission, as a financial payment, which amount constitutes the entire amount demanded by I&E.

Accordingly, the Parties submit that the Settlement Agreement is reasonable under the Policy Statement and in the public interest because it effectively and positively addresses all of the issues and requests set forth in I&E’s formal complaint and avoids the

time and expense of litigation which entails hearings, filings of briefs, exceptions, reply exceptions, and possible appeals.

29. The Parties submit that a settlement, among other things, avoids the necessity for the prosecuting agency to prove elements of each violation. This settlement represents a compromise by both PGW and I&E. Statements in Support of the Settlement Agreement, prepared by PGW and I&E, offer further explanation of how and why this settlement is in the public interest, pursuant to 52 Pa. Code § 69.1201(b), and are being filed along with this Settlement Agreement.

30. With the Commission's approval that the terms and conditions in this Settlement Agreement are in the public interest, and, unless the Commission directs a different allocation of the agreed, \$500,000 payment, PGW agrees to pay a \$400,000 civil settlement amount within thirty (30) days of the date of the Commission Order approving this Settlement Agreement, and contribute an additional \$100,000 to a worthy PFD safety program. Moreover, PGW has already implemented critical modifications to its operational procedures in response to the allegations raised by I&E's investigation. Moreover, PGW agrees not to seek recovery of any portion of the total settlement amount in future ratemaking proceedings.

VI. Additional Settlement Terms

31. This Settlement Agreement is a full and final resolution of I&E's investigation, related in any way to the matters described in this Settlement Agreement.

32. PGW and I&E have agreed to this amicable settlement in the interests of avoiding formal litigation and moving forward in the conduct of business in Pennsylvania.

33. PGW and I&E have entered into and seek the Commission's approval of the Settlement Agreement pursuant to 52 Pa. Code § 3.113. This Settlement Agreement is subject to all applicable administrative and common law treatments of settlements, settlement offers, and/or negotiations. The validity of this Settlement Agreement is expressly conditioned upon the Commission's approval under applicable public interest standards without modification, addition, or deletion of any term or condition herein, except as set forth in Paragraph 34, below. Accordingly, this Settlement Agreement is made without any admission against or prejudice to any position which any party might adopt during litigation of this case if this settlement is rejected by the Commission or withdrawn by any of the Parties as provided below. This Settlement Agreement is, therefore, a compromise and is conditioned upon the Commission's approval of all of the terms and conditions contained herein without modification or amendment.

34. While not stating or implying that I&E joins in the request and notwithstanding the above, it is agreed that, at the time that the Settlement Agreement is considered by the Commission, PGW may propose to the Commission that, in its approval of the Settlement Agreement, it assign a greater portion of the \$500,000 total settlement amount to programs that would provide new funding to assist Philadelphia citizens with natural gas or fire safety.

35. If the Commission, by tentative and final order, fails to approve this Settlement Agreement, or any of the terms or conditions set forth herein, without modification, addition, or deletion, except as set forth below, then either Party may elect to withdraw from this Settlement Agreement by filing a response to the tentative or final order within twenty (20) days of the date the tentative or final order is entered. None of the provisions of this Settlement Agreement shall be considered binding upon the Parties if such a response is filed. The sole exception to the Parties' right to withdraw from the Settlement Agreement, if modified by the Commission, is that should the Commission approve this Settlement Agreement with the only modification to its terms and conditions being the allocation of the total \$500,000 settlement amount between the amount to be paid as a civil settlement amount and the amount to be contributed to the specified safety program ("Modified Allocation"), that such Modified Allocation will be binding on the Parties. The Parties agree that this exception shall apply whether the Commission's Modified Allocation increases the amount of the total settlement to be contributed to the specified safety program, thereby decreasing the amount of the total settlement amount to be assessed as a civil settlement amount or decreases the amount of the total settlement to be contributed to the specified safety program, thereby increasing the amount of the total settlement amount to be assessed as a civil settlement amount, but in no case greater than a total payment of \$500,000.

36. This document, including Appendix A, represents the Settlement Agreement in its entirety. No changes to obligations set forth herein may be made unless

they are in writing and are expressly accepted by the Parties involved. This Settlement Agreement shall be construed and interpreted under Pennsylvania law.

37. None of the provisions of the Settlement Agreement or statements herein shall be considered an admission of any fact or culpability. I&E acknowledges that this Settlement Agreement is entered into with the express purpose of settling the asserted claims regarding the specific alleged violations of the Commission's regulations, the Code, and the Code of Federal Regulations.

38. The Parties may execute this Settlement Agreement in separate counterparts, each of which when so executed and delivered shall constitute an original, but all of which together shall constitute one and the same instrument.

WHEREFORE, the Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement and Philadelphia Gas Works respectfully request that the Commission adopt an order approving this Settlement Agreement, in its entirety, as being in the public interest.

Respectfully Submitted,

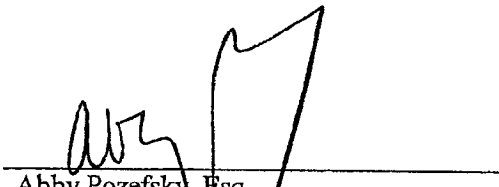
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