PENNSYLVANIA

**PUBLIC UTILITY COMMISSION**

# Harrisburg PA 17105-3265

Public Meeting held July 16, 2013

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

Wayne E. Gardner, Statement

James H. Cawley

Pamela A. Witmer

|  |  |
| --- | --- |
| Pennsylvania Public Utility Commission,  Bureau of Investigation and Enforcement  v.  Philadelphia Gas Works | C-2011-2278312 |
|  |  |

## OPINION AND ORDER

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Philadelphia Gas Works (PGW or Company), filed on February 4, 2013, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Angela T. Jones, issued January 28, 2013, in the above-captioned proceeding. The Commission’s Bureau of Investigation and Enforcement (I&E) filed Replies to Exceptions on February 11, 2013.

**I. History of the Proceeding**

On December 15, 2011, I&E filed a Complaint[[1]](#footnote-1) against PGW regarding a natural gas explosion at a two-story row home located at 6932 Torresdale Avenue, Philadelphia, Pennsylvania. The explosion leveled that building, damaged several surrounding properties and damaged six vehicles. In addition, a nineteen-year old employee of PGW was killed, and five other PGW employees were injured. Settlement at ¶ 11.

I&E alleged that a gas explosion occurred at or about 8:35 p.m. on January 18, 2011, when natural gas migrating from a ruptured twelve-inch cast iron underground main near the intersection of Torresdale Avenue and Disston Street in Philadelphia came in contact with an ignition source in the basement of the row home. I&E alleged 334 counts against PGW for various gas safety violations of Commission Regulations and Federal Regulations, as follows:

a. Count 1

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.

This is a violation of 49 CFR § 192.491(c).

b. Count 2

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.

This is a violation of 49 CFR § 192.605(b)(2) with respect to § 192.491(c).

c. Counts 3 through 5

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 though its procedure states that PGW must eliminate ignition sources during gas emergencies and by so doing failed to reasonably protect the public from danger.

This is a violation of 49 CFR § 192.751(a), 49 CFR

§ 192.605(a) and 52 Pa. Code § 59.33.

d. Counts 6 through 8

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 though its procedure states that PGW must eliminate ignition sources during gas emergencies and by so doing failed to reasonably protect the public from danger.

This is a violation of 49 CFR § 192.751(a), 49 CFR

§ 192.605(a) and 52 Pa. Code § 59.33.

e. Counts 9 through 14

PGW failed to comply with its emergency procedures that require actions be directed toward protecting people first and then property in that four PGW employees … , each acting under the scope of their employment, all entered after detecting gas readings greater than 40% LEL (“Lower Explosive Limit”) inside the building and after the [Philadelphia Fire Department (PFD)] had evacuated the building. Moreover, [Supervisor One] was aware of readings above 40% LEL in 6932 Torresdale Avenue. This was not communicated to [Foreman Two] and [Crew Member Five] and they were permitted to enter even though [Supervisor One] knew the PFD had evacuated the building.

This is a violation of 49 CFR § 192.615(a)(5), and 49 CFR § 192.605(a), with respect to Section 192.615(a)(5).

f. Counts 15 through 20

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 [Supervisor One] was aware of readings above 40% LEL in 6932 Torresdale Avenue, this was not communicated to [Foreman Two] and [Crew Member Five] and they were permitted to enter even though [Supervisor One] knew the PFD had evacuated the building. These two employees …, acting under their scope of employment, re-entered 6932 Torresdale Avenue after [Foreman Two] had obtained readings of 80% gas at the second floor exterior doorway. [Foreman Two] and [Crew Member Five] endangered themselves by entering and opening windows to ventilate.

Each separate action constitutes a violation of 49 CFR § 192.605(a) and 49 CFR § 192.615(a)(5).

g. Counts 21 and 22

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 two employees] regarding the 70% LEL reading. All of the above resulted in an increased danger to the public.

This is a violation of 49 CFR § 192.605(a) and 52 Pa. Code § 59.33.

h. Counts 23 and 24

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.

This is a violation of 49 CFR §§ 192.615(a)(3)(i) and (a)(6).

i. Counts 25 and 26

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.

This is a violation of 49 CFR §§ 192.605(a) and (b)(9).

j. Counts 27 through 32

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.

This is a violation of 49 CFR §§ 192.615(a)(5), (7) and (8), 49 CFR §§ 192.615(c)(3) and (4), and 52 Pa. Code § 59.33.

k. Counts 33 through 35

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.

This is a violation of 49 CFR §§ 192.615(a)(5) and (7) and 52 Pa. Code § 59.33.

l. Counts 36 and 37

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.

This is a violation of 49 CFR §§ 192.615(a)(6) and (a)(7).

m. Counts 38 through 41

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.

This is a violation of 49 CFR §§ 192.615(a)(1), (3)(i) and (5) and 52 Pa. Code § 59.33.

n. Count 42

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.

This is a violation of 49 CFR § 192.615(a)(2).

o. Counts 43 and 44

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.

This is a violation of 49 CFR § 192.615(a)(5) and 52 Pa. Code § 59.33.

p. Counts 45 and 46

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.

This is a violation of 49 CFR § 192.615(b)(2) and 52 Pa. Code § 59.33.

q. Counts 47 and 48

PGW failed to maintain valve inspection reports and/or records for Valve No. 788 for calendar years 2007 and 2008.

This is a multiple violation of 49 CFR § 192.603(b).

r. Counts 49 and 50

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.

This is a multiple violation of 49 CFR § 192.605(b)(1).

s. Counts 51 and 52

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.

This is a multiple violation of 49 CFR § 192.747(a).

t. Counts 53 through 224

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 up to and including the day of the explosion, January 18, 2011, and beyond; each day consisting of a separate violation herein.

This is a multiple violation of 49 CFR § 192.747(b).

u. Counts 225 through 227

PGW failed to have and/or follow a written qualification program in that the Company failed to ensure that [Crew Member Four] 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, failed to adequately protect the public.

This is a violation of 49 CFR §§ 192.805(b) and (c) and 52 Pa. Code § 59.33.

v. Counts 228 and 229

PGW failed to train [Crew Member Four], a Distribution employee, 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.

This is a violation of 49 CFR § 192.615(b)(2) and 52 Pa. Code § 59.33.

w. Counts 230 through 264

PGW failed to conduct post-accident drug testing for [thirty-five] 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.

This is a multiple violation of 49 CFR § 199.105(b).

x. Counts 265 through 299

PGW failed to conduct post-accident alcohol testing for [thirty-five] 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.

This is a multiple violation of 49 CFR § 199.225(a)(1).

y. Counts 300 through 334

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 [thirty-five] employees referred to above; the failure to prepare and maintain such records on each employee constituting a separate violation herein.

This is a multiple violation of 49 CFR § 199.225(a)(2).

Complaint at 9-16.

I&E requested, among other things, that the Commission find PGW in violation of each of the 334 counts enumerated above. I&E requested that the Commission assess a civil penalty of $500,000, which was the maximum civil penalty allowed at the time of the incident under Section 3301(c) of the Public Utility Code (Code), 66 Pa. C.S. § 3301(c). I&E also requested that the Commission prohibit PGW from recovering any portion of the $500,000 civil penalty through the Company’s rates regulated by the Commission. *Id*. at 16. I&E further requested that, *inter alia*, the Commission order PGW to perform remedial training, re-qualify PGW workers, and document and re-document PGW procedures; as well as order any further relief that the Commission deemed appropriate. *Id*. at 17-19.

PGW filed an Answer and New Matter to the Complaint on February 6, 2012.[[2]](#footnote-2) PGW filed a public version and a non-public version of its Answer. On February 9, 2012, PGW filed a corrected Answer that redacted some of the proprietary information that erroneously remained public and included some information in redacted form that was omitted from the public version. PGW stated that the explosion and the resultant loss of life was a tragic incident, however, the Company denied the material allegations in the Complaint and averred that it did not violate the Code, Commission Regulations, or Federal Regulations. *See*, Answer at 18-39. On February 27, 2012, I&E filed a Reply to New Matter.

PGW filed three motions for a continuance, which were granted by ALJ Jones, because the Parties were engaging in settlement negotiations. The Parties filed a Joint Petition for Settlement (Settlement) on November 14, 2012. An Appendix A was attached to the Settlement and contained detailed information regarding the operational steps PGW had taken after the incident on its own volition and/or at the request of the Commission’s Pipeline Safety Division. The Settlement was also accompanied by Statements in Support filed by PGW and I&E.

The record closed on November 14, 2012, the date the Settlement was filed.

In the Initial Decision, issued on January 28, 2013, ALJ Jones approved the Settlement and, *inter alia*, directed PGW to pay a civil settlement amount of $400,000 and to make a $100,000 contribution to the smoke alarm program operated by the Fire Prevention Division of the PFD.

As previously noted, PGW filed Exceptions on February 4, 2013. I&E filed Replies to Exceptions on February 11, 2013.

**II. Background**

At approximately 8:35 p.m. on January 18, 2011, a two-story row home located on a corner lot at 6932 Torresdale Avenue, Philadelphia, Pennsylvania (the Property) was destroyed by a natural gas explosion. The Property contained a chiropractor’s office on the first floor and two apartments on the second floor. The Property 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 into contact with an ignition source located in the Property’s basement. This incident resulted in the tragic death of a nineteen-year-old PGW employee and injuries of five PGW employees, all of whom were responding to the gas leak that resulted from the broken high pressure main and eventually led to the explosion. Several surrounding properties and six vehicles, including a PGW truck, were also damaged. Settlement at 4.

Prior to the explosion, at approximately 7:19 p.m., 911 received a call regarding a strong natural gas odor on the 6900 block of Torresdale Avenue. The PFD responded within two minutes of the call and began immediate evacuations of the Property and surrounding buildings. At approximately 7:23 p.m., the PFD called PGW, and PGW personnel arrived at the scene at approximately 7:38 p.m. At approximately 7:56 p.m., PGW personnel called for the dispatch of Pressure Force personnel to reduce pressure and cut off main line valves. *Id*. at 5. The explosion occurred at approximately 8:35 p.m. *Id*. at 6.

At approximately 9:25 p.m., PGW notified the Commission’s Pipeline Safety Division Chief and a Commission Pipeline Safety Division Inspector of the explosion. The Inspector arrived at the scene at approximately 9:40 p.m. At approximately 9:48 p.m., PGW Pressure Force completed the closure of the main valves that cut off the flow of natural gas to the broken high pressure main. *Id*.

Following the incident, the PFD issued a Fire Marshal’s Office Formal Report, dated April 13, 2011, which concluded that the cause of the fire at the Property was an explosion of natural gas vapors, and the ignition source was the glow plug from the fixed heater in the basement of the Property. *Id*. at 7.

I&E Pipeline Safety Division inspectors conducted an investigation that included, but was not limited to, conducting several field investigations, conducting and/or attending interviews of PGW personnel, attending testing and analysis of failed pipe, submission and review of data requests to the Company, requesting and analyzing physical evidence and Company data, meeting with PFD personnel to review accounts and data logs maintained by them, photographing the scene, participating in meetings with PGW distribution and legal personnel, review of the PFD Fire Marshal Report, 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. Based on the results of its investigation, I&E prepared the Formal Complaint against PGW in this proceeding. *Id*.

Following the incident, PGW also conducted its own investigation that included interviews of its employees and a review of its emergency rules and procedures, resulting in improvement and clarification to many of its rules and procedures. *Id*. PGW also re-trained its emergency personnel and responders on the rules and procedures. *Id*. at 7-8.

**III. Terms of the Settlement**

PGW and I&E state that the purpose of the Settlement is to resolve I&E’s Formal Complaint at this Docket and to settle this matter completely without further litigation. PGW and I&E have agreed to the following terms solely for the purposes of this Settlement:

1. 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 the Settlement Agreement. PGW shall not make any claim whatsoever for recovery of any portion of this $400,000 amount in any future proceeding before the Commission; and
2. 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.

Settlement at 20-21.

In addition to this monetary allocation, PGW had implemented, or agreed to implement in the future, certain modifications to its operating procedures (Operational Modifications) to address the relief I&E sought in its Complaint. The specific details regarding the Operational Modifications are set forth in Appendix A of the Settlement. In summary, the Operational Modifications that have been made, or, with respect to items n. and s., will be made by PGW, include the following:

1. 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);
2. 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);
3. 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);
4. 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);
5. 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);
6. 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);
7. 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);
8. 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);
9. 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);
10. 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 as to these procedures (*see* Appendix A-10);
11. 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);
12. 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);
13. 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 requirements that responders not enter a building with 40% LEL or higher (*see* Appendix A-13);
14. 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 the Settlement Agreement that it has consolidated emergency procedures into one manual that covers responsibilities for all departments involved (*see* Appendix A-19).

Settlement at 21-25. Based on the above-quoted terms of the Settlement, I&E agrees to forebear from instituting any further complaint relating to PGW’s conduct as described in the Settlement or in the Complaint in this proceeding. The Settlement provides that none of the provisions in the Settlement 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. The Parties also agree that the Settlement does not affect the Commission’s authority to receive and resolve any formal or informal complaints filed by any affected party with respect to the incident, except that no further civil penalties may be imposed by the Commission for any actions identified in the Complaint. *Id*. at 25.

The Parties state that the Settlement is in the public interest and is consistent with the Commission’s Policy Statement at 52 Pa. Code § 69.1201 (Policy Statement), which sets forth ten factors that we may consider in evaluating whether a fine for violating a Commission Order, Regulation, or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest. *Id*. at 26. Specifically, the Parties aver that PGW has taken actions to expand, revise, clarify, or confirm its emergency procedures consistent with the requests for operational modifications set forth in the Prayer for Relief in I&E’s Complaint. The Parties submit that the Agreement effectively addresses all of the issues and requests in I&E’s Complaint and avoids the time and expense of litigation. *Id*. at 27‑28.

The Parties state that the Settlement is conditioned on the Commission’s approval, without modification, of the terms and conditions of the Settlement, except as set forth in Paragraph 34 of the Settlement. Paragraph 34 provides the following:

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.

*Id*. at 29. The Parties additionally state that, if the Commission modifies the Settlement, except as set forth in Paragraph 34, any party may elect to withdraw from the Settlement. *Id*. at 12.

The Parties explain the sole exception to their right to withdraw from the Settlement, if modified by the Commission, as follows:

[S]hould 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.

*Id*. at 30.

**IV. Discussion**

The ALJ reached six Conclusions of Law. I.D. at 39-40. The Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

Before addressing the Exceptions, we note that any issue or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. [*Consolidated Rail Corp. v. Pa. PUC,* 625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also see, generally,* [*University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

**A. Initial Decision**

In the Initial Decision, ALJ Jones determined that the Settlement was in the public interest and the $500,000 total settlement amount was reasonable based on a thorough analysis of the Settlement pursuant to the factors set forth in the Commission’s Policy Statement at 52 Pa. Code § 69.1201. I.D. at 27-36. The ALJ determined that the seriousness of the incident and the resulting consequences, including the loss of life, injury to five PGW employees, and extensive property damage, warranted a higher civil penalty. *Id*. at 30-31. The ALJ also found that PGW’s remedial actions should lessen the civil penalty and stated that, through the non-monetary conditions of the Settlement, PGW addressed all of the issues raised in the Complaint. The ALJ stated that the implementation of the procedural modifications and clarifications would deter unsafe practices and improve emergency response procedures. *Id*. at 26, 32.

Upon review of all of the factors in the Policy Statement, the ALJ agreed with the civil settlement and contribution amount proposed in the Settlement. The ALJ stated that the $500,000 total payment in the Settlement was the maximum civil penalty that could have been imposed under Section 3301(c), 66 Pa. C.S. § 3301(c), at the time of the gas leak and explosion.[[3]](#footnote-3) The ALJ concluded that to obtain this amount and to avoid the time, costs, and resources of litigation was beneficial. *Id*. at 25, 33-34. The ALJ also found that the contribution by PGW to the PFD’s existing smoke detector program was in the public interest, because the contribution would provide a safety benefit to a significant nexus of the public affected by the incident, including the employees and customers of PGW, the PFD and other emergency responders, and the citizens of Philadelphia. *Id*. at 26, 34, 35.

Furthermore, the ALJ determined that the alternative allocation PGW suggested that the ALJ and the Commission approve was not appropriate. The ALJ noted that, in its Statement in Support of the Settlement, PGW proposed an alternative allocation for approval. The alternative allocation consisted of a total payment of $500,000, but distributed monetary contributions to different natural gas and safety programs and allocated a smaller civil settlement amount to the General Fund. *Id*. at 36. The programs and the corresponding allocations proposed by PGW included the following:

1. $100,000 contribution to the PFD’s smoke detector program (as proposed in the Settlement Agreement);
2. $107,000 for furnace repair or replacement of damaged or malfunctioning heaters for low income citizens of Philadelphia;
3. $36,000 for special safety information bill stuffers to residential customers describing safe natural gas safety practices in the home;
4. $107,000 for programs 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.

*Id.* at 36-37 (citing PGW Statement in Support at 4). With the exception of the allocation to the smoke detector program, as set forth in the Settlement, the ALJ found the remaining three allocations to be problematic. *Id*. at 37.

The ALJ stated that the allocations presented a benefit to only a subset of citizens affected by the incident and that a wider section of the public should receive benefits stemming from the incident since all Philadelphia citizens, PGW, and its employees were affected by the incident. The ALJ did not find the allocations reasonable due to the preferences ingrained in the proposals. *Id*. at 37-38. With regard to the allocation for safety information bill stuffers, the ALJ found that it may have been problematic in a future Commission proceeding to differentiate this allocation from the Company’s business expense in providing adequate natural gas service to its customers. The ALJ also addressed PGW’s suggestion that the Commission could provide any different allocation than that presented in the Settlement to programs that benefitted PGW customers and Philadelphia citizens. The ALJ did not recommend that the Commission adopt this approach, because the ALJ found that there was no record to support a different allocation, and such a procedure would further delay the implementation of the benefits in the Settlement. *Id*. at 38.

**B. Exceptions and Replies**

In its Exceptions, PGW avers that the ALJ erred in rejecting PGW’s alternative allocationfor several reasons. Exc. at 2. First, PGW states that the alternative allocation it suggests is reasonable and is in the public interest. PGW believes that allocating a majority or all of the $500,000 payment to fund worthy programs to benefit the City of Philadelphia (City) is justified because of PGW’s unique status as a municipally-owned natural gas distribution utility and the unique facts of this incident. PGW explains that it has no shareholders in the typical sense, and its “shareholders” are the citizens of the City. PGW states that, while it has agreed that it will not request recovery of any portion of the $500,000 payment in a future rate case, since the Company is a cash-flow regulated company, the payment will affect its cash flow and, at some point, will affect its “shareholders.” *Id*. at 4. PGW notes that it is obligated to make an annual $18 million payment to the City, consistent with Section 2212(f) of the Code,

66 Pa. C.S. § 2212(f). PGW specifically avers the following: “Even if it were legally possible to reduce that payment to account for the financial payment agreed to here (which it is not), the payment would nonetheless affect the citizens of Philadelphia by reducing the amount of support provided to the City by the Gas Works’ operations.” *Id*. n.7.

PGW avers that the Commission has recognized PGW’s status as a municipally-owned utility and has refrained from imposing civil penalties on the Company in certain cases. *Id*. at 4-5 (citing *Malisa Alexander v. Philadelphia Gas Works*, Docket No. C-20077389 (Order entered November 6, 2008); *Thea Jones v. Philadelphia Gas Works*, Docket No. F-2009-2138367 (Order entered December 16, 2010); and *Nia Peterson v. Philadelphia Gas Works*, Docket No. F-2010-2215379 (Order entered January 27, 2012)). PGW asserts that the imposition of a substantial civil penalty in this case would be inconsistent with the Commission’s general approach toward PGW. PGW believes that it would be appropriate and more consistent with the Commission’s prior actions to reallocate the payment in a manner that provides benefits to PGW’s customers. Exc. at 5. PGW states that, if the Commission agrees with the general principal of allocating funds to beneficial programs, but is not comfortable with the specific programs proposed by the Company, then the Commission can establish a process, via a workshop or process through its Director of Regulatory Operations, to identify different workshops and supervise the funding of those programs by PGW from the $500,000 payment. PGW also states that funding programs, rather than imposing a civil penalty, will create positive benefits from this tragic incident by enhancing public safety. *Id*. at 6.

Second, PGW argues that, contrary to the ALJ’s determination, the specific programs that PGW proposes to fund are worthy of support from the payment in this proceeding. PGW states that any program funded by a utility will benefit some portion of the public more than another, but such distinctions are acceptable as long as there is a reasonable justification for the distinction. *Id*. at 7. PGW also states that, like the PFD smoke detector program, each of the selected programs serves the public, enhances public safety, and has the potential to save lives. With regard to the safety information bill stuffers, PGW avers that the ALJ’s concern that PGW may not be able to distinguish those bill stuffers from its regular bill stuffers is speculative. *Id*. at 8. PGW notes that it has agreed that costs for the bill stuffers would not be recovered in rates and any effort by the Company to do so would be objectionable in a future rate proceeding. *Id*. at 8-9.

Third, PGW addressed the ALJ’s recommendation that the Commission not act on its own discretion in providing for a different allocation than that set forth in the Settlement because such action would delay implementation of the Settlement. PGW avers that the ALJ’s concern is not supported by the record. PGW states that, as noted in the Settlement, it has already implemented most of the changes to its operating procedures as sought by I&E. PGW acknowledges that, while there would be a delay in making the payment, that delay would only be as long as it required the Commission to determine the best allocation of the $500,000. *Id*. at 9.

In its Replies to Exceptions, I&E challenges PGW’s statements regarding the Commission’s general approach toward PGW and not imposing civil penalties on the Company. I&E asserts that the Commission has no established position of avoiding the imposition of a civil penalty on PGW. I&E states that the Commission has, in fact, imposed civil penalties against PGW. R. Exc. at 4-5 (citing *Doe v. Philadelphia Gas Works*, Docket No. F-01559449 (Order entered December 13, 2005); and *Perez v. Philadelphia Gas Works*, Docket No. F-01761817 (Order entered September 19, 2006)). I&E opines that, if PGW’s claim is accepted, then PGW will be exonerated in all future actions regardless of the nature or severity of the alleged violations. I&E avers that the Commission has not sent PGW a message that no matter how tragic or egregious the violation, PGW is exempt from the imposition of a civil penalty. I&E indicates that the Commission made clear, in *Mullins v. Philadelphia Gas Works*, Docket No. C‑2011‑2266040 (Order entered October 2, 2012), that “PGW’s status as a municipally-owned utility does not negate the Commission’s authority to impose a penalty on PGW when appropriate.” R. Exc. at 5 (quoting *Mullins* at 4). I&E states that the *Alexander* and *Jones* decisions, cited by PGW as representative of the Commission’s desire to avoid penalties that would result in an additional burden on the ratepayers, are not dispositive in this case because PGW has already agreed that it would not seek recovery of the civil penalty amount from ratepayers. *Id*.

Regarding PGW’s statements about its annual $18 million payment to the City, I&E asserts that there is no factual basis for the Company’s contention that this source of funds could not be used to absorb the civil penalty agreed to in the Settlement. I&E states that, in a June 22, 2011 PGW news release, the Company noted that in past years the City had granted all or part of the $18 million payment back to PGW. *Id*. at 6.

Lastly, I&E excepts to PGW’s suggestion that the Commission establish a process to identify and fund worthy projects from the $500,000 payment amount. I&E avers that PGW’s suggestion is inappropriately raised for the first time in the Company’s Exceptions. I&E also asserts that establishing such a workshop would delay the implementation of the monetary allocation. *Id*. at 6-7.

**C. Disposition**

Initially, we note that, pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. The Commission must review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004). The Commission has promulgated a Policy Statement at 52 Pa. Code § 69.1201 that sets forth ten factors that we may consider in evaluating whether a fine for violating a Commission Order, Regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest. In this case, we find that the ALJ properly determined that the Settlement was in the public interest and that the application of the Policy Statement supported approval of all of the terms of the Settlement as filed. Nevertheless, as discussed in more detail below, we conclude that one modification to the Settlement is necessary. We will therefore approve the Settlement, subject to the condition that no Party elects to withdraw from it.

Given the facts in this case and the tragic loss of life caused by the explosion, we determine that the allocation the Parties agreed to in the Settlement, which included a civil settlement of $400,000 and a monetary contribution of $100,000 to the existing smoke alarm program operated by the Fire Prevention Division of the PFD, is appropriate under the circumstances as it equals the maximum amount that was permitted under the Code at the time of the incident. The civil settlement amount of $400,000 is also consistent with our recent decisions. *See, e.g*., *Pa. PUC, Bureau of Investigation and Enforcement v. UGI Utilities, Inc*., Docket No. C-2012-2308997 (Order entered February 19, 2013) (finding that, given the catastrophic losses caused by the explosion, UGI Utilities, Inc. must pay the maximum $500,000 civil penalty this Commission is authorized to levy under the Code). The Legislature has entrusted us with the important task of ensuring that our public utilities operate safely, and we intend to use the authority given to us by the Code and our Regulations to deter unsafe practices.

We do not question the value and worthiness of the programs to which PGW proposes a reallocation of the monetary amount agreed to in the Settlement. However, we note that the Parties expressly agreed to only one monetary allocation in the Settlement: that PGW would pay a $400,000 civil settlement amount and make a $100,000 contribution to the smoke alarm program operated by the Fire Prevention Division of the PFD. *Id*. at 20-21. As parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest, we are not inclined, under the circumstances in this case, to disturb the proposed Settlement terms regarding the specified monetary allocation.

The case before us is distinguishable from the cases that PGW relies on in support of its position that the imposition of a civil penalty in this case would be inconsistent with our general approach toward PGW and our recent decisions to refrain from imposing civil penalties on the Company. *Alexander*, *Jones*, and *Peterson* were all litigated proceedings, whereas the instant proceeding was resolved through a Settlement. As part of the Settlement, PGW expressly agreed to and signed-off on the $400,000 civil settlement amount to which it is objecting.

We also find these cases to be distinguishable from the case before us, because PGW’s conduct and the resulting consequences of PGW’s conduct were of a much more serious nature in this case than in the *Alexander*, *Jones*, and *Peterson* cases. The natural gas explosion in this case resulted in the tragic death of a nineteen-year-old PGW employee and the injury of five PGW employees. Several surrounding properties, as well as six vehicles, were also damaged. As I&E pointed out, we have stated that “PGW’s status as a municipally-owned utility does not negate the Commission’s authority to impose a penalty on PGW when appropriate.” *Mullins v. Philadelphia Gas Works*, *supra*, at 4 (citing 66 Pa. C.S. § 3301(a). We believe that the circumstances in this case justify our approval of the $400,000 civil settlement amount agreed to by the Parties.

We also conclude that the non-monetary provisions of the Settlement, pursuant to which PGW has implemented, or will implement in the future, certain modifications to its operating procedures, are in the public interest. We note that PGW has revised its written procedures and re-qualified its emergency responder crews and field supervisors regarding the proper way to respond in these situations. We urge PGW to also continually train its employees regarding the need for and use of good communication skills and the prompt transfer of vital information about potentially dangerous gas levels between and among its responding crew members and other persons in harm’s way.

While we agree with ALJ Jones’s evaluation of the Settlement and find it to be in the public interest, we conclude that one modification to the Settlement is necessary. Just as with this Commission’s recent determination in *Pa. PUC, Bureau of Investigation and Enforcement v. UGI Utilities, Inc*., Docket No. C-2012-2308997 (Order entered February 19, 2013), regarding the catastrophic explosion in Allentown in February, 2011, we believe that PGW should explore enhanced leak detection measures and file a pilot program to utilize one or more of those enhanced leak detection measures. If at all possible, PGW should utilize a different vendor than UGI to give the Commission and all interested stakeholders the opportunity to evaluate more than just one of the various technologies available. This filing shall be made with the Commission’s Secretary, with a copy served on the Commission’s Pipeline Safety Division, within forty-five days of the date that this Opinion and Order becomes final. Notice of the pilot program filing shall be published in the *Pennsylvania Bulletin*, so that interested parties may provide comments to the pilot program.Comments shall be filed within twenty days from the date of publication in the *Pennsylvania Bulletin*. The Commission shall consider any comments and approve, modify, or reject the pilot program.

We recognize that the Parties have the right, under the Settlement, to withdraw from the Settlement if the Commission does not approve it as filed.  If any Party wishes to withdraw from the Settlement, it shall file with the Secretary of the Commission, and serve on all Parties to this proceeding, an election to withdraw within five business days from the date that this Opinion and Order is entered.  If such an election to withdraw is filed, the Initial Decision shall be reversed and the Settlement shall be disapproved, without further action by this Commission, and this matter shall be remanded to the Office of Administrative Law Judge for such further proceedings as may be necessary. If no Party elects to withdraw from the Settlement within five business days from the entry date of this Opinion and Order, then this Opinion and Order shall become final without further action by this Commission,[[4]](#footnote-4) and the Settlement, with the modification discussed herein, will be approved without further action by this Commission.

Moreover, we emphasize that, while we are conditionally approving the agreed-upon civil settlement amount and the contribution to the PFD’s Fire Prevention Division, we remain far from convinced that these amounts adequately penalize PGW for its numerous actions and inactions that culminated in the devastating losses resulting from the January 18, 2011 gas explosion. The Commission is, however, limited by the statutory civil penalty threshold in Section 3301(c) of the Code that was in place at the time of the incident and by the fact that PGW, as a municipally-owned utility, operates on a cash-flow basis.

**V. Conclusion**

Based on our reviewand analysis of the record in this proceeding, including the Initial Decision, the Settlement, and the Exceptions and Replies thereto, we shall deny the Exceptions and modify the ALJ’s Initial Decision, consistent with this Opinion and Order. Additionally, we shall conditionally approve the Settlement, as modified by this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions of Philadelphia Gas Works, filed on February 4, 2013, are denied.

2. That the Initial Decision of Administrative Law Judge Angela T. Jones, issued January 28, 2013, is modified, consistent with this Opinion and Order, subject to the condition set forth in Ordering Paragraph No. 4.

3.     That the Joint Settlement Petition filed by the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement and Philadelphia Gas Works on November 14, 2012, is modified by this Opinion and Order, subject to the condition set forth in Ordering Paragraph No. 4.

                 4.     That, if either of the Parties wishes to withdraw from the Joint Petition for Settlement, that Party shall file with the Secretary of the Commission and serve on all Parties to this proceeding an election to withdraw within five (5) business days from the date that this Opinion and Order is entered.  If such an election to withdraw is filed, the Initial Decision shall be reversed and the Joint Petition for Settlement shall be disapproved, without further action by this Commission, and this matter shall be remanded to the Office of Administrative Law Judge for such further proceedings as may be necessary.

5.      That if no elections to withdraw are filed pursuant to Ordering Paragraph No. 4, this Opinion and Order shall become final without further Commission action, and it is further ordered:

a. That Philadelphia Gas Works shall file a pilot program designed to test enhanced leak detection measures. This filing shall be made with the Commission’s Secretary and served on the Commission’s Pipeline Safety Division within forty-five days of the date that this Opinion and Order becomes final.

b. That notice of the pilot program filing shall be published in the *Pennsylvania Bulletin*, so that interested parties may provide comments to the pilot program. Such comments shall be filed within twenty days from the date of publication in the *Pennsylvania Bulletin*.

c. That the Commission shall consider any comments and approve, modify, or reject the pilot program.

  d.     That, in accordance with Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, within thirty (30) days of entry of the Commission’s final Opinion and Order, Philadelphia Gas Works shall pay a civil settlement in the amount of $400,000.  Said check or money order shall be made payable to “Commonwealth of Pennsylvania” and shall be mailed to:

Pennsylvania Public Utility Commission

P.O. Box 3265

Harrisburg, PA  17105-3265

e. That within one (1) year of entry of the Commission’s final Opinion and Order, Philadelphia Gas Works shall make a $100,000 contribution to the existing smoke alarm program operated by the Fire Prevention Division of the Philadelphia Fire Department in partnership with The Citizens for Fire Prevention Committee, a non-profit corporation formed by the Philadelphia Fire Department for education and fundraising.

f. That Philadelphia Gas Works shall notify the Commission that it has made the contribution required by Ordering Paragraph 5(e). Such notice shall be filed with the Secretary’s Bureau, at this docket number, within thirty days after making the contribution.

g.    That a copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Office of Administrative Services.

h.   That the Secretary’s Bureau shall mark this proceeding closed upon receipt of payment of the $400,000 civil settlement amount and notification of the $100,000 contribution, consistent with Ordering Paragraph 5(d)-(f) of this Opinion and Order.



**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: July 16, 2013

ORDER ENTERED: July 26, 2013

1. I&E filed a Proprietary and Non-Proprietary Complaint. [↑](#footnote-ref-1)
2. In response to PGW’s request for an extension of time to file its Answer, the Commission’s Secretary permitted PGW to file an Answer on or before February 6, 2012. [↑](#footnote-ref-2)
3. When the January 18, 2011 explosion occurred, former Section 3301(c) provided that any public utility that violated any gas pipeline safety provisions of the Code “shall be subject to a civil penalty of not to exceed $10,000 for each violation for each day that the violation persists, except that the maximum civil penalty shall not exceed $500,000 for any related series of violations, or subject to a penalty provided under federal pipeline safety laws, whichever is greater.” Act 11 of 2012 amended Section 3301(c), which now provides that any public utility that violates any gas pipeline safety provisions of the Code “shall be subject to a civil penalty of not to exceed $200,000 for each violation for each day that the violation persists, except that the maximum civil penalty shall not exceed $2,000,000 for any related series of violations, or subject to a penalty provided under federal pipeline safety laws, whichever is greater.” [↑](#footnote-ref-3)
4. In the event that no Settling Party withdraws from the Settlement, this Opinion and Order shall become final effective on the date that is six business days following the entry of this Opinion and Order. [↑](#footnote-ref-4)