



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE
Docket Nos.
C-2014-
2400485; C-
2017-2582760

October 13, 2017

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission, Bureau of Investigation and
Enforcement v. Pine Roe Natural Gas Co., Inc.
Docket Nos. C-2014-2400485 and C-2017-2582760
(Joint Petition for Approval of Settlement)

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Joint Petition for Approval of Settlement, Appendix A - the Bureau of Investigation and Enforcement's Statement in Support, and Appendix B - the Statement in Support of Pine Roe Natural Gas Co., Inc., in the above-captioned proceeding.

Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Stephanie Wimer / *mk*

Stephanie M. Wimer
Senior Prosecutor
PA Attorney ID No. 207522

Enclosure

cc: Honorable Joel H. Cheskis
As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement, Complainant	:	
	:	
v.	:	Docket Nos. C-2014-2400485 and C-2017-2582760
	:	
Pine Roe Natural Gas Company, Inc., Respondent	:	

JOINT PETITION FOR APPROVAL OF SETTLEMENT

TO PRESIDING ADMINISTRATIVE LAW JUDGE JOEL H. CHESKIS:

Pursuant to 52 Pa. Code §§ 5.41 and 5.232, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) and Pine Roe Natural Gas Company, Inc. (“Pine Roe” or “Company” or “Respondent”) hereby submit this Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) to resolve all issues related to the above-docketed consolidated Complaint proceedings alleging violations of the Code of Federal Regulations, the Public Utility Code and the Pennsylvania Code. As part of this Settlement Agreement, I&E and Pine Roe (hereinafter referred to collectively as the “Parties”) respectfully request that Your Honor issue an initial decision or recommended decision approving the Settlement, without modification. Statements in Support of the Settlement expressing the individual views of I&E and Pine Roe are attached hereto as Appendix A and Appendix B, respectively.

I. INTRODUCTION

1. The Parties to this Settlement Agreement are the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement, by its prosecuting attorneys, P.O. Box

3265, Harrisburg, PA 17105-3265, and Pine Roe Natural Gas Company, Inc., with a main mailing address of P.O. Box 146, Clarion, PA 16214.

2. The Pennsylvania Public Utility Commission is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within this Commonwealth pursuant to the Public Utility Code (“Code”), 66 Pa.C.S. §§ 101, *et seq.*

3. I&E is the entity established to prosecute complaints against public utilities and other entities subject to the Commission’s jurisdiction pursuant to 66 Pa.C.S. § 308.2(a)(11); *See also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E).

4. Pine Roe is a “public utility” as that term is defined at 66 Pa.C.S. § 102¹ as it is engaged in providing public utility service as a natural gas distribution company (“NGDC”) to the public for compensation. The Commission issued Pine Roe a Certificate of Public Convenience on or about August 4, 1980 at Docket No. A-00102046.

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

¹ At Section 102 of the Public Utility Code, “Public utility” is defined, in pertinent part, as:

Any person or corporation now or hereafter owning or operating in this Commonwealth equipment or facilities for:

- (i) Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity, or steam for the production of light, heat, or power to or for the public for compensation.
- ...
- (v) Transporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products, materials for refrigeration, or oxygen or nitrogen, or other fluid substance, by pipeline or conduit, for the public for compensation.

66 Pa.C.S. § 102(1)(i), (v).

6. Section 701 of the Code, 66 Pa.C.S. § 701, authorizes the Commission, *inter alia*, to hear and determine complaints alleging a violation of any law or regulation that the Commission has jurisdiction to administer.

7. Pursuant to the Commission's regulations at 52 Pa. Code § 59.33(b), the Commission's Pipeline Safety Division, which is a division within I&E, also has the authority to enforce the federal gas pipeline safety regulations set forth in 49 U.S.C.A. §§ 60101, *et seq.*, and implemented in 49 C.F.R. Parts 191-193, 195 and 199, 49 C.F.R. §§ 191-193, 195 and 199.

8. Section 3301 of the Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or any other person or corporation subject to the Commission's jurisdiction for violation(s) of the Code and/or Commission regulations. Section 3301(c) of the Code, 66 Pa.C.S. § 3301(c), allows for the imposition of a separate civil penalty for each pipeline safety violation and each day's continuance of such violation(s), not to exceed \$200,000 for each violation for each day that the violation persists, or \$2,000,000 for any related series of violations.

9. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter and the actions of Respondent in its capacity as a NGDC serving customers in Pennsylvania.

II. BACKGROUND

A. 2014 Complaint Proceeding

10. I&E commenced the action docketed at C-2014-2400485 on January 10, 2014 by filing a Complaint against Pine Roe alleging violations of various gas safety regulations in Parts 191 and 192 of Title 49 of the Code of Federal Regulations and provisions of the Commission's regulations, which were discovered during inspections conducted by the Pipeline Safety Division

on November 28, 2012 and September 9, 2013. Following the November 28, 2012 inspection, I&E alleged that Pipeline Safety mailed a non-compliance letter dated January 9, 2013 to Pine Roe, NC-04-13, listing violations that were discovered during the inspection and providing Pine Roe with additional time to take corrective action. I&E alleged that Pine Roe failed to respond to NC-04-13 and the inspection that Pipeline Safety conducted on September 9, 2013 revealed that Pine Roe had not corrected the violations cited in NC-04-13.

11. The Complaint also alleged violations of the Code pertaining to the filing of annual assessment reports with the Commission.

12. In the Complaint, I&E sought relief, including the imposition of a civil penalty of \$40,500 that was not permitted to be recovered through rates regulated by the Commission.

13. On March 4, 2014, after receiving an extension of time, Pine Roe filed an Answer *pro se* to I&E's Complaint asserting that it is in compliance with the alleged violations set forth in the Complaint. Pine Roe requested a decrease in the civil penalty amount.

14. On March 4, 2016, I&E filed an Amended Complaint² against Pine Roe alleging that Respondent violated additional gas safety regulations in connection with a June 2015 gas leak; failed to file assessment reports and pay the Commission's assessment for the 2014-2015 fiscal year; contracted to purchase natural gas from an affiliate without an approved affiliated interest agreement; failed to adhere to its tariff regarding the purchase of natural gas and the filing of quarterly reports related to the Gas Cost Rate; and failed to file reports related to unaccounted-for-gas.

15. The Amended Complaint incorporates the allegations of the original Complaint.

² I&E initially filed the Amended Complaint on February 3, 2016 and filed it again on March 4, 2016 because the Amended Complaint had not been served by certified mail pursuant to 66 Pa.C.S. § 702 and 52 Pa. Code § 1.53(c) (related to service by the Commission).

16. With respect to the June 2015 gas leak, I&E alleges that Pine Roe did not promptly respond or continuously monitor the leak, which was deemed to be hazardous due to its location next to a residence. I&E also alleges that Pine Roe used a battery-powered pipe cutter to cut a live gas line and permitted the public to be in the excavated area while gas was leaking from the pipe. I&E alleges that on June 25, 2015, Pipeline Safety mailed Pine Roe a non-compliance letter, NC-17-15, listing the violations discovered during the June 2015 gas leak incident. I&E avers that after requesting several extensions of time, Pine Roe submitted partial responses to NC-17-15 on October 31, 2015.

17. The Amended Complaint also alleges violations that were discovered during an audit from the Commission's Bureau of Audits concerning Pine Roe's Statements of Gas Cost Rate Over/(Under) Collections for the twelve months ending August 31, 2014, August 31, 2013 and August 31, 2012.

18. Due to the increase in alleged violations in the Amended Complaint, I&E increased the proposed civil penalty to \$318,055 and sought payment of Pine Roe's outstanding assessment for the July 1, 2014 to June 30, 2015 fiscal year in the amount of \$365, among other requested relief.

19. Pine Roe did not file any response to I&E's Amended Complaint.

20. On May 3, 2016, I&E filed a Motion for Default Judgment requesting that the Commission sustain I&E's Amended Complaint.

21. Pine Roe did not file any response to I&E's Motion for Default Judgment.

22. By Order entered on March 21, 2017, the Commission denied I&E's Motion for Default Judgment and determined that the matter would be best treated in a formal manner due to the seriousness of the alleged violations and the amount of the requested civil penalty. The

Commission referred the proceeding to the Office of Administrative Law Judge (“OALJ”) for mediation. The Commission’s March 21, 2017 Order provided for a sixty (60) day mediation period with the option to request an additional thirty (30) days to mediate, which I&E exercised.

23. A mediation session was held on May 10, 2017.

24. At the conclusion of the ninety (90) day mediation period as set by the Commission in the March 21, 2017 Order, the parties had not reached an agreement.

25. By Report of Mediator dated July 5, 2017, the case was assigned to OALJ for appropriate proceedings.

B. 2017 Complaint Proceeding

26. On January 4, 2017, I&E filed a Complaint against Pine Roe docketed at C-2017-2582760 alleging violations of gas safety regulations in Part 192 of the Code of Federal Regulations and Section 59.33 of the Commission’s regulations, 52 Pa. Code § 59.33, which I&E alleges occurred in connection with the repair of a 2016 line hit by a third party to one of Pine Roe’s facilities.

27. In the Complaint, I&E seeks relief, including the imposition of a civil penalty of \$90,000.

28. Pine Roe did not file a response to I&E’s Complaint.

29. On February 10, 2017, I&E filed a Motion for Default Judgment.

30. Pine Roe did not file any response to I&E’s Motion for Default Judgment.

31. On March 24, 2017, I&E filed a Petition to Withdraw its Motion for Default Judgment, given the Commission’s March 21, 2017 Order denying a similar Motion for Default Judgment in the enforcement action docketed at C-2014-2400485.

32. By Secretarial Letter dated May 22, 2017, I&E's Petition to Withdraw was granted.

C. Consolidation of the 2014 and 2017 Complaint Proceedings

33. By Hearing Notice dated July 7, 2017, an Initial Hearing was scheduled for September 14, 2017 at 10:00 AM in Harrisburg before Administrative Law Judge ("ALJ") Joel H. Cheskis in the Complaint proceedings docketed at C-2014-2400485 and C-2017-2582760. A Prehearing Order dated July 10, 2017 was served to the Parties.

34. On July 11, 2017, I&E filed an unopposed Motion to Consolidate the Complaint proceedings docketed at C-2014-2400485 and C-2017-2582760 as they contain common questions of law and fact.

35. Also on July 11, 2017, I&E filed an unopposed Motion to Convert the Initial Hearing into a Prehearing Conference.

36. By Hearing Notice dated July 14, 2017, the Initial Hearing scheduled for September 14, 2017 was cancelled and an Initial Prehearing Conference was scheduled for August 23, 2017 at 10:00 AM in Harrisburg before ALJ Cheskis.

37. By Order dated July 19, 2017, I&E's Motion to Consolidate and Motion to Convert the Initial Hearing into a Prehearing Conference were granted. The Order also established August 16, 2017 as the date to submit prehearing memoranda.

38. On August 16, 2017, I&E filed its Prehearing Memorandum. No prehearing memorandum was received by Pine Roe.

39. The Initial Prehearing Conference was held as scheduled on August 23, 2017 where the following dates were established: (1) Pine Roe was directed to have an attorney enter an appearance on or before September 22, 2017; (2) Pine Roe was directed to submit answers to

the 2014 Amended Complaint and 2017 Complaint by October 20, 2017; and (3) a further prehearing conference was scheduled for November 17, 2017, with Pine Roe being directed to submit a prehearing memorandum by November 9, 2017.

40. The above-referenced dates were memorialized in a Further Prehearing Conference Order that was entered on August 24, 2017.

41. Prior to the Further Prehearing Conference scheduled for November 17, 2017, I&E and Pine Roe reached a settlement in principle and advised the Presiding ALJ of the settlement by e-mail dated October 5, 2017.

III. ALLEGED VIOLATIONS

42. Had this matter been fully litigated, I&E would have proffered evidence and legal arguments to demonstrate that Pine Roe committed the following violations:

A. ALLEGED VIOLATIONS – 2014 COMPLAINT PROCEEDING

2012-2013 Gas Safety Inspections

1. Pine Roe failed to submit annual distribution system reports to the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) in that it had not obtained an Operator ID from the U.S. Department of Transportation (“DOT”), which is required to file the reports.

If proven, I&E alleges that such conduct would have violated 49 C.F.R. § 191.11 and 52 Pa. Code § 59.33 (1 count).

2. Pine Roe failed to demonstrate that the gas in its distribution system contains a proper concentration of odorant in that it could not produce records to show that it periodically monitors the odorant levels of natural gas using an instrument capable of determining the percentage of gas-in-air at which the odorant becomes readily detectable.

If proven, I&E alleges that such conduct would have violated 49 C.F.R. § 192.625 and 52 Pa. Code § 59.33 (1 count).

3. Pine Roe failed to demonstrate that it conducts leakage surveys using leak detector equipment at least once every three (3) calendar years on cathodically unprotected lines in that its records show that Pine Roe completed leak surveys by walking the pipeline and searching for dead vegetation.

If proven, I&E alleges that such conduct would have violated 49 C.F.R. § 192.723 and 52 Pa. Code § 59.33 (1 count).

4. Pine Roe failed to demonstrate that it checked and serviced each valve that is necessary for the safe operation of its distribution system at least once each calendar year in that its records do not identify the inspection history of each emergency valve.

If proven, I&E alleges that such conduct would have violated 49 C.F.R. § 192.747 and 52 Pa. Code § 59.33 (1 count).

5. Pine Roe failed to place or maintain line markers over each buried main and transmission line, and at the crossing of public roads and railroads, in that line markers were missing or illegible at several locations during the inspection on September 9, 2013.

If proven, I&E alleges that such conduct would have violated 49 C.F.R. § 192.707 and 52 Pa. Code § 59.33 (1 count).

6. Pine Roe failed to inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion at least once every three (3) calendar years in that it has no records to demonstrate that it conducted inspections for atmospheric corrosion.

If proven, I&E alleges that such conduct would have violated 49 C.F.R. § 192.481 and 52 Pa. Code § 59.33 (1 count).

7. Pine Roe failed to clean and coat each pipeline or portion of pipeline that is exposed to the atmosphere in that atmospheric corrosion was present on Pine Roe's meter riser at 486 Stone House Road.

If proven, I&E alleges that such conduct would have violated 49 C.F.R. § 192.479 and 52 Pa. Code § 59.33 (1 count).

8. Pine Roe failed to develop and implement an integrity management program in that it did not have a written Distribution Integrity Management Program ("DIMP") at the time of the September 9, 2013 inspection.

If proven, I&E alleges that such conduct would have violated 49 C.F.R. § 192.1005 and 52 Pa. Code § 59.33 (1 count).

9. Pine Roe failed to demonstrate that it patrolled mains, the frequency of which is determined by the severity of conditions that could cause failure or leakage and the consequent hazards to the public, in that Pine Roe did not maintain records in sufficient detail to show that patrols were conducted.

If proven, I&E alleges that such conduct would have violated 49 C.F.R. § 192.721 and 52 Pa. Code § 59.33 (1 count).

10. Pine Roe failed to create a public awareness program in that it has not developed and implemented a written continuing public education program that follows the guidance provided in the American Petroleum Institute's Recommended Practice.

If proven, I&E alleges that such conduct would have violated 49 C.F.R. § 192.616 and 52 Pa. Code § 59.33 (1 count).

11. Pine Roe failed to update its operations and maintenance manual in that it reviewed the manual after NC-04-13 was issued on January 9, 2013, but did not update the manual to reflect the items that Pine Roe was required to implement in NC-04-13.

If proven, I&E alleges that such conduct would have violated 49 C.F.R. § 192.605 and 52 Pa. Code § 59.33 (1 count).

12. Pine Roe failed to keep complete records of its entire distribution system in that it does not maintain detailed records to demonstrate that it is performing the inspections that are required under 49 C.F.R. Part 192, Subparts L (relating to Operations) and M (relating to Maintenance).

If proven, I&E alleges that such conduct would have violated 49 C.F.R. § 192.13(c) and 52 Pa. Code §§ 59.37 and 59.33 (1 count).

Commission Assessment Requirements

13. Pine Roe failed to file statements, under oath, showing its gross intrastate operating revenues per calendar year in that it did not file assessment reports for the 2010, 2011 and 2012 calendar years.

If proven, I&E alleges that such conduct would have violated 66 Pa.C.S. § 510(b) (3 counts).

14. Pine Roe failed to satisfy its 2014-2015 Fiscal Year assessment in that it did not pay the amount due, \$365, within thirty (30) days of receipt of the invoice.

If proven, I&E alleges that such conduct would have violated 66 Pa.C.S. § 510(c) (1 count).

June 2015 Gas Leak

15. Pine Roe failed to promptly and effectively respond to a gas odor reported near a building in that no Company representative responded to the gas leak at 192 Timber Bridge Road, Reidsburg, PA 16214 after a Pennsylvania Emergency Management Agency (“PEMA”) report was created and emergency services were notified, and the Company only initially responded several hours after Pipeline Safety attempted to locate the Company’s owner.

If proven, I&E alleges that such conduct would have violated 49 CFR § 192.605(b)(11), 49 CFR § 192.615(a)(3)(i) and 52 Pa. Code § 59.33 (1 count).

16. Pine Roe failed to make available necessary equipment and tools at the site of the leak in that it did not have a combustible gas indicator to take gas readings.

If proven, I&E alleges that such conduct would have violated 49 CFR § 192.615(a)(4) and 52 Pa. Code § 59.33 (1 count).

17. Pine Roe failed to promptly repair a hazardous leak in that the Company waited for more than 24-hours to begin repairing a reported gas leak in which gas-in-air was present against the deck of a residence.

If proven, I&E alleges that such conduct would have violated 49 CFR § 192.703(c) and 52 Pa. Code § 59.33 (1 count).

18. Pine Roe failed to promptly repair, replace or remove from service the segment of pipe that was leaking in that the leak had been occurring prior to June 15, 2015, the date that it was reported, due to the presence of dead vegetation at the leak site.

If proven, I&E alleges that such conduct would have violated 49 CFR § 192.703(b) and 52 Pa. Code § 59.33 (1 count).

19. Pine Roe violated its written procedures regarding minimizing hazards during a gas pipeline emergency in that it permitted members of the general public to crawl into the excavated area with the presence of blowing gas from the leaking pipeline.

If proven, I&E alleges that such conduct would have violated 49 CFR § 192.615(a)(5) and (a)(7), and 52 Pa. Code § 59.33 (1 count).

20. Pine Roe failed to minimize the danger of accidental ignition of gas where

the presence of gas constitutes a hazard of fire or explosion in that the Company used a battery-powered pipe cutter to cut a live gas line and did not have a fire extinguisher present.

If proven, I&E alleges that such conduct would have violated 49 CFR § 192.751(a) and 52 Pa. Code § 59.33 (1 count).

21. Pine Roe failed to test the pressure of the yellow polyethylene pipe used to replace the segment of leaking pipe prior to its installation.

If proven, I&E alleges that such conduct would have violated 49 CFR § 192.513 and 52 Pa. Code § 59.33 (1 count).

22. Pine Roe failed to install tracer wire in underground plastic pipeline in that during the leak repair, the Pipeline Safety inspector observed exposed plastic pipe without an electrically conducting wire or other means of locating the pipe.

If proven, I&E alleges that such conduct would have violated 49 CFR § 192.321(e) and 52 Pa. Code § 59.33 (1 count).

23. Pine Roe failed to include the proper information on line marker warnings in that the name of the operator and telephone number where the operator can be reached were missing.

If proven, I&E alleges that such conduct would have violated 49 CFR § 192.707(d)(2) and 52 Pa. Code § 59.33 (1 count).

Audit Findings

24. Pine Roe failed to obtain written approval from the Commission regarding its arrangement to purchase gas from a family member of the owner of the Company in that it has purchased gas from this family member since June 1, 2007 without an approved Affiliated Interest Agreement.

If proven, I&E alleges that such conduct would have violated 66 Pa.C.S. § 2102 (1 count).

25. Pine Roe failed to adhere to its tariff in that it has not used revenue collected pursuant to its Gas Cost Rate for the purchase of natural gas as evidenced by the increasing arrearages it maintains with three natural gas suppliers.

If proven, I&E alleges that such conduct would have violated 66 Pa.C.S. §§ 1303 and 1307(a), (h) (1 count).

26. Pine Roe has not adhered to reporting requirements established in its Gas Cost Rate tariff in that it has failed to submit quarterly reports related to Gas Cost Rate revenues, expenses and over/under collections within thirty (30) days following the conclusion of each computation year quarter.

If proven, I&E alleges that such conduct would have violated 52 Pa. Code §§ 53.66 and 53.67 (1 count).

Unaccounted For Gas Filing Requirements

27. Pine Roe failed to show metrics regarding distribution system losses for the 12 months ending August 31, 2014 and August 31, 2015 in that it did not file unaccounted-for-gas reports by September 30, 2014 and September 30, 2015, respectively.

If proven, I&E alleges that such conduct would have violated 52 Pa. Code § 59.111(c)(2) (2 counts).

B. ALLEGED VIOLATIONS – 2017 COMPLAINT PROCEEDING

1. Pine Roe failed to produce records to Pipeline Safety inspectors demonstrating that it tested the pressure of the 3” plastic main used to replace the segment of the damaged pipe prior to its installation.

If proven, I&E alleges that such conduct would have violated 49 CFR §§ 192.503(a)(1), 192.513, and 192.517, and 52 Pa. Code § 59.33 (1 count).

2. Pine Roe violated its written procedures regarding operating, maintaining and repairing pipeline in that it failed to test the new segment of pipe prior to its installation.

If proven, I&E alleges that such conduct would have violated 49 CFR § 192.605(b)(1) and 52 Pa. Code § 59.33 (1 count).

3. Pine Roe failed to install tracer wire in underground plastic pipeline in that upon review of the photographs of the repair, Pipeline Safety inspectors observed uncased plastic pipe without an electrically conducting wire or other means of locating the pipe.

If proven, I&E alleges that such conduct would have violated 49 CFR § 192.321(e) and 52 Pa. Code § 59.33 (1 count).

43. Had this matter been litigated, Pine Roe would have raised defenses to each of these allegations and defended against the same at hearing.

IV. SETTLEMENT TERMS

44. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest,³ the Parties held a series of discussions that culminated in this Settlement. The purpose of this Joint Petition for Approval of Settlement is to resolve this matter without further litigation. There has been no evidentiary hearing before any tribunal and no sworn testimony taken in I&E's consolidated Complaint proceedings docketed at C-2014-2400485 and C-2017-2582760.

45. It is understood that this Settlement is the compromise of the allegations in the consolidated Complaints, which I&E intended to prove and Pine Roe intended to dispute. However, Pine Roe fully acknowledges the seriousness of I&E's allegations, namely the Company's pattern of failing to adhere to pipeline safety regulations, which I&E alleges has jeopardized the Company's ability to meet its obligation to provide safe and reliable service to its customers. Pine Roe also acknowledges its prior failure to communicate with Pipeline Safety and has taken steps to address its deficiencies.

46. The Parties recognize that their positions and claims are disputed and, given that the outcome of a contested proceeding is uncertain, the Parties further recognize the benefits of amicably resolving the disputed issues through settlement.

47. I&E and Respondents, intending to be legally bound and for consideration given, desire to fully and finally conclude this litigation and agree that a Commission Order approving the Settlement without modification shall create the following rights and obligations:

- A. Pine Roe will pay a civil penalty in the amount of Twenty Thousand Dollars (\$20,000) pursuant to 66 Pa.C.S. § 3301(c). Said payment shall be made within sixty (60) days of the date of the Commission's Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania." The

³ See 52 Pa. Code § 5.231(a).

docket numbers of this consolidated proceeding, C-2014-2400485 and C-2017-2582760, shall be indicated with the certified check or money order and the payment shall be sent to:

Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Pine Roe shall not include any portion of the civil penalty in any present or future rate proceeding. The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

- B. Within sixty (60) days of the date of the Commission's Final Order approving the Settlement Agreement, Pine Roe agrees that it will perform the following corrective actions if the Company has not already done so:
1. At its sole cost and expense, Pine Roe will enter into agreements with two producers in order to take ownership of the producers' lines that are currently serving Pine Roe's customers. In obtaining ownership of the lines, the Company must be able to locate the lines and shut off the flow of gas in the event of an emergency.
 2. Pine Roe agrees that it has provided I&E with its Operator ID number issued by the U.S. DOT in response to I&E's allegation that Pine Roe violated 49 CFR § 191.11 and 52 Pa. Code § 59.33.
 3. Pine Roe agrees that it has filed the annual distribution system report to PHMSA that was due on March 15, 2017. Pine Roe agrees to file annual distribution system reports to PHMSA in all future years that it operates as a NGDC. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 49 CFR § 191.11 and 52 Pa. Code § 59.33.
 4. At its sole cost and expense, Pine Roe agrees that it hired an outside contractor who performed odorant testing on May 15, 2017 and will produce records to the I&E Pipeline Safety Division demonstrating the same. Pine Roe agrees that it must continue to periodically monitor odorant using an instrument capable of determining the percentage of gas-in-air at which the odorant becomes readily detectible. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 49 CFR § 192.625 and 52 Pa. Code § 59.33.
 5. At its sole cost and expense, Pine Roe agrees that it purchased leak

detector equipment on or around August 25, 2017, and agrees to participate in training regarding how to use the equipment. At its sole cost and expense, Pine Roe also agrees that it hired an outside contractor who completed a leak survey on May 25, 2017, and that Pine Roe will either conduct, or arrange for a leakage survey to be conducted by an outside contractor on cathodically unprotected lines at least once every three (3) calendar years. Pine Roe agrees to provide the I&E Pipeline Safety Division with records of its leakage survey. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 49 CFR § 192.723 and 52 Pa. Code § 59.33.

6. At its sole cost and expense, Pine Roe agrees that on May 4, 2017 and May 11, 2017, it completed an inspection and performed service, where necessary, on each emergency valve in its system. Pine Roe agrees to provide the I&E Pipeline Safety Division with records to demonstrate the inspection history of each emergency valve. Pine Roe agrees to check and service each valve that is necessary for the safe operation of its distribution system at least once each calendar year and maintain records of the same. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 49 CFR § 192.747 and 52 Pa. Code § 59.33.
7. At its sole cost and expense, Pine Roe agrees that it has placed line markers over each buried main and transmission line and at the crossing of public roads and railroads, and agrees to replace line markers that become missing or illegible in the future. Pine Roe agrees that its line markers contain Pine Roe's contact information and information to alert the public to call 8-1-1 prior to excavating. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 49 CFR § 192.707 and 52 Pa. Code § 59.33.
8. Pine Roe agrees that it has inspected all the pipeline in its system for evidence of atmospheric corrosion and will provide records to the I&E Pipeline Safety Division to demonstrate the same. Pine Roe agrees that where there was atmospheric corrosion present, Pine Roe took measures to correct it by cleaning and coating the pipeline; such work was performed on May 15, 2017 and May 25, 2017 at Pine Roe's sole cost and expense. Pine Roe agrees to inspect each pipeline, or portion of pipeline, that is exposed to the atmosphere for evidence of atmospheric corrosion at least once every three (3) years and maintain records of such inspections. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 49 CFR §§ 192.481 and 192.479, and 52 Pa. Code § 59.33.

9. I&E agrees that Pine Roe has developed a written DIMP since I&E's initial Complaint was filed on January 10, 2014 at C-2014-2400485 and provided a revised DIMP to I&E on September 21, 2017. The Parties agree that Pipeline Safety will confer with Pine Roe and provide feedback regarding the Company's DIMP during the quarterly meetings that are referenced below. Pine Roe agrees that if it does not incorporate any revisions suggested by the I&E Pipeline Safety Division with respect to Pine Roe's DIMP, that it does so at its own peril and can be subject to further enforcement proceedings. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 49 CFR § 192.1005 and 52 Pa. Code § 59.33.
10. At its sole cost and expense, Pine Roe agrees that it secured an outside contractor who performed a patrol of Pine Roe's mains on May 16, 2017. Pine Roe agrees that it will continue to patrol mains in the future and keep records of the patrolling. The patrolling of mains can be conducted at the same time as a leakage survey provided that Pine Roe follows the separate requirements for the patrolling of mains and leakage surveys. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 49 CFR § 192.71 and 52 Pa. Code § 59.33.
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14. I&E agrees that Pine Roe has submitted assessment reports demonstrating the revenues that it earned during the 2010, 2011 and 2012 calendar years. Pine Roe agrees that it will submit assessment reports by March 31 of each year demonstrating the revenues it earned during the prior calendar year. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 66 Pa.C.S. § 510(b).
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20. Pine Roe agrees to take actions directed towards protecting people first, then property, and making safe any actual or potential hazard to life and property at all times. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 49 CFR § 192.615(a)(5) and (a)(7), and 52 Pa. Code § 59.33.
21. Pine Roe agrees to take steps to minimize the danger of accidental ignition of gas in any structure or area where the presence of gas constitutes a hazard of fire or explosion. Pine Roe expressly agrees that it will not use a battery-powered pipe cutter to cut a live gas line. Pine Roe also expressly agrees to have a fire extinguisher within reach when a hazardous amount of gas is being vented into open air. Further, Pine Roe agrees that it will purchase at its sole cost and expense safety equipment such as fire extinguishers, fire retardant clothing and "no smoking" signs, which will be located at repair sites. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 49 CFR § 192.751(a) and 52 Pa. Code § 59.33.
22. Pine Roe agrees to test the pressure of pipeline, or segments of pipeline, prior to its installation and maintain records of the same. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 49 CFR §§ 192.503(a)(1), 192.513 and 192.517, and 52 Pa. Code § 59.33.
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24. Pine Roe now has an affiliated interest agreement that was approved by the Commission by Secretarial Letter issued September 7, 2016 at Docket No. G-2015-2502973, which permits Pine Roe to purchase gas from Pauline Griebel, an affiliated gas producer. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 66 Pa.C.S. § 2102.
25. Pine Roe agrees that within sixty (60) days of the date of the Commission's Order approving any settlement in this matter, it will no longer maintain any arrearages with natural gas suppliers and will use revenue collected pursuant to its Gas Cost Rate for the purchase of natural gas. Pine Roe's actions were taken in response

to I&E's allegation that Pine Roe violated 66 Pa.C.S. §§ 1303 and 1307(a), (h).

26. Pine Roe agrees that it filed annual financial reports with the Commission that had not been filed within the past three (3) years. Pine Roe agrees to file future annual financial reports with the Commission by April 30 of each year pursuant to 66 Pa.C.S. § 504 and 52 Pa. Code § 59.48.
27. Pine Roe agrees to comply with all filing requirements related to the recovery of purchased gas costs. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 52 Pa. Code § 53.66.
28. On or around May 12, 2017, Pine Roe provided unaccounted-for-gas reports showing metrics regarding distribution system losses for the twelve (12) months ending August 31, 2014, August 31, 2015 and August 31, 2016. Pine Roe agrees to file unaccounted-for-gas reports by September 30 for all future years, beginning with the period ending August 31, 2017. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 52 Pa. Code § 59.111(c)(2).
29. Pine Roe agrees to meet with the I&E Pipeline Safety Division on a quarterly basis for a period of three (3) years following the entry of a Commission final order approving any settlement in this matter. Inspections conducted by the I&E Pipeline Safety Division may satisfy the quarterly meeting requirement.
30. At its sole cost and expense, Pine Roe agrees to send at least one employee to an operator qualification ("OQ") training program, taught by a certified entity specializing in OQ training, and provide proof to I&E within sixty (60) days of the date of the Commission's Order approving any settlement in this matter that Pine Roe attended the training.
31. Pine Roe agrees that within sixty (60) days of the date of the Commission's Order approving any settlement in this matter, Pine Roe will hire at its sole cost and expense a Certified Public Accountant to review and complete the Company's financial documentation and accounting records. Pine Roe agrees that it will use the Certified Public Accountant to complete all financial documentation that must be submitted to the Commission, such as the annual financial report that is due on April 30 of each year, for a period of at least three (3) years.

48. Pine Roe expressly acknowledges that if it fails to adhere to any of the settlement terms set forth above, that I&E will pursue revocation of its Certificate of Public Convenience, among other requested relief, without any further offer of settlement.

49. Upon payment by Pine Roe of the civil penalty and proof that the above-referenced corrective measures have been completed, if they have not already been completed, I&E's 2014 Amended Complaint docketed at C-2014-2400485 and 2017 Complaint docketed at C-2017-2582760 shall be deemed satisfied and the matters shall be marked closed.

50. Upon Commission approval of the Settlement in its entirety without modification, I&E shall be deemed to have forever released Pine Roe from all past claims that were made or could have been made for monetary and/or other relief based on allegations that the Company violated: (1) Pipeline Safety regulations during 2012 and 2013 inspections, the June 2015 gas leak incident, and the repair of the 2016 line hit incident; (2) Commission assessment requirements related to the filing of 2010, 2011 and 2012 assessment reports and payment of the July 1, 2014 to June 30, 2015 fiscal year assessment; (3) violations that were discovered during the Bureau of Audits' 2015 audit of Pine Roe's Gas Cost Rate for the periods ending August 31, 2014, August 31, 2013, and August 31, 2012; and (4) the Commission's requirements related to unaccounted-for-gas filings for the twelve (12) months ending August 31, 2014 and August 31, 2015. Nothing contained in this Settlement Agreement shall affect the Commission's authority to receive and resolve any future formal or informal complaints filed by any affected party related to the allegations set forth in I&E's consolidated Complaint proceeding.

51. I&E and Respondents jointly acknowledge that approval of this Settlement Agreement is in the public interest and fully consistent with the Commission's Policy Statement for Litigated and Settled Proceedings Involving Violations of the Code and Commission

Regulations, 52 Pa. Code § 69.1201. The Parties submit that the Settlement Agreement is in the public interest because it effectively addresses I&E's allegations that are the subject of the I&E consolidated Complaints, and avoids the time and expense of litigation, which entails hearings, travel for the Company's witnesses, and the preparation and filing of briefs, exceptions, reply exceptions, as well as possible appeals. Attached as Appendices A and B are Statements in Support submitted by I&E and Pine Roe, respectively, setting forth the bases upon which they believe the Settlement Agreement is in the public interest.

V. CONDITIONS OF SETTLEMENT

52. This document 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. This Settlement Agreement shall be construed and interpreted under Pennsylvania law.

53. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in this Joint Petition for Approval of Settlement without modification. If the Commission modifies this Settlement Agreement, any party may elect to withdraw from the Settlement and may proceed with litigation and, in such event, this Settlement Agreement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all parties within twenty (20) days after entry of an Order modifying the Settlement.

54. In the event that the presiding ALJ issues an initial decision or recommended decision approving this Joint Petition for Approval of Settlement without modification, the Parties agree to waive the exception period, thereby allowing the Settlement Agreement to be presented directly to the Commission for review, pursuant to 52 Pa. Code § 5.232(e).

55. The Parties agree that the underlying allegations were not the subject of any hearing and that there has been no order, findings of fact or conclusions of law rendered in this Complaint proceeding. It is further understood that, by entering into this Settlement Agreement, Pine Roe has made no concession or admission of fact or law and may dispute all issues of fact and law for all purposes in all proceedings that may arise as a result of the circumstances described in the Settlement.

56. The Parties acknowledge that this Settlement Agreement reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issues raised in this proceeding.

57. This Settlement Agreement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable. This Settlement is presented without prejudice to any position that any of the parties may have advanced and without prejudice to the position any of the parties may advance in the future on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of this Settlement Agreement. This Settlement does not preclude the parties from taking other positions in any other proceeding.

58. The terms and conditions of this Settlement Agreement constitute a carefully crafted package representing reasonably negotiated compromises on the issues addressed herein. Thus, the Settlement Agreement is consistent with the Commission's rules and practices encouraging negotiated settlements set forth in 52 Pa. Code §§ 5.231 and 69.1201.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and Pine Roe Natural Gas Company, Inc. respectfully request that the presiding Administrative Law Judge issue an initial decision or recommended decision approving the terms of the Joint Petition for Approval of Settlement in their entirety as being in the public interest.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this the _____ day of [as below] 2017.

FOR THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, BUREAU OF INVESTIGATION AND ENFORCEMENT:



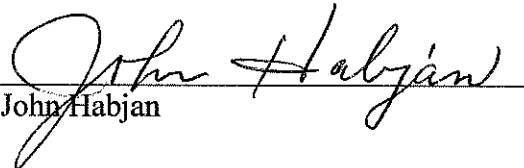
Michael L. Swindler
for
Stephanie M. Wimer

Deputy Chief Prosecutor

13 OCT 17

Date

FOR PINE ROE NATURAL GAS COMPANY, INC.:



John Habjan

President

6 Oct '17

Date

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket Nos. C-2014-2400485 and
	:	C-2017-2582760
Pine Roe Natural Gas Company, Inc.,	:	
Respondent	:	

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

TO PRESIDING ADMINISTRATIVE LAW JUDGE JOEL H. CHESKIS:

Pursuant to 52 Pa. Code §§ 5.231, 5.232 and 69.1201, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”), a signatory party to the Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) filed in the matters docketed above, submits this Statement in Support of the Settlement Agreement between I&E and Pine Roe Natural Gas Company, Inc. (“Pine Roe” or “Company” or “Respondent”). I&E avers that the terms and conditions of the Settlement are just and reasonable and in the public interest especially given the Company’s recent significant efforts to come into compliance with the Code of Federal Regulations, the Public Utility Code (“Code”) and the Pennsylvania Code, and for additional reasons set forth herein.

I. BACKGROUND

This matter involves two consolidated Complaint proceedings brought by I&E against Pine Roe alleging numerous violations of various gas safety regulations in Parts 191 and 192 of Title 49 of the Code of Federal Regulations and provisions of the Commission’s regulations,

violations of the Commission's assessment requirements, violations that were discovered during an audit of the Company's Gas Cost Rate and violations of the unaccounted-for-gas filing requirement. The procedural history of this matter is set forth in detail at Paragraphs 10 through 41 of the Joint Petition for Settlement.

On October 11, 2017, I&E and Respondent (collectively, the "Parties") filed a Joint Petition for Approval of Settlement resolving all issues between I&E and Respondent in the instant matter. This Statement in Support is submitted in conjunction with the Settlement Agreement.

II. THE PUBLIC INTEREST

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of settlement discussions. These discussions culminated in this Settlement Agreement, which, once approved, will resolve all issues related to the instant consolidated Complaint proceeding.

I&E submits that the terms and conditions of the Settlement Agreement are in the public interest because they demonstrate the numerous corrective actions that the Company has taken to achieve compliance with gas safety regulations and record-keeping requirements. Such corrective actions consist of capital expenditures that the Company has made, including the purchase of essential equipment such as line locating equipment and leak detectors. Furthermore, the Company has recently hired a full-time field operations manager who is in the process of becoming Operator Qualified to run all aspects of Pine Roe's distribution system. With respect to the civil penalty component, I&E submits that the amount of the agreed-upon civil penalty, \$20,000, is justified due to the recent investments the Company has made, the financial circumstances of the Company, which are demonstrated in Pine Roe's recent base rate

increase filing docketed at R-2017-2618332 and the Company's annual financial reports for the 2014, 2015 and 2016 calendar years, and the affiliate's agreement to erase a nearly \$85,000 arrearage that Pine Roe had accrued for the purchase of natural gas supply. A more detailed discussion of how the terms and conditions of the settlement are in the public interest appears below.

Nevertheless, had this matter been litigated, I&E intended to prove the factual allegations set forth in its Complaints at hearing, to which Pine Roe likely would have disputed.¹ This Settlement Agreement results from the compromises of the Parties. Although I&E and Pine Roe may disagree with respect to I&E's factual allegations, Pine Roe recognizes the need to prevent similar allegations from reoccurring.

Further, I&E recognizes that, given the inherent unpredictability of the outcome of a contested proceeding, the benefits of amicably resolving the disputed issues through settlement outweigh the risks and expenditures of litigation. I&E submits that the Settlement constitutes a reasonable compromise of the issues presented and is in the public interest. As such, I&E respectfully requests that the Commission approve the Settlement without modification.

III. TERMS OF SETTLEMENT

Under the terms of the Settlement, I&E and Respondent have agreed as follows:

- A. Pine Roe will pay a civil penalty in the amount of Twenty Thousand Dollars (\$20,000) pursuant to 66 Pa.C.S. § 3301(c). Said payment shall be made within sixty (60) days of the date of the Commission's Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania." The docket numbers of this consolidated proceeding, C-2014-2400485 and

¹ As of the time of the filing of this Joint Settlement Petition, Pine Roe had not filed an Answer to I&E's Amended Complaint docketed at C-2014-2400485 or an Answer to I&E's Complaint docketed at C-2017-2582760. This matter was precluded from being subject to a default judgment. *See Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Pine Roe Natural Gas Co., Inc.*, Docket No. C-2014-2400485 (Order entered March 21, 2017).

C-2017-2582760, shall be indicated with the certified check or money order and the payment shall be sent to:

Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Pine Roe shall not include any portion of the civil penalty in any present or future rate proceeding. The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

- B. Within sixty (60) days of the date of the Commission's Final Order approving the Settlement Agreement, Pine Roe agrees that it will perform the following corrective actions if the Company has not already done so:
1. Pine Roe will enter into agreements with two producers in order to take ownership of the producers' lines that are currently serving Pine Roe's customers. In obtaining ownership of the lines, the Company must be able to locate the lines and shut off the flow of gas in the event of an emergency.
 2. Pine Roe agrees that it has provided I&E with its Operator ID number issued by the U.S. DOT in response to I&E's allegation that Pine Roe violated 49 CFR § 191.11 and 52 Pa. Code § 59.33.
 3. Pine Roe agrees that it has filed the annual distribution system report to PHMSA that was due on March 15, 2017. Pine Roe agrees to file annual distribution system reports to PHMSA in all future years that it operates as a NGDC. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 49 CFR § 191.11 and 52 Pa. Code § 59.33.
 4. Pine Roe agrees that an outside contractor performed odorant testing on May 15, 2017 and will produce records to the I&E Pipeline Safety Division demonstrating the same. Pine Roe agrees that it must continue to periodically monitor odorant using an instrument capable of determining the percentage of gas-in-air at which the odorant becomes readily detectible. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 49 CFR § 192.625 and 52 Pa. Code § 59.33.
 5. Pine Roe agrees that it purchased leak detector equipment on or around August 25, 2017, and agrees to participate in training regarding how to use the equipment. Pine Roe also agrees that an outside contractor completed a leak survey on May 25, 2017, and

- that Pine Roe will either conduct, or arrange for a leakage survey to be conducted by an outside contractor on cathodically unprotected lines at least once every three (3) calendar years. Pine Roe agrees to provide the I&E Pipeline Safety Division with records of its leakage survey. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 49 CFR § 192.723 and 52 Pa. Code § 59.33.
6. Pine Roe agrees that on May 4, 2017 and May 11, 2017, it completed an inspection and performed service, where necessary, on each emergency valve in its system. Pine Roe agrees to provide the I&E Pipeline Safety Division with records to demonstrate the inspection history of each emergency valve. Pine Roe agrees to check and service each valve that is necessary for the safe operation of its distribution system at least once each calendar year and maintain records of the same. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 49 CFR § 192.747 and 52 Pa. Code § 59.33.
 7. Pine Roe agrees that it has placed line markers over each buried main and transmission line and at the crossing of public roads and railroads, and agrees to replace line markers that become missing or illegible in the future. Pine Roe agrees that its line markers contain Pine Roe's contact information and information to alert the public to call 8-1-1 prior to excavating. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 49 CFR § 192.707 and 52 Pa. Code § 59.33.
 8. Pine Roe agrees that it has inspected all the pipeline in its system for evidence of atmospheric corrosion and will provide records to the I&E Pipeline Safety Division to demonstrate the same. Pine Roe agrees that where there was atmospheric corrosion present, Pine Roe took measures to correct it by cleaning and coating the pipeline; such work was performed on May 15, 2017 and May 25, 2017. Pine Roe agrees to inspect each pipeline, or portion of pipeline, that is exposed to the atmosphere for evidence of atmospheric corrosion at least once every three (3) years and maintain records of such inspections. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 49 CFR §§ 192.481 and 192.479, and 52 Pa. Code § 59.33.
 9. I&E agrees that Pine Roe has developed a written DIMP since I&E's initial Complaint was filed on January 10, 2014 at C-2014-2400485 and provided a revised DIMP to I&E on September 21, 2017. The Parties agree that Pipeline Safety will confer with Pine Roe and provide feedback regarding the Company's DIMP during the quarterly meetings that are referenced below. Pine Roe agrees

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26. Pine Roe agrees that it filed annual financial reports with the Commission that had not been filed within the past three (3) years. Pine Roe agrees to file future annual financial reports with the

Commission by April 30 of each year pursuant to 66 Pa.C.S. § 504 and 52 Pa. Code § 59.48.

27. Pine Roe agrees to comply with all filing requirements related to the recovery of purchased gas costs. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 52 Pa. Code § 53.66.
 28. On or around May 12, 2017, Pine Roe provided unaccounted-for-gas reports showing metrics regarding distribution system losses for the twelve (12) months ending August 31, 2014, August 31, 2015 and August 31, 2016. Pine Roe agrees to file unaccounted-for-gas reports by September 30 for all future years, beginning with the period ending August 31, 2017. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 52 Pa. Code § 59.111(c)(2).
 29. Pine Roe agrees to meet with the I&E Pipeline Safety Division on a quarterly basis for a period of three (3) years following the entry of a Commission final order approving any settlement in this matter. Inspections conducted by the I&E Pipeline Safety Division may satisfy the quarterly meeting requirement.
 30. Pine Roe agrees to send at least one employee to an operator qualification ("OQ") training program, taught by a certified entity specializing in OQ training, and provide proof to I&E within sixty (60) days of the date of the Commission's Order approving any settlement in this matter that Pine Roe attended the training.
 31. Pine Roe agrees that within sixty (60) days of the date of the Commission's Order approving any settlement in this matter, Pine Roe will hire a Certified Public Accountant to review and complete the Company's financial documentation and accounting records. Pine Roe agrees that it will use the Certified Public Accountant to complete all financial documentation that must be submitted to the Commission, such as the annual financial report that is due on April 30 of each year, for a period of at least three (3) years.
- C. Pine Roe expressly acknowledges that if it fails to adhere to any of the settlement terms set forth above, that I&E will pursue revocation of its Certificate of Public Convenience, among other requested relief, without any further offer of settlement.

- D. Upon payment by Pine Roe of the civil penalty and proof that the above-referenced corrective measures have been completed, if they have not already been completed, I&E's 2014 Amended Complaint docketed at C-2014-2400485 and 2017 Complaint docketed at C-2017-2582760 shall be deemed satisfied and the matters shall be marked closed.
- E. Upon Commission approval of the Settlement in its entirety without modification, I&E shall be deemed to have forever released Pine Roe from all past claims that were made or could have been made for monetary and/or other relief based on allegations that the Company violated: (1) Pipeline Safety regulations during 2012 and 2013 inspections, the June 2015 gas leak incident, and the repair of the 2016 line hit incident; (2) Commission assessment requirements related to the filing of 2010, 2011 and 2012 assessment reports and payment of the July 1, 2014 to June 30, 2015 fiscal year assessment; (3) violations that were discovered during the Bureau of Audits' 2015 audit of Pine Roe's Gas Cost Rate for the periods ending August 31, 2014, August 31, 2013, and August 31, 2012; and (4) the Commission's requirements related to unaccounted-for-gas filings for the twelve (12) months ending August 31, 2014 and August 31, 2015.

IV. **LEGAL STANDARD FOR SETTLEMENT AGREEMENTS**

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. "The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a 'burden of proof'

standard, as is utilized for contested matters.” *Pa. Pub. Util. Comm’n, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011) at p. 11.

Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm’n v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

I&E submits that approval of the Settlement Agreement in the above-captioned matter is consistent with the Commission’s Policy Statement regarding *Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* (“Policy Statement”), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission’s Policy Statement sets forth ten factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

The Commission will not apply the factors as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases, the parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters as long as the settlement is in the public interest.” *Id.*

The first factor considers whether the conduct at issue was of a serious nature, such as willful fraud or misrepresentation, or if the conduct was less egregious, such as an administrative or technical error. Conduct of a more serious nature may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(1). The violations averred in I&E’s Complaints are of a serious nature. Pine Roe’s alleged failure to promptly correct gas safety violations that were discovered during routine

inspections of its facilities and records, combined with Pine Roe's alleged flawed response to a 2015 gas leak that occurred next to a customer's residence and alleged faulty repair to a 2016 gas leak caused by a line hit, directly impact public safety and Pine Roe's ability to safely serve and reliably deliver gas to its customers. While many of the alleged violations also pertain to a failure to keep records, I&E submits that keeping complete records of its distribution system is crucial to ensure that Pine Roe is performing the requisite operations and maintenance of its facilities in accordance with Federal pipeline safety regulations. In addition to gas safety violations, I&E also alleges that Pine Roe ignored paying Commission assessments and filing assessment reports, failed to use revenue pursuant to its Gas Cost Rate to pay for natural gas in that it maintained arrearages with suppliers, failed to obtain an approved Affiliated Interest Agreement before contracting with a family member and failed to file unaccounted-for-gas reports. In looking at the totality of all the violations alleged in I&E's Complaints, the allegations are serious in that they demonstrate a failure at nearly every level of the Company to comply with the laws and regulations that regulate it.

The second factor considered is whether the resulting consequences of Respondent's alleged conduct were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(2). No serious consequences, such as personal injury or property damage, are alleged to have occurred. Although no serious consequences resulted from this incident, the potential for serious consequences to occur was significant especially with respect to Pine Roe's 2015 repair of a gas leak in which Pine Roe used a battery-powered pipe cutter to cut a live gas line and members of the public were present at the site while gas was leaking.

The third factor to be considered under the Policy Statement is whether the alleged conduct was intentional or negligent. 52 Pa. Code § 69.1201(c)(3). “This factor may only be considered in evaluating litigated cases.” *Id.* Whether Respondent’s alleged conduct was intentional or negligent does not apply since this matter is being resolved by Settlement of the Parties.

The fourth factor to be considered is whether Respondent has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). As demonstrated by the detailed terms and conditions of the Settlement Agreement, Pine Roe has either performed or has committed to perform numerous corrective actions that are designed to address any past non-compliance issue spanning from gas safety regulations to record keeping and reporting requirements to paying Commission assessments. The measures that Pine Roe has taken should provide a significant benefit to public safety and enhance the safety and reliability of its service.

The fifth factor to be considered relates to the number of customers affected by Pine Roe’s actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). The alleged violations in this matter were first discovered during an inspection conducted by the Pipeline Safety Division on November 28, 2012 and continued at least through August 24, 2016, the date that Pine Roe repaired the pipe struck by the line hit. Pine Roe serves approximately 160 customers and potentially each customer could have been affected by Pine Roe’s alleged failure to adhere to gas safety regulations.

The sixth factor to be considered relates to Pine Roe’s compliance history. 52 Pa. Code § 69.1201(c)(6). An isolated incident from an otherwise compliant company may result in a lower penalty, whereas frequent, recurrent violations by a company may result in a higher

penalty. *Id.* Pine Roe has an extensive history of non-compliance before this Commission.

In *Daniel K. Shirey, Jr., et al. v. Pine Roe Natural Gas Company*, Docket Nos. F-8283564 and C-822940 (Order entered July 2, 1986), several customers brought forth complaints alleging a loss of gas service between January 16, 1985 through January 19, 1985 when weather conditions were extremely cold. The Commission sustained the complaints and imposed a civil penalty of \$11,000, which was reduced by the cost of an engineering study not to exceed \$3,000 that the Commission directed Pine Roe to arrange to be conducted to determine what changes are necessary to its system to ensure safe and reliable service to its customers.

In *Pa. Pub. Util. Comm'n, Law Bureau Prosecutory Staff v. Pine Roe Natural Gas Company, Inc.*, Docket No. C-20032166 (Final Order entered May 15, 2006), the Commission approved a settlement agreement between the Law Bureau Prosecutory Staff and Pine Roe wherein Pine Roe agreed to pay a \$1,000 civil penalty and cease and desist from committing further violations of the Code, Commission regulations and Federal pipeline safety regulations. The Law Bureau Prosecutory Staff initiated the proceeding by filing a complaint alleging that numerous gas safety violations were discovered during an inspection of the company's facilities and records. The Complaint originally sought a civil penalty of \$150,000.

On numerous occasions, Pine Roe failed to file annual financial reports with the Commission. In *Pa. Pub. Util. Comm'n v. Law Bureau Prosecutory Staff v. Pine Roe Natural Gas Company, Inc.*, Docket No. C-20042684, Pine Roe paid a \$1,000 civil penalty for failing to file a 2002 annual report. In *Pa. Pub. Util. Comm'n v. Law Bureau Prosecutory Staff v. Pine Roe Natural Gas Company, Inc.*, Docket No. C-20044089, the Law Bureau Prosecutory Staff filed a complaint alleging that Pine Roe failed to file a 2003 annual report. The complaint was satisfied on January 19, 2005 when Pine Roe submitted the report and paid a \$250 civil penalty.

Additionally, in *Pa. Pub. Util. Comm'n v. Law Bureau Prosecutory Staff v. Pine Roe Natural Gas Company, Inc.*, Docket No. C-20077736 (Order entered December 3, 2007), the Commission entered a Default Order sustaining the Law Bureau Prosecutory Staff's complaint related to Pine Roe's failure to file a 2005 annual report and directed Pine Roe to pay a \$1,000 civil penalty. Lastly, in *Pa. Pub. Util. Comm'n v. Law Bureau Prosecutory Staff v. Pine Roe Natural Gas Company, Inc.*, Docket No. C-2008-2036247 (Order entered March 18, 2009), the Commission entered a Default Order sustaining the Law Bureau Prosecutory Staff's complaint related to Pine Roe's failure to file a 2006 annual report and directed Pine Roe to pay a \$1,000 civil penalty.

Pine Roe also has a history of failing to timely pay Commission assessments and file assessment reports. In *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Pine Roe Natural Gas Company, Inc.*, Docket No. C-2012-2316007, I&E filed a complaint alleging that Pine Roe failed to file 2007 and 2008 assessment reports and pay the Commission's assessment for the July 1, 2008 to June 30, 2009 and July 1, 2009, to June 30, 2010 fiscal years. By Secretarial Letter dated May 6, 2013, the Commission approved the withdrawal of I&E's complaint given that Pine Roe satisfied its outstanding assessment balance of \$1,234.

The seventh factor to be considered relates to whether Respondent cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). "Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty." *Id.* Initially, Pine Roe did not cooperate with the Pipeline Safety Division's investigation because the Company failed to timely and completely respond to non-compliance letters that were issued to it. The intention of the non-compliance letters was to have Pine Roe correct the alleged deficiencies without escalating the matters to a formal enforcement

proceeding, but that did not occur. Additionally, Pine Roe had a pattern of failing to consistently communicate with the Pipeline Safety Division and it was difficult for Pipeline Safety to contact the Company. However, Pine Roe has recently taken significant steps to address its prior shortcomings. The owners of Pine Roe created a new office space dedicated to operating the Company and the field operations manager has been communicative with and responsive to the inquiries of Pipeline Safety. Specifically, on June 26 and 27, 2017, Pipeline Safety spent two entire days inspecting the facilities and records of Pine Roe to gauge Pine Roe's progress towards compliance. Pine Roe was receptive to and actively participated in the inspection.

The eighth factor to be considered is the appropriate settlement amount necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). The size of the company may be considered to determine an appropriate penalty amount. *Id.* I&E submits that a civil penalty of \$20,000, which may not be claimed as a tax deduction by operation of law and is not recoverable through rates regulated by the Commission, is substantial and sufficient to deter Pine Roe from committing future violations. This is especially true considering the following: (1) Pauline Griebel, who is the Secretary/Treasurer of Pine Roe and an affiliate of the Company who supplies natural gas to Pine Roe, has agreed to forgive an arrearage of \$84,256.80 that Pine Roe owes to her for the purchase of natural gas and which has accrued since 2008; (2) Pine Roe has made recent significant expenditures designed to improve the safety and reliability of its distribution system. Such expenditures include purchasing equipment, hiring outside contractors to perform routine checks on its facilities like odorant testing and leakage surveys, developing written programs and manuals such as Pine Roe's DIMP, O&M manual and public education program, and agreeing to take ownership of two producers' lines that are currently serving Pine Roe's customers; and (3) The financial health of the Company is less than ideal. In Pine Roe's

annual financial reports for the years ending December 31, 2014, December 31, 2015 and December 31, 2016, the Company reported long-term debts that far exceed revenues it earned. In 2014, the Company's total sales were \$113,318 with a long-term debt of \$304,557. In 2015, the Company's total sales were \$95,994 with a long-term debt of \$340,557. In 2016, the Company's total sales were 93,059 with a long-term debt of \$357,192. All of the above considerations support the imposition of a civil penalty that is much less than what had been originally requested by I&E.

The ninth factor to be considered relates to past Commission decisions in similar matters. 52 Pa. Code § 69.1201(c)(9). The Commission previously imposed a civil penalty on Pine Roe in a similar proceeding that was initiated by a formal complaint brought by the Law Bureau Prosecutory Staff on December 3, 2003. *Pa. Pub. Util. Comm'n, Law Bureau Prosecutory Staff v. Pine Roe Natural Gas Company, Inc.*, Docket No. C-20032166 (Final Order entered May 15, 2006). The complaint alleged various violations of pipeline safety regulations discovered during an inspection of the company's facilities and regulations. Some violations are similar to what has been alleged in the present matter, including a failure to implement a public education program, maintain pipeline markers and keep records in sufficient detail to show compliance with pipeline safety regulations. The complaint originally sought a civil penalty of \$150,000. The parties agreed to resolve the matter for a \$1,000 civil penalty. The presiding Administrative Law Judge ("ALJ") issued an Initial Decision finding that the settlement agreement was in the public interest based on Pine Roe's willingness to correct the matters that led to the filing of the complaint. The Commission approved the ALJ's Initial Decision.

Thus, the Commission has previously considered Pine Roe's compliance efforts when approving a substantially smaller civil penalty than what had been originally proposed by prosecutory staff.

The tenth factor considers "other relevant factors." 52 Pa. Code § 69.1201(c)(10). I&E submits that an additional relevant factor – whether the case was settled or litigated – is of pivotal importance to this Settlement Agreement. A settlement avoids the necessity for the governmental agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty, or other remedial action. Both parties negotiate from their initial litigation positions. The fines and penalties, and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent economic and programmatic compromise but allow the parties to move forward and to focus on implementing the agreed upon remedial actions.

In conclusion, I&E fully supports the terms and conditions of the Settlement Agreement. The terms of the Settlement Agreement reflect a carefully balanced compromise of the interests of the Parties in this proceeding. The Parties believe that approval of this Settlement Agreement is in the public interest. Acceptance of this Settlement Agreement avoids the necessity of further administrative and potential appellate proceedings at what would have been a substantial cost to the Parties.

WHEREFORE, I&E supports the Settlement Agreement as being in the public interest and respectfully requests that the Commission approve the Joint Petition for Approval of Settlement, including all the terms and conditions set forth therein, without modification.

Respectfully submitted,



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Dated: October 13, 2017

October 10, 2017

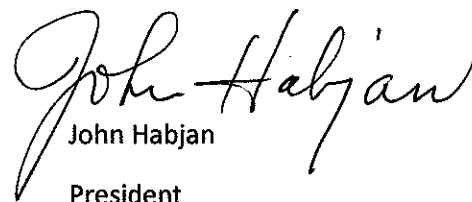
STATEMENT OF SUPPORT IF SETTLEMENT AGREEMENT OF PINE-ROE NATURAL GAS

To avoid further action, the parties have engaged in settlement discussion to reach an amicable resolution of the investigation. As set forth in the Settlement Agreement Pine-Roe Natural Gas Company, Inc. intends to fully comply with the agreement. Pine-Roe's main concern is the safety of the public. With that the Pine-Roe Natural Gas Company has been working with the Bureau of investigation and Enforcement to resolve the safety concerns and make the public safe around and near the gas lines.

For the reasons set forth in the Settlement Agreement between Pine-Roe Natural Gas Company and Bureau of Investigation and Enforcement, I request that the Commission accept and approve the Settlement Agreement and adopt an order approving the terms and conditions in their entirety as being in the public interest.

I thank the Commission for its consideration of this filing. If you should have any questions, please contact me.

Sincerely,


John Habjan
President

Pine-Roe Natural Gas Company

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement, :
Complainant :

v. :

Pine Roe Natural Gas Co., Inc., :
Respondent :

Docket Nos. C-2014-2400485 and
C-2017-2582760

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service by First Class Mail and Email:

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Dated: October 13, 2017