

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

INITIAL DECISION

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision grants a joint petition for approval of settlement resolving two formal complaints filed by the Bureau of Investigation and Enforcement against a natural gas distribution company. The two complaints alleged violations of various gas safety regulations in the Code of Federal Regulations and provisions of the Commission’s regulations that were discovered during inspections conducted by the Commission’s Pipeline Safety Division and in connection with a repair of a 2016 line hit by a third party to one of the company’s facilities, among other things. The settlement requires the company to pay a civil penalty of \$20,000 and take 31 corrective actions. The settlement is adopted in its entirety without modification because it is consistent with Commission regulations and is in the public interest.

HISTORY OF THE PROCEEDING

On January 10, 2014, the Pennsylvania Public Utility Commission Bureau of Investigation and Enforcement (I&E) filed a formal complaint against Pine Roe Natural Gas Co., Inc. (Pine Roe) at Docket Number C-2014-2400458 alleging various violations of gas safety regulations in the Code of Federal Regulations and in the Commission's regulations, as well as various violations pertaining to the filing of annual assessment reports with the Commission. In its complaint, I&E sought relief, including the imposition of a civil penalty of \$40,500. On March 4, 2016, I&E filed an amended complaint wherein additional violations were averred and the proposed civil penalty sought increased to \$318,055. The complaint was referred to the Commission's mediation unit but the parties did not reach an agreement to resolve the complaint.

On May 3, 2016, I&E filed a motion for default judgment requesting that the Commission sustain I&E's amended complaint. Pine Roe did not file an answer to I&E's motion.

On January 4, 2017, I&E filed a second complaint against Pine Roe alleging violations of the Code of Federal Regulations and the Commission's regulations that occurred in connection with the repair of a 2016 line hit by a third party to one of Pine Roe's facilities, among other things. In the complaint, I&E sought a civil penalty of \$90,000.

By Order entered March 21, 2017, the Commission denied I&E's motion for default judgment regarding the first complaint filed by I&E against Pine Roe. The Commission determined that the matter would be best treated in a formal manner due to the seriousness of the violations and the amount of the civil penalty requested. The amended complaint was referred to the Office of Administrative Law Judge.

By Hearing Notice dated July 7, 2017, the Commission scheduled an Initial In-Person Hearing for both complaints for Thursday, September 14, 2017 at 10:00 a.m. and

assigned me as the Presiding Officer. A prehearing order dated July 10, 2017 was issued setting forth various rules that would govern that hearing.

On July 11, 2017, I&E submitted a motion to consolidate both of its complaints filed against Pine Roe, as well as a motion to convert the initial hearing scheduled for September 14, 2017 into a prehearing conference. I&E indicated that Pine Roe did not oppose either motion. An Order granting the motion to consolidate and converting the initial hearing to a prehearing conference was issued July 19, 2017. A second notice was issued cancelling the September 14, 2017 initial hearing and scheduling an initial in-person prehearing conference for Wednesday, August 23, 2017 at 10:00 a.m. in hearing room 3 of the Commonwealth Keystone building in Harrisburg. I&E filed a prehearing memorandum on August 16, 2017.

On August 23, 2017, the prehearing conference convened as scheduled. Stephanie Wimer, Esquire appeared on behalf of I&E. Andy Griebel, Pauline Griebel and John Habian, none of whom are attorneys, appeared on behalf of Pine Roe. Several matters were discussed during the prehearing conference. In particular, a discussion was held regarding the fact that the company was not represented by counsel and had not filed answers to either complaint. As a result, Pine Roe was given 30 days to have counsel enter an appearance. Pine Roe was then given an additional 30 days to file answers to the complaints. A further prehearing conference would then be set for an additional 30 days so that a procedural schedule to litigate the consolidated complaints could be established. The parties were also encouraged to engage in settlement discussions.

A hearing notice was issued on August 23, 2017 establishing a further prehearing conference for Friday, November 17, 2017.

On October 13, 2017, however, the parties filed a Joint Petition for Approval of Settlement (settlement). Attached to the settlement were statements in support filed by both I&E and Pine Roe.

The record in this case closed on October 13, 2017 when the settlement was submitted. For the reasons discussed below, the settlement will be adopted in its entirety without modification.

FINDINGS OF FACT

1. The Pennsylvania Public Utility Commission Bureau of Investigation and Enforcement is the entity established to prosecute complaints against public utilities and other entities subject to the Commission's jurisdiction pursuant to Section 308.2(a)(11) of the Public Utility Code. Settlement at para. 2.

2. Pine Roe is a public utility as that term is defined by Section 102 of the Public Utility Code as it is engaged in providing public utility service as a natural gas distribution company to the public for compensation pursuant to a certificate of public convenience issued by the Commission on or about August 4, 1980. Settlement at para. 4.

3. On January 10, 2014, I&E filed a complaint with the Commission against Pine Roe alleging violations of various 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 Commission's Pipeline Safety Division on November 28, 2012 and September 9, 2013. Settlement at para. 10.

4. In its complaint, I&E alleged that the Pipeline Safety Division mailed a non-compliance letter to Pine Roe following the November 28, 2012 inspection listing violations that were discovered during the inspection and providing Pine Roe with additional time to take corrective action. Settlement at para. 10.

5. In its complaint, I&E alleged that Pine Roe failed to respond to the non-compliance letter and an inspection on September 9, 2013 revealed that Pine Roe had not taken corrective action. Settlement at para. 10.

6. In its complaint, I&E alleged violations of the Public Utility Code pertaining to the filing of annual assessment reports with the Commission. Settlement at para. 14.

7. In its 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. Settlement at para. 12.

8. On March 4, 2016, I&E filed an amended complaint against Pine Roe alleging that Pine Roe violated additional gas safety regulations in connection with a June 2015 gas leak, among other things. Settlement at paras. 14-17.

9. Due to the increase in alleged violations in the amended complaint, I&E increased its 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. Settlement at para. 18.

10. On January 4, 2017, I&E filed a second complaint against Pine Roe alleging violations of gas safety regulations in Part 192 of the Code of Federal Regulations and Section 59.33 of the Commission's regulations 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. Settlement at para. 26.

11. In the second complaint, I&E sought relief, including the imposition of a civil penalty of \$90,000. Settlement at para. 27.

12. By order dated July 19, 2017, both complaints filed by I&E against Pine Roe were consolidated. Settlement at paras. 34-37.

13. On October 13, 2017, I&E and Pine Roe submitted a Joint Petition for Approval of Settlement seeking to resolve all issues related to both complaints.

DISCUSSION

A. Legal Standard

In this case, the parties submitted a settlement of all issues. Commission policy promotes settlements. 52 Pa.Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code § 69.401. 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.* (Opinion and Order entered July 14, 2011). The Commission must review proposed settlements to determine whether the terms are in the public interest. Pa. Pub. Util. Comm’n LBPS v. PPL Utilities Corporation, M-2009-2058182 (Opinion and Order November 23, 2009); Pa. Pub. Util. Comm’n v. Philadelphia Gas Works, M-00031768 (Opinion and Order January 7, 2004); 52 Pa. Code § 69.1201; Warner v. GTE North, Inc., Docket No. C-00902815 (Opinion and Order entered April 1, 1996); Pa. Pub. Util. Comm’n v. CS Water and Sewer Associates, 74 Pa. PUC 767 (1991).

The Commission has historically defined the public interest as including ratepayers, shareholders and the regulated community. Pa. Pub. Util. Comm’n v. Bell Atlantic-Pennsylvania, Inc., Docket No. R-00953409 (Order entered September 29, 1995). What is in the public interest is decided by examining the effect of the proposed settlement on these “stakeholder” entities. *Id.* The public interest is best served, however, by ensuring that the underlying transaction complies with applicable law. Dauphin County Indus. Dev. Auth. v. Pa. Pub. Util. Comm’n, 123 A.3d 1124 (Pa. Cmwlth. 2015). Furthermore, as a general rule, the interpretations of the agency charged with a statute’s administration and execution are entitled to great weight and the Legislature is presumed to favor public interests over private interests. Chappell v. Pa. Pub. Util. Comm’n, 425 A.2d 873 (Pa. Cmwlth. 1981); 1 Pa.C.S. §§ 1921(c)(8), 1922(5).

In addition, decisions of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 413 A.2d 1037 (Pa. 1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa.Super. 1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth. 1984).

The settlement submitted by I&E and Pine Roe includes a civil penalty. Section 3301 of the Public Utility Code grants the Commission authority to impose civil penalties. For most violations of the Public Utility Code, the Commission is authorized to impose a fine not exceeding \$1,000. 66 Pa.C.S. § 3301(a); *see also*, Newcomer Trucking, Inc. v. Pa. Pub. Util. Comm'n, 531 A.2d 85 (Pa.Cmwlth. 1987) (holding that Section 3301 of the Code authorizes the Commission to impose a civil penalty of up to \$1,000 for each and every discrete violation, regardless of the number of violations occurred).

Finally, Section 69.1201 of the Commission's regulations provides a Policy Statement regarding factors and standards to be used when evaluating litigated and settled proceedings. 52 Pa.Code § 69.1201. The Policy Statement notes that "these factors and standards will be utilized by the Commission in determining if 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." 52 Pa.Code § 69.1201(a). The Policy Statement notes that "when applied in settled cases, these factors and standards will not be applied in as strict a fashion as in a litigated proceeding. The parties in settled cases will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest." 52 Pa.Code § 69.1201(b). These factors and standards are as follows:

- (1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

- (2) Whether the resulting consequences of the conduct at issue 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.
- (3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.
- (4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.
- (5) The number of customers affected and the duration of the violation.
- (6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.
- (7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.
- (8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.
- (9) Past Commission decisions in similar situations.
- (10) Other relevant factors.

52 Pa.Code § 69.1201(c); *see also*, Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Company, Docket No. C-0092409 (Final Order entered February 10, 2000) (“Rosi factors”).

It is against this legal backdrop that the terms of the settlement will be evaluated.

B. Terms of Settlement

The parties have agreed to the following terms, with the original paragraph numbering from the settlement maintained:

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 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.

11. At its sole cost and expense, Pine Roe agrees that it created and implemented a public education program following the guidance provided in the American Petroleum Institute's Recommended Practice. Pine Roe completed the program on April 6, 2017, mailed it to customers on May 2, 2017 and provided a brochure to emergency management officials, local officials, excavators and plumbers on June 13, 2017. Pine Roe agrees that it

provided a copy of the program to I&E on September 21, 2017 and that I&E may provide feedback to Pine Roe concerning the program. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 49 CFR § 192.616 and 52 Pa. Code § 59.33.

12. Pine Roe agrees that it has updated its operations and maintenance manual ("O&M manual") on or around July 19, 2017. Pine Roe agrees to provide a copy of its revised O&M manual to the I&E Pipeline Safety Division wherein Pipeline Safety will confer with Pine Roe and provide feedback during the quarterly meetings that are referenced below. Pine Roe agrees that if it does not incorporate revisions suggested by the I&E Pipeline Safety Division with respect to Pine Roe's O&M manual, 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 § 192.605 and 52 Pa. Code § 59.33.

13. Pine Roe agrees to maintain complete records of its entire distribution system to show that it is performing the inspections that are required under 49 CFR Part 192 Subparts L (relating to Operations) and M (relating to Maintenance). Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 49 CFR § 192.13(c) and 52 Pa. Code §§ 59.37 and 59.33.

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).

15. I&E agrees that Pine Roe has paid its outstanding assessment for the July 1, 2014 to June 30, 2015 fiscal year in the amount of \$365 and has satisfied all outstanding assessments. Pine Roe agrees that it will timely pay assessments in the future. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 66 Pa.C.S. § 510(c).

16. Pine Roe agrees to respond within one hour, at most, of any report of a gas odor. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 49 CFR §§ 192.605(b)(11), 192.615(a)(3)(i) and 52 Pa. Code § 59.33.

17. At its sole cost and expense, Pine Roe agrees that it purchased a combustible gas indicator on or around August 28, 2017, which Pine Roe will use to take gas readings at sites where gas leaks are reported to have occurred. Also at its sole cost and expense, Pine Roe agrees that it purchased equipment to take bore hole leak tests. Pine Roe agrees to participate in training regarding how to use the equipment. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 49 CFR § 192.615(a)(4) and 52 Pa. Code § 59.33.

18. Pine Roe agrees to begin repairs of hazardous gas leaks within one hour of reported gas leaks. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 49 CFR § 192.703(c) and 52 Pa. Code § 59.33.

19. Pine Roe agrees to monitor the area where its pipeline facilities are located for dead vegetation and other signs that may indicate the presence of a gas leak, and agrees to promptly repair, replace or remove from service pipe or segments of leaking pipe. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 49 CFR § 192.703(b) and 52 Pa. Code § 59.33.

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.

23. Pine Roe agrees that it purchased line locating equipment at its sole cost and expense. Pine Roe also agrees that it will purchase an attachment for the line locator at its sole cost and expense. Further, Pine Roe agrees to participate in training regarding how to use the equipment. Pine Roe's actions were taken in response to I&E's allegation that Pine Roe violated 49 CFR § 192.321(e) and 52 Pa. Code § 59.33.

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.

Settlement at 14-20. In addition, Pine Roe also expressly acknowledged that if it fails to adhere to any of the settlement terms set forth above, I&E will, among other things, pursue revocation of its certificate of public convenience without any further offer of settlement. Id. at 21.

The settlement is also conditioned upon additional terms and conditions typically found in most settlements presented to the Commission for approval. For example, the settlement is conditioned upon the Commission’s approval of the terms and conditions contained in the settlement without modification and allows parties to withdraw from the settlement and proceed with litigation if the settlement is modified. Id. at 22. The parties also agreed to waive their right to file exceptions if the settlement is adopted without modification. Id. The parties further note, among other things, that the settlement is made without any concession or admission of fact or law and the parties may dispute all issues of fact or law for all purposes in all proceedings that may arise as a result of the circumstances described in the settlement. Id. at 23.

C. Public Interest

1. Position of the parties

In the settlement, the parties acknowledged that approval of the settlement is in the public interest and consistent with the Commission's regulations regarding settlements. Settlement at 22. The parties submitted that the settlement is in the public interest because it effectively addresses the allegations raised by I&E that are the subject of the consolidated complaints and avoids the time and expense of litigation, including hearings, travel and the preparation of briefs and exceptions, as well as the possibility of appeal. Id. In addition, both parties attached to the settlement statements in support of the settlement.

In its statement in support of the settlement, I&E stated 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 in to compliance with the Code of Federal Regulations, the Public Utility Code and the Commission's regulations. I&E noted that Pine Roe agreed to take numerous corrective actions to achieve compliance with gas safety regulations and record-keeping requirements. I&E noted that the company has recently hired a full-time field operations manager who is in the process of becoming qualified to run all aspects of Pine Roe's distribution system. I&E added that the \$20,000 civil penalty is justified due to the recent investments the company has made, the financial circumstances of the company and the affiliate's agreement to erase a nearly \$85,000 arrearage that Pine Roe had accrued for the purchase of natural gas supply. I&E stated that, although the parties may disagree with respect to the factual allegations averred by I&E, Pine Roe recognizes the need to prevent similar allegations from reoccurring. I&E also noted 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 then addressed in great detail each of the "Rosi factors" in Section 69.1201 of the Commission's regulations that the Commission may consider when evaluating whether a civil penalty and a proposed settlement are reasonable and in the public interest.

For example, I&E stated that the settlement is in the public interest and should be adopted without modification because the violations averred in I&E's complaint are of a serious nature since Pine Roe allegedly failed to promptly correct gas safety violations that were discovered during routine inspections and Pine Roe's alleged flawed response and repair to 2015 and 2016 gas leaks. I&E further noted that, although no serious consequences such as personal injury or property damage are alleged to have occurred, the potential for serious consequences was significant, especially with regard to Pine Roe's 2015 repair of a gas leak in which, it is alleged, the company used a battery-powered pipe cutter to cut a live gas line and members of the public were present at the site while the gas was leaking. I&E noted that Pine Roe has either performed or has committed to perform numerous corrective actions designed to address any past non-compliance and that such measures should provide a significant benefit to public safety.

I&E also noted in its statement in support of the settlement that the settlement is in the public interest and should be approved without modification because all 160 of Pine Roe's customers could have been affected by the alleged repair of a gas leak and Pine Roe has an extensive history of non-compliance before this Commission. I&E noted several formal proceedings brought against Pine Roe to demonstrate the company's non-compliance. I&E also stated that Pine Roe did not initially cooperate with the Pipeline Safety Division's investigation, including that it was difficult for the Pipeline Safety Division to contact the company. I&E stated that the settlement is in the public interest because it will deter Pine Roe from committing future violations and because past Commission decisions in similar cases support the civil penalty. Finally, I&E stated that other relevant factors warrant adopting the settlement in its entirety without modification because it is in the public interest.

In its statement in support of the settlement, Pine Roe stated in total:

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 have any questions, please contact me.

The statement in support is then signed by John Habjan as President of Pine Roe.

2. Disposition

In this case, the settlement agreement provides that Pine Roe will pay a civil penalty of \$20,000 and engage in a number of corrective actions to resolve both complaints filed by I&E. In general, the settlement is in the public interest and consistent with Commission regulations regarding settlements. The settlement will, therefore, be adopted without modification.

The settlement provides that Pine Roe has performed, or will perform within 60 days of the date of the Commission's final order approving the settlement, 31 corrective actions. Some of these actions include taking ownership of the producers' lines that are currently serving Pine Roe customers, hiring an outside contractor who performed odorant testing and will periodically monitor odorant, purchasing leak detector equipment, placing line markers over each buried main and transmission line, hiring a contractor to patrol the mains and keep records of the patrols, creating and implementing a public education program, updating its operations and maintenance manual, responding within one hour to any report of a gas odor, purchasing a combustible gas indicator and taking readings at sites where gas leaks are reported to have occurred, beginning repair of hazardous gas leaks within one hour of report, taking steps to minimize the danger of accidental ignition of gas, testing the pressure of the pipeline, complying with all filing requirements related to the recovery of purchased gas costs, meeting with Pipeline

Safety Division on a quarterly basis for three years and hiring a certified public accountant to review and complete the company's financial documentation and accounting records.

This is an extensive list of corrective actions, some of which Pine Roe has already completed and many of which likely are expensive. Many of these actions correlate with violations of specific CFR and Commission regulations that, it is alleged, Pine Roe has not been following. Pine Roe should have been in compliance with many, if not all, of these requirements all along. The high number of commitments is indicative of just how far out of compliance Pine Roe has been. However, Pine Roe is now committing to adhere to these requirements. To the extent that Pine Roe now, as a result of this settlement, complies with the requirements, the settlement is in the public interest and should be adopted. Many of the commitments Pine Roe makes in the settlement address specific issues that I&E raised in its complaints and would have pursued had this case been litigated.

All of the commitments Pine Roe makes in the settlement will help ensure the safety of Pine Roe's customers and the public and are, therefore, in the public interest. For example, performing odorant tests and purchasing leak detector equipment will help prevent gas leaks from occurring in the future. Similarly, inspecting each emergency valve and placing markers over buried lines and at crossings will also help prevent gas leaks from occurring in the future. Pine Roe has also agreed to make "back office" corrections. These include updating its operations and maintenance manuals, hiring certain additional personnel, submitting assessment reports, maintaining certain records and submitting certain financial reports. Pine Roe has also committed to respond to reports of leaks and make repairs within one hour. All of these actions will help ensure that Pine Roe is run more appropriately and efficiently and provide adequate and safe natural gas service at just and reasonable rates consistent with all applicable laws. As a result, these actions are in the public interest and warrant adopting the settlement without modification in its entirety.

With regard to the \$20,000 civil penalty Pine Roe commits to pay as part of the settlement, this amount is less than 5% of the more than \$400,000 total civil penalty requested by I&E in its complaints. Of course, the corrective actions identified above that Pine Roe commits

to undertake, or has already undertaken, will likely be costly. And, it would not be in the public interest to require a civil penalty on top of the cost of the corrective actions that would financially harm Pine Roe and hinder its ability to provide service to its 160 customers. Furthermore, a settlement is a product of compromise and a variety of sometimes conflicting factors. Such factors include using the civil penalty as a deterrent for future noncompliance while still enabling the company to come into compliance. Had the parties not agreed to this settlement, I&E would have been required to provide substantial evidence in support of its positions. When coupled with the numerous corrective actions included in the settlement, the \$20,000 civil penalty is reasonable and consistent with Commission regulations that encourage settlement. Nonetheless, the company is advised that the civil penalty is a small portion of the civil penalty that could have been imposed had I&E's litigation position been adopted in full.

Overall, the settlement submitted by I&E and Pine Roe to resolve the two outstanding complaints will be adopted without modification. Pine Roe is now agreeing to comply with the statutes and regulations it should have been complying with all along., To the extent that Pine Roe does in fact comply with these requirements as part of the settlement, the settlement is in the public interest. And, as noted above, the list of requirements that Pine Roe obligates itself to as part of this settlement is long because the company has acted in violation of so many requirements. As discussed further below, Pine Roe also has a long history of non-compliance.

In general, to the extent that Pine Roe fulfills its obligations in this settlement and provides compliant utility service going forward, the settlement is in the public interest and should be adopted without modification. To the extent Pine Roe fails to fulfill its obligations in this settlement, the consequences will likely be greater, including a larger civil penalty and possible revocation of its certificate of public convenience. As stated in the settlement, I&E will pursue revocation of Pine Roe's certificate of public convenience without any further offer of settlement if the company fails to adhere to any of the settlement terms. Pine Roe is advised in the strongest possible terms to comply with each and every provision of the settlement.

3. Application of Rosi factors

As noted above, the Commission has promulgated a Policy Statement that sets forth ten factors (“Rosi factors”) that the Commission will consider in evaluating litigated and settled proceedings and determining whether a fine for violating a Commission order, regulation or statute is appropriate, as well as whether a proposed settlement for violations is reasonable and approval of the settlement agreement is in the public interest. 52 Pa.Code § 69.1201(a). When applied in settled cases, the factors will not be applied in as strict a fashion as in a litigated proceeding. 52 Pa.Code § 69.1201(b). The parties in settled cases will be afforded flexibility in reaching amicable resolutions so long as the settlement is in the public interest. *Id.* A review of the factors articulated in the Policy Statement supports finding that the settlement submitted in this proceeding by I&E and Pine Roe should be adopted in its entirety and without modification as being in the public interest.

a. First Rosi Factor - Whether the conduct was of a serious nature

With regard to the first Rosi factor, Section 69.1201(c)(1) states:

Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

52 Pa.Code § 69.1201(c)(1). In its statement in support of the settlement, I&E stated that “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 Commission takes very seriously the provision of natural gas service. At a time when aging infrastructure has led to serious gas explosions, some of which have resulted in the loss of life and substantial destruction of property, the averments made by I&E in the complaints filed against Pine Roe are, if proven, very serious. For example, the complaints allege one gas leak in

2015 and another gas leak caused by a line hit in 2016. The 2016 complaint also includes an allegation of use of a battery-powered pipe cutter to cut a live gas line where the public was permitted in the excavated area. The Public Utility Code requires that “every public utility furnish and maintain adequate, efficient, *safe* and reasonable service and facilities ... for the accommodation, convenience and *safety* of its patrons, employees and the public.” 66 Pa.C.S. § 1501 (emphasis added). The averments made by I&E in its complaints against Pine Roe would violate this fundamental precept of public utility law. While some of the averments do pertain to matters that are administrative or technical in nature, such as failing to pay assessments, overall, the conduct at issue in the I&E complaints is very serious. As a result, this factor warrants adopting the settlement in its entirety without modification, including a higher civil penalty, because the conduct at issue was of a serious nature.

b. Second Rosi Factor - Whether the resulting consequences of the conduct at issue were of a serious nature

With regard to the second Rosi factor, whether the resulting consequences of the conduct at issue were of a serious nature, Section 69.1201(c)(2) states:

Whether the resulting consequences of the conduct at issue 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). In its statement in support of the settlement, I&E stated that “no serious consequences, such as personal injury or property damage, are alleged to have occurred.” Fortunately, there is no indication that Pine Roe’s actions caused personal injury or property damage. As a result, this factor warrants adopting the settlement in its entirety without modification, including a lower civil penalty, because the conduct at issue did not result in serious consequences.

c. Third Rosi factor – whether the conduct was intentional or negligent

With regard to the third factor, whether the conduct at issue was deemed intentional or negligent, this factor is not relevant here because this factor is only evaluated in litigated proceedings. 52 Pa.Code § 69.1201(c)(3).

d. Fourth Rosi factor – efforts to modify internal practices and procedures

With regard to the fourth Rosi factor, efforts to modify internal practices and procedures, Section 69.1201(c)(4) states:

Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

52 Pa.Code § 69.1201(c)(4). In its statement in support of the settlement, I&E stated that “Pine Roe has either performed or committed to perform numerous corrective actions that are designed to address any past non-compliance issue [and that] these measures should provide a significant benefit to public safety and enhance the safety and reliability of service.”

I agree. As noted above, the settlement provides that Pine Roe will perform 31 corrective actions within 60 days of the date of the Commission’s final order approving the settlement. While not all of these actions “modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future,” it is clear that Pine Roe has undertaken, or has agreed to undertake, significant steps to change how it operates in many facets of the company. These actions include training and improving company technique and supervision. Although the settlement is submitted several years after the underlying incidents which gave rise to the complaints, Pine Roe is now moving expeditiously to modify its internal practices and procedures. Therefore, this factor warrants adopting the settlement in its entirety without

modification, including a lower civil penalty, because Pine Roe has made significant efforts to modify its internal practices and procedures.

e. Fifth Rosi factor – Number of customers affected and duration of violation

The fifth Rosi factor considers the number of customers affected and the duration of the violation. 52 Pa.Code § 69.1201(c)(5). In its statement in support of the settlement, I&E noted that “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.” I&E also noted that the alleged violations were first discovered on November 28, 2012 and continued at least through August 24, 2016.

Therefore, a significant number of customers were affected for a long period. Although, as noted above, no serious consequences, such as personal injury or property damage, are alleged to have occurred, each of these customers was allegedly provided with unsafe gas service for at least a period of nearly four years. To the extent Pine Roe was providing non-compliant utility service, it was doing so to all 160 of its customers. Furthermore, I&E alleged 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. Such actions placed the entire public in jeopardy, not just Pine Roe’s 160 customers.

As such, this factor warrants adopting the settlement in its entirety without modification, including a higher civil penalty, because of the number of customers affected by, and the duration of, the alleged violations.

f. Sixth Rosi factor – compliance history

With regard to the sixth Rosi factor, Pine Roe’s compliance history, Section 69.1201(c)(6) provides that, “an isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.” 52 Pa.Code § 69.1201(c)(6). In its statement in support of the settlement, I&E articulated an extensive history of Pine Roe’s non-compliance before the Commission. Such non-compliance includes

complaints brought by customers who lost gas service for three days during extreme cold weather in 1985, a proceeding brought in 2006 by I&E's predecessor alleging numerous gas safety violations discovered during an inspection and numerous cases over several years regarding Pine Roe's failure to file annual financial reports, pay assessments and file assessment reports with the Commission.

Pine Roe has an extensive history of non-compliance with the Commission. This includes several issues which are also the subject of the two complaints filed by I&E in this proceeding. There is at least one instance where a settlement was filed, but there is no precedential value to the settlement, and the mere fact that a complaint was filed does not mean that a regulation was violated. Nonetheless, at a minimum, Pine Roe has a history of failing to file annual financial reports, pay assessments and file assessment reports with the Commission. This is a troubling pattern and constitutes "recurrent violations by a utility [that] may result in a higher penalty." All public utilities should have the core competence to, at a minimum, file annual financial reports, pay assessments and file assessment reports with the Commission. Therefore, this factor warrants adopting the settlement in its entirety without modification, including a higher civil penalty, because Pine Roe has a poor compliance history.

g. Seventh Rosi factor – cooperation with the Commission investigation

With regard to the seventh Rosi factor, Section 69.1201(c)(7) analyzes "whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations or attempts to interfere with Commission investigations may result in a higher penalty." 52 Pa.Code § 69.1201(c)(7). In its statement in support of the settlement, I&E noted several ways that Pine Roe initially did not cooperate with the Pipeline Safety Division's investigation. This included failing to timely and completely respond to non-compliance letters that were issued and failing to consistently communicate with the Pipeline Safety Division. This failure to cooperate is substantial. I&E added, however, that Pine Roe has subsequently addressed these "shortcomings" and was receptive to and actively participated in the inspection.

Pine Roe's initial lack of cooperation is, again, troubling, especially when coupled with the company's history of non-compliance. Pine Roe's failure to communicate, for example,

constitutes “attempts to interfere with Commission investigations [that] may result in a higher penalty.” On a going forward basis, Pine Roe must satisfy the obligations and requirements of being a regulated utility. This includes cooperating with the Commission’s investigations. Failing to timely and completely respond to non-compliance letters and to consistently communicate with the Commission and its personnel has, at a minimum, caused the unnecessary expenditure of scarce Commission resources needed to obtain Pine Roe’s compliance, up to and including this formal proceeding, and, at most, perpetuated unsafe or hazardous conditions for the public for longer than necessary. The company is strongly advised to cooperate with all Commission personnel, and especially the Pipeline Safety Division. While the company ultimately cooperated with the investigation, such actions must happen sooner rather than later. To the extent the company fails to do so, it faces even greater repercussions than those contained in the settlement, including a revocation of its certificate of public convenience.

Pine Roe’s failure to cooperate with the Commission supports adopting the settlement in its entirety without modification, including a higher civil penalty.

h. Eighth Rosi factor – amount of penalty necessary to deter future violations

With regard to the eighth Rosi factor, Section 69.1201(c)(8) analyzes “the amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.” 52 Pa.Code § 69.1201(c)(8). In its statement in support of the settlement, I&E stated that the \$20,000 civil penalty is substantial and sufficient to deter Pine Roe from committing future violations, noting in particular the company’s recent expenditures designed to improve safety and reliability of the distribution system and that the financial health of the company “is less than ideal.”

This factor is essential because, thus far, no action of the Commission seemingly has deterred Pine Roe from continuing to violate its obligations and requirements under the law. As noted above, Pine Roe has a long history of non-compliance and was even initially uncooperative with the Commission’s investigation in this case. Certainly, Pine Roe’s size warrants adopting the settlement without modification because it will help ensure that Pine Roe provides compliant utility

service. In this case, the size of the civil penalty and the 31 corrective actions are also reasonable given Pine Roe's financial health.

Therefore, this factor warrants adopting the settlement in its entirety without modification, including a lower civil penalty, to deter future violations by Pine Roe.

i. Ninth Rosi factor – past Commission decisions in similar cases

The ninth Rosi factor addresses past Commission decisions in similar cases. 52 Pa.Code § 69.1201(c)(9). In its statement in support of the settlement, I&E discussed the Commission's recent approval of a prior proceeding brought by I&E against Pine Roe wherein various similar allegations were made and the parties settled for a \$1,000 civil penalty. I&E also noted the company's willingness to correct the matters that led to the filing of the complaint. The final order in that case was entered in 2006.

The case relied upon by I&E in its statement in support of the settlement involved a settlement and, therefore, is of no precedential value. Furthermore, I am unaware of other Commission proceedings where the respondent has had such a long history of non-compliance and failed to comply with such an extensive list of Commission regulations. As a result, this factor will not be considered when determining whether the settlement and the accompanying civil penalty should be adopted as being in the public interest.

j. Tenth Rosi factor – other relevant factors

The tenth factor analyzes other relevant factors. 52 Pa.Code § 69.1201(c)(10). In its statement in support of the settlement, I&E stated that a settlement avoids the necessity for the governmental agency to prove elements of each allegation and, in turn, the opposing party agrees to a lesser fine or penalty or other remedial action. I&E also noted that the results of litigation are difficult to predict and reasonable settlement terms can represent an economic and pragmatic compromise and allow the parties to move forward and focus on implementing the remedial actions.

Adopting the settlement in its entirety will conserve administrative resources and the resources of the parties required to litigate this matter. Although the parties participated in preliminary matters related to litigating this case, including filing the complaint and participating in the prehearing conference, as well as exchanging discovery and engaging in settlement discussions, the parties have avoided submitting rounds of pre-served, written witness testimony, hearings and briefs, as well as any exceptions and other post-hearing activity including appeals, by submitting the settlement. These matters would have required significant expenditure of resources by the parties and the Commission. Additionally, the Commission strongly encourages settlements and has indicated that the results reached in settlements are often preferable over the results reached in fully litigated proceedings. Finally, the settlement will help promote gas safety because the corrective actions will ensure that Pine Roe complies with all applicable rules and regulations. There are no other additional relevant factors.

This factor, therefore, supports adopting the settlement, and accompanying civil penalty, in its entirety and without modification.

V. CONCLUSION

In conclusion, this decision adopts the joint petition for approval of settlement filed on October 13, 2017 in its entirety and without modification as it is in the public interest and consistent with Commission regulations regarding settlements. The settlement requires Pine Roe to pay a civil penalty of \$20,000 and perform 31 corrective actions, some of which have already been taken and some of which are costly. In contrast, the civil penalty is a small fraction of what could have been imposed had I&E proven all of its claims. In general, some of the Rosi factors support a higher civil penalty be imposed and some support a lower civil penalty be imposed. All of the Rosi factors, however, support adopting the settlement without modification.

Pine Roe is strongly advised to comply with this settlement because the results if the case were to be fully litigated could have been much more burdensome. Utilities simply cannot operate the way I&E alleged Pine Roe has been operating. This is supported by the company's long history of non-compliance, which is particularly troublesome given that Pine Roe is a small

company. If more utilities were to be as non-compliant and dilatory as Pine Roe's history demonstrates and I&E has alleged occurred in this case, this Commission would have to spend significant time and effort in performing its duties and the public would be unsafe. Such actions – or lack therefore – averred in I&E's complaints simply can no longer be tolerated.

In conclusion, the settlement will be adopted without modification. The 31 corrective actions will help to ensure that Pine Roe complies with its statutory and regulatory obligations and the public is safe. The settlement, therefore, is in the public interest. Pine Roe is again reminded that, as stated in the settlement, I&E will pursue revocation of Pine Roe's certificate of public convenience without any further offer of settlement if the company fails to adhere to any of the settlement terms.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.
2. Commission policy promotes settlements. 52 Pa.Code § 5.231.
3. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code § 69.401.
4. 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.* (Opinion and Order entered July 14, 2011).
5. The Commission must review proposed settlements to determine whether the terms are in the public interest. Pa. Pub. Util. Comm'n LBPS v. PPL Utilities Corporation, M-

2009-2058182 (Opinion and Order November 23, 2009); Pa. Pub. Util. Comm'n v. Philadelphia Gas Works, M-00031768 (Opinion and Order January 7, 2004); 52 Pa. Code § 69.1201; Warner v. GTE North, Inc., Docket No. C-00902815 (Opinion and Order entered April 1, 1996); Pa. Pub. Util. Comm'n v. CS Water and Sewer Associates, 74 Pa. PUC 767 (1991).

6. The Commission has historically defined the public interest as including ratepayers, shareholders and the regulated community. What is in the public interest is decided by examining the effect of the proposed settlement on these “stakeholder” entities. Pa.P.U.C. v. Bell Atlantic-Pennsylvania, Inc., Docket No. R-00953409 (Order entered September 29, 1995).

7. The public interest is best served by ensuring that the underlying transaction complies with applicable law. Dauphin County Indus. Dev. Auth. V. Pa. P.U.C., 123 A.3d 1124 (Pa. Cmwlth. 2015).

8. As a general rule, the interpretations of the agency charged with a statute’s administration and execution are entitled to great weight and the Legislature is presumed to favor public interests over private interests. Chappell v. Pa. P.U.C., 425 A.2d 873 (Pa. Cmwlth. 1981); 1 Pa.C.S. §§ 1921(c)(8), 1922(5).

9. The Commission’s regulations provide a Policy Statement regarding factors and standards to be used when evaluating litigated and settled proceedings. 52 Pa.Code § 69.1201; *see also*, Rosi v. Bell Atlantic-Pa., Inc. and Sprint Communications Company, Docket No. C-0092409 (Final Order entered February 10, 2000).

10. The Policy Statement factors and standards will be utilized by the Commission in determining if 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. 52 Pa.Code § 69.1201(a).

11. When applied in settled cases, the Policy Statement factors and standards will not be applied in as strict a fashion as in a litigated proceeding. The parties in settled cases will

be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest. 52 Pa.Code § 69.1201(b).

12. Decisions of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

13. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 413 A.2d 1037 (Pa. 1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa.Super. 1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth. 1984).

14. The Commission is authorized to impose civil penalties. For most violations of the Public Utility Code, the Commission is authorized to impose a fine not exceeding \$1,000. 66 Pa.C.S. § 3301(a).

15. The joint petition for approval of settlement submitted in this proceeding on October 13, 2017 should be adopted in its entirety because it is in the public interest and consistent with Commission regulations regarding settlement.

VI. ORDER

THEREFORE,

IT IS ORDERED:

1. That the Joint Petition for Approval of Settlement filed by the Bureau of Investigation and Enforcement and Pine Roe Natural Gas Co., Inc. on October 13, 2017 at Docket Numbers C-2014-2400485 and C-2017-2582760 is hereby approved in its entirety.

