



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

October 30, 2018

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. Burgly Gas & Oil Company: and/or in the alternative, Burgly Gas & Oil, Inc.; and/or in the alternative Burgly Drilling, Inc.
Docket No. C-2014-2411284
(Joint Petition for Settlement)

Dear Secretary Chiavetta:

Enclosed for filing is the Joint Petition for Settlement between the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement ("I&E") and Burgly Gas & Oil Company: and/or in the alternative, Burgly Gas & Oil, Inc.; and/or in the alternative Burgly Drilling, Inc. ("Burgly") in the above-captioned proceeding. The Settlement Agreement consists of the Agreement and Appendices A through C consisting of: Appendix A – Statement in Support of I&E; Appendix B – Statement in Support of Burgly; Appendix C – Proposed Ordering Paragraphs.

Copies have been served on the parties of record in accordance with the Certificate of Service. If you have any questions, please do not hesitate to contact me. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Gorter", with a long, sweeping horizontal line extending to the right.

Bradley R. Gorter, Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
(717) 783-6150
bgorter@pa.gov

Enclosure

cc: As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
	:	
Complainant	:	
	:	Docket No. C-2014-2411284
v.	:	
	:	
Burgly Gas & Oil Company; and/or in the	:	Electronically Filed
alternative, Burgly Gas & Oil, Inc.; and/or	:	
in the alternative Burgly Drilling, Inc.,	:	
	:	
Respondents	:	

JOINT PETITION FOR SETTLEMENT

The Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement (“I&E”) and Burgly Gas & Oil Company, *et al.* (“Burgly”), by their respective counsel, respectfully submit to the Pennsylvania Public Utility Commission (“Commission”) this Joint Petition for Settlement, including the attached Statements in Support from I&E (Attachment A) and Burgly (Attachment B) and Proposed Ordering Paragraphs (Attachment C) (together the “Joint Petition”). Burgly and I&E are collectively referred to herein as the “Joint Petitioners.”

As a result of negotiations between I&E and Burgly, the Joint Petitioners have agreed to resolve their differences as encouraged by the Commission’s policy to promote settlements (See 52 Pa. Code § 5.231). The terms and conditions of this Joint Petition represent a comprehensive settlement (the “Settlement”) of all issues presently pending in the above-docketed proceeding. The Joint Petitioners submit that this comprehensive Settlement is in the public interest and, therefore, request that the Commission approve, without

modification, the proposed Settlement as set forth in the Joint Petition. In support of their request, the Joint Petitioners state as follows:

I. BACKGROUND

1. The parties to this Settlement are I&E, by and through its prosecuting attorneys, P.O. Box 3265, Harrisburg, PA 17105-3265, and Burgly, with a principal place of business at 710 First Street, Apollo, PA 15613.

2. The Commission is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate pipeline operators pursuant to Section 501(a) of the Gas and Hazardous Liquids Pipelines Act (“Act 127”), 58 P.S. § 801.501(a) (effective date February 20, 2012).

3. I&E is the entity established by the Pennsylvania Public Utility Code to take appropriate enforcement actions and perform such other functions as the Commission deems necessary for the proper work of the Commission. 66 Pa.C.S. § 308.2(a)(11) and (12). *See also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered Apr. 11, 2011).

4. Section 501(a) of Act 127, 58 P.S. § 801.501(a), authorizes and obligates the Commission to supervise and regulate pipeline operators within this Commonwealth consistent with Federal Pipeline Safety Laws. Burgly owns and/or operates conventional and unconventional gas production and gathering pipeline facilities in Pennsylvania. As such, Burgly is a “pipeline operator” as that term is defined in 58 P.S. § 801.102 in that it “owns or operates equipment or facilities in this Commonwealth for the transportation of

gas or hazardous liquids by pipeline or pipeline facility regulated under Federal pipeline safety laws.” 58 P.S. § 801.102.

5. Section 502(a) of Act 127, 58 P.S. § 802.502(a) authorizes the Commission to impose civil penalties on pipeline operators for violations of Act 127. A pipeline operator may be subject to the civil penalty provided under Federal Pipeline Safety Laws or Section 3301(c) of the Code, 66 Pa.C.S. § 3301(c), whichever is greater.

6. On March 17, 2014, I&E filed a Formal Complaint (“Complaint”) with the Commission against Burgly. In the Complaint, I&E alleges that Burgly failed to obtain a certificate of public convenience and failed to properly register its pipeline, located in McKeesport, Pennsylvania, with the Commission, as required by Act 127. I&E further alleges that Burgly failed to properly register with Pennsylvania One Call (“PA One Call”).

7. I&E sought in its Complaint that the Commission: (a) impose a civil penalty of two million dollars (\$2,000,000) against Burgly, pursuant to Section 3301 of the Code, 66 Pa.C.S. § 3301; and, (b) order Burgly to comply with all Commonwealth laws and regulations, as well as all federal regulations as adopted by the Commonwealth.

8. Burgly’s counsel timely filed preliminary objections to I&E’s Complaint on April 24, 2014, asserting that it is not a public utility because it serves only a single end-user.

9. On May 5, 2014, I&E filed an Amended Complaint.

10. On May 23, 2014, Burgly filed preliminary objections to I&E’s Amended Complaint.

II. ALLEGED VIOLATIONS

11. If this matter had been litigated, rather than resolved through an exchange of information and Settlement discussions, I&E would have contended that Burgly violated certain provisions of the Public Utility Code, the Commission's regulations, Act 127, and Code of Federal Regulations in that:¹

- A. Burgly did not properly place and maintain markers as close as practical over its buried natural gas pipeline. If proven, this is a violation of 49 C.F.R. § 192.707 and 52 Pa. Code § 59.33.
- B. Burgly did not register with and participate in the PA One Call damage prevention program regarding its pipeline. If proven, this is a violation of 49 C.F.R. § 192.614(b) and 66 Pa.C.S. § 59.33.
- C. Burgly failed to register its pipeline with the Commission and failed to pay associated annual assessment(s) to the Commission. If proven, this is a violation of 58 P.S. § 801.301 and 58 P.S. § 801.503.

12. If this matter had been litigated rather than resolved through an exchange of information and Settlement discussions, Burgly would have contended that it did not violate the provisions of the Public Utility Code, the Commission's regulations, Act 127, or the Code of Federal Regulations as stated in I&E's Complaint.

III. CORRECTIVE ACTIONS

13. Burgly began to implement corrective actions in advance of this Settlement. On or about November 2014, Burgly registered its pipeline with PA One Call, as required

¹ Alleged violations not listed herein were not pursued and do not factor into the civil penalty or other settlement terms.

by 49 C.F.R. § 192.614(b). On January 9, 2017, Burgly also registered as an Act 127 Pennsylvania Pipeline Operator. *See* Docket No. A-2017-2584015.

14. Further, Burgly has complied with the requirements of Act 127, as specified in 58 P.S. §§ 801.101, *et. seq.*, including, but not limited to, timely paying Act 127 annual assessments, placing markers over the pipeline as required by Act 127, and preparing and maintaining a Damage Prevention Plan.

15. At this time Burgly is in compliance with Act 127.

IV. TERMS AND CONDITIONS OF SETTLEMENT

16. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest,² the Joint Petitioners engaged in numerous settlement discussions. These discussions culminated in this Settlement. The terms and conditions of the Settlement, for which the Joint Petitioners seek Commission approval, are set forth below.

A. Specific Settlement Provisions

17. I&E and Burgly, intending to be legally bound and for consideration given, desire to fully and finally conclude this litigation and agree to stipulate as to the following terms solely for the purposes of this Settlement Agreement.

- A. Burgly shall continue to comply with the requirements of Act 127 going forward, as specified in 58 P.S. §§ 801.101, *et. seq.*, including, but not limited to, timely paying Act 127 annual assessments.

² *See* 52 Pa. Code § 5.231(a).

- B. Burgly shall continue to properly place markers as close as practical over its buried natural gas pipeline(s), both existing and future, as required by 49 C.F.R. § 192.707.
- C. Burgly shall continue to conduct leakage surveys in accordance with 49 C.F.R. § 192.706 using leak detection equipment and promptly repair hazardous leaks that are discovered in accordance with § 192.703(c).
- D. Burgly has prepared and shall maintain a written damage prevention program, as required by 49 C.F.R. § 192.614. This damage prevention program shall be submitted to the Commission's Pipeline Safety Division for review.

18. Burgly shall complete the above actions within sixty (60) days after the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment.

19. Burgly shall pay a civil penalty in the amount of eighty thousand dollars (\$80,000), pursuant to 66 Pa.C.S. § 3301 to resolve the alleged violations included herein. Said payment shall be made within sixty (60) days after the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment.

B. General Settlement Provisions

20. This Settlement shall be deemed to constitute full and complete satisfaction by Burgly of all obligations relating to the issues raised in, within the scope of, or related to the Complaint. The Joint Petitioners acknowledge and agree that this Settlement shall have the same force and effect as if this proceeding were fully litigated.

21. This Settlement reflects compromises between the Joint Petitioners and: (i) is proposed solely for the purpose of settling the present proceeding; (ii) is made without any

admission by any party hereto as to any matter of fact or law, other than as may be expressly stated in this Joint Petition; and (iii) is without prejudice to any position advanced by either Joint Petitioner in this proceeding or that might be adopted by any Joint Petitioner during subsequent litigation. Notwithstanding the foregoing, however, if this Settlement is approved and implemented, the Joint Petitioners shall not in any subsequent proceeding take any action or advocate any position which would disrupt the spirit or the letter of the Joint Petition or the Settlement.

22. The Parties acknowledge that their actions pursuant to this Joint Petition are undertaken to resolve a disputed claim and are on an entirely voluntary basis and, except as may be expressly stated herein, this Joint Petition and Settlement are made without admission against or prejudice to any factual or legal position which either Joint Petitioner has asserted previously in connection with the Complaint or otherwise. Neither Joint Petitioner may cite, refer to, or rely on this Joint Petition as precedent, an admission, or by way of estoppel in any proceeding or future negotiation between them, other than a proceeding to enforce this Joint Petition or any final order from the Commission approving the Joint Petition.

23. This Joint Petition and the Settlement are conditioned upon the Commission's approval, without modification, of all of the terms outlined herein. If the Commission modifies or fails to approve any of the Settlement terms, then either Joint Petitioner may elect to withdraw from the Settlement and proceed to complete the litigation of these proceedings, in which event: (i) the Joint Petitioners reserve their respective rights to, *inter alia*, request rulings on all preliminary motions that may have been filed

previously, participate in a prehearing conference, conduct discovery, file testimony, confront opposing witnesses and generally participate in evidentiary hearings, submit briefs and reply briefs supporting their respective positions, etc.; (ii) the Joint Petitioners claim the privilege reserved in 52 Pa. Code § 5.231 that no part of the unaccepted Settlement shall be admissible in evidence at any time against any Joint Petitioner; and (iii) no adverse inference shall be drawn against either Joint Petitioner as a result of any matter set forth herein.

24. As of the date the Commission approves this Joint Petition and Settlement, I&E hereby holds harmless, releases, and forever forbears from further prosecuting any formal complaint relating to Burgly's conduct that is the subject of this Complaint and as described in this Joint Petition up to the Effective Date. Under no circumstances shall I&E request or the Commission impose any further civil or other penalties for any Burgly conduct or actions that are the subject of the formal Complaint and this Joint Petition.³

25. The Joint Petitioners shall not, in any subsequent proceeding before the Commission or any other forum, take any action, file any pleadings, or otherwise advocate any position inconsistent with or otherwise challenge or seek to overturn the terms and conditions of this Joint Petition and Settlement.

26. The terms and conditions of this Joint Petition shall be implemented at all times by Burgly and I&E in good faith and fair dealing. Each Joint Petitioner shall execute

³ This section does not preclude the Commission from investigating Burgly in the future or should Burgly begin to service additional customers.

such other documents as may be reasonably requested by the other Joint Petitioner to implement the intent and purpose of this Joint Petition and Settlement.

27. The Joint Petitioners may enforce this Joint Petition through any appropriate action before the Commission or through any other available remedy in law, equity, or otherwise.

28. This Joint Petition constitutes the entire agreement between Burgly and I&E hereto with respect to the matters contained herein and all prior agreements with respect to the matters covered herein are superseded, and each Joint Petitioner confirms that it is not relying upon any representations or warranties of the other Joint Petitioner, except as specifically set forth herein or incorporated by reference hereto.

29. This Joint Petition shall be governed by and construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania, irrespective of the application of any conflict of laws provisions.

30. The Settlement, including all terms, representations and conditions therein, are the result of negotiations and compromises between the Joint Petitioners and therefore shall not be admissible in any civil proceeding in accordance with Pennsylvania Rule of Evidence 408 and Federal Rule of Evidence 408.

31. The Joint Petitioners agree that this Settlement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together constitute one and the same agreement that is binding upon the Joint Petitioners as if they executed a single petition.

32. It is expressly understood and agreed between the Joint Petitioners that this Joint Petition and Settlement constitutes a negotiated resolution solely of the above-referenced proceeding.

33. The Joint Petitioners shall utilize their best efforts to support this Joint Petition and Settlement and to secure its approval, without modification, by the Commission.

V. THE SETTLEMENT IS IN THE PUBLIC INTEREST

34. The Commission's policy is to encourage settlements. See 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and, at the same time, conserve valuable administrative resources. The Commission has also referenced that settlement results are often preferable to those reached at the conclusion of a fully litigated proceeding. See 52 Pa. Code § 69.401. In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. Pa. Pub. Util. Comm'n v. York Water Co., Docket No. R-00049165 (Order entered Oct. 4, 2004); Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs., 74 Pa. P.U.C. 767 (1991). The Joint Petitioners assert that this Settlement is in the public interest because, with the conditions imposed herein, the proposed transaction will provide substantial affirmative public benefits.

35. Substantial litigation and associated costs will be avoided by this Settlement. This Settlement resolves a number of important issues fairly, by balancing the interests of

Burgly, I&E, and the public. If approved, the Settlement will eliminate the possibility of further Commission litigation and appeals, along with their attendant costs.

36. This Settlement is consistent with the Commission's policies promoting negotiated settlements. The Joint Petitioners arrived at this Settlement after a number of discussions and negotiations. The Settlement terms and conditions constitute a carefully crafted package, representing reasonable negotiated compromises on the issues addressed herein. Thus, the Settlement is consistent with the Commission's rules and practices encouraging negotiated settlements. See 52 Pa. Code §§ 5.231, 69.391, and 69.1201.

37. The reasons set forth in the Statements in Support filed by each of the Joint Petitioners at the above-referenced docket and attached hereto support approval of this Settlement.

VI. CONCLUSION

WHEREFORE, the Joint Petitioners, by their respective counsel, respectfully request that the Commission: approve the Settlement as set forth herein in its entirety without modification; find the Joint Petition for Settlement is in the public interest; and terminate this proceeding and mark the matter closed.

APPENDIX A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
	:	
Complainant	:	
	:	Docket No. C-2014-2411284
v.	:	
	:	
Burgly Gas & Oil Company: and/or in	:	
the alternative, Burgly Gas & Oil, Inc.;	:	Electronically Filed
and/or in the alternative Burgly Drilling,	:	
Inc.,	:	
	:	
Respondents	:	

**STATEMENT IN SUPPORT OF JOINT PETITION FOR SETTLEMENT OF
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION'S
BUREAU OF INVESTIGATION AND ENFORCEMENT**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

I. INTRODUCTION

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) hereby files this Statement in Support of the Joint Petition for Settlement (“Settlement” or “Joint Petition”) entered into by I&E and Burgly Gas & Oil, Inc. (“Burgly”) (hereinafter collectively referred to as the “Parties”) in the above docketed matter. The Settlement, if approved, fully resolves all issues related to the I&E formal complaint proceeding involving allegations that Burgly committed various violations of the Public Utility Code, the Commission’s regulations and the

federal Pipeline Safety Regulations, as codified in the Code of Federal Regulations, 49 C.F.R. Parts 190-199.

I&E respectfully submits that the Settlement is in the public interest and requests that the Commission approve the Settlement, including the terms and conditions thereof, without modification.

II. BACKGROUND

This matter involves Burgly, a jurisdictional “pipeline operator” as that term is defined in 58 P.S. § 801.102 (“Act 127”). Burgly owns and operates a natural gas well located at 637 Eden Park Boulevard, McKeesport, Pennsylvania. Burgly supplies natural gas for compensation to a single customer at 2214 Walnut Street, McKeesport, Pennsylvania via a 4-inch diameter plastic pipeline from the well to the customer. On May 21, 2018, a McKeesport Public Works excavation crew struck Burgly’s pipeline resulting in the release of natural gas. After an investigation, I&E’s Pipeline Safety Division determined that Burgly’s pipeline was not registered with the Pennsylvania One Call System (“PA One Call”), nor had Burgly obtained a certificate of public convenience from the Commission.

On March 17, 2014, I&E filed a Formal Complaint (“Complaint”) against Burgly alleging violations of the Public Utility Code, the Commission’s regulations, Act 127, and the Code of Federal Regulations (collectively “Pipeline Safety Regulations”). In its Complaint, I&E requested that the Commission: (a) impose a civil penalty of \$2,000,000 against Burgly, pursuant to 66 Pa.C.S. § 3301(c); (b) prevent Burgly from recovering any

portion of the civil penalty through rates; (c) order Burgly to cease and desist from committing any further violations of Pipeline Safety Regulations; (d) order Burgly to take any actions necessary to comply with all Pipeline Safety Regulations; and, (e) order Burgly to implement programs and procedures to correct all violations of Pipeline Safety Regulations.

On April 24, 2014, Burgly filed preliminary objections to the Complaint asserting, *inter alia*, that it is not a public utility because it serves only a single end user. On May 5, 2014, I&E filed an Amended Complaint, to which Burgly filed preliminary objections on May 23, 2014.

III. 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, which, once approved, will resolve all issues related to I&E's Complaint proceeding.

As fully set forth in the settlement terms below, I&E submits that this Settlement is in the public interest and fully satisfies I&E's significant safety concerns in this matter. After I&E initiated this matter, Burgly undertook several corrective actions. In November 2014, Burgly registered its pipeline with PA One Call. On January 9, 2017, Burgly registered as an Act 127 Pennsylvania Pipeline Operator. Additionally, Burgly has placed pipeline markers, performed leakage surveys, and developed a damage

prevention program, all generally in compliance with the federal Pipeline Safety Regulations codified at 49 CFR Parts 190-199.

I&E intended to prove the factual allegations set forth in Paragraph 11 of the Settlement Agreement,¹ which Burgly has disputed, at hearing. The Settlement results from the compromises of the Parties in arms-length negotiations. Further, I&E recognizes that, given the inherent unpredictability of the outcome of a contested proceeding, the benefits to amicably resolving the disputed issues through settlement outweigh the risks and expenditures of continued 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.

IV. TERMS OF SETTLEMENT:

Under the terms of the Settlement, the Parties have agreed that Burgly will perform the following corrective actions, which are intended to enhance safety:

- A. Burgly shall continue to comply with the requirements of Act 127 going forward, as specified in 58 P.S. §§ 801.101, et. seq., including, but not limited to, timely paying Act 127 annual assessments;
- B. Burgly shall continue to properly place markers as close as practical over its buried natural gas pipeline(s), both existing and future, as required by 49 C.F.R. § 192.707;
- C. Burgly shall continue to conduct leakage surveys in accordance with 49 C.F.R. § 192.706 using leak detection equipment and promptly

¹ Alleged violations not listed herein were not pursued and do not factor into the civil penalty or other settlement terms.

repair hazardous leaks that are discovered in accordance with § 192.703(c); and,

- D. Burgly has prepared and shall maintain a written damage prevention program as required by 49 C.F.R. § 192.614. This damage prevention program shall be submitted to the Commission's Pipeline Safety Division for review.

Burgly shall begin the above actions (contained in Paragraph 17 of the Settlement) within sixty (60) days after the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment.

Finally, Burgly will pay a civil penalty in the amount of Eighty Thousand Dollars (\$80,000), pursuant to 66 Pa.C.S. § 3301, to resolve the alleged violations included in the Complaint. Burgly will make this payment within sixty (60) days after the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment. This payment shall not be claimed or included for recovery in future ratemaking proceedings, nor shall it be considered tax deductible.

V. ANALYSIS OF THE *ROSI* STANDARDS:

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. In order to accept a settlement, the Commission must first determine that 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 Jan. 7, 2004).

I&E submits that approval of the Settlement Agreement in the above-referenced matter is consistent with the Commission's Policy Statement for Litigated and Settled Proceedings Involving Violations of the 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 Mar. 16, 2000). The Commission's Policy Statement sets forth ten factors that the Commission shall 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 an alleged violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

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). I&E submits that the violations averred in the Complaint are serious in nature in that Burgly did not register its pipeline with PA One Call and did not place markers over the buried pipeline. Serious public safety concerns are present when a utility's conduct puts its pipeline and the public at risk by not marking or registering its pipeling with PA One Call. Further, the Commission was not even aware of the existence of the pipeline because Burgly had not obtained a certificate of public convenience from the Commission. I&E submits that Burgly's alleged conduct is of a serious nature and this conduct was considered in arriving at the civil penalty in the Settlement Agreement. Moreover, Burgly recognized the seriousness

of this matter and took steps to mitigate further harm in this case, which justifies the proposed Settlement, including the agreed upon penalty amount.

The second factor considered is whether the resulting consequences of the Burgly'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). In this case, there were two minor injuries and property damage to the drill rig. However, there were no serious injuries or fatalities. The seriousness of this incident and Burgly's corrective actions have been taken into consideration in arriving at the civil penalty of \$80,000.

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 Burgly'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 Burgly has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). Following the incident, Burgly took several steps to prevent a similar recurrence. Burgly has registered with PA One Call and filed an application as an Act 127 Pipeline Operator. Further, Burgly has installed pipeline markers as close as practical to its pipeline, and it has conducted leakage surveys of the pipeline. Finally, Burgly has implemented and maintains a damage prevention program that has been

submitted to the Commission's Pipeline Safety Division for review. These actions demonstrate that a reduced penalty amount is in the public interest.

The fifth factor to be considered relates to the number of customers affected by Burgly's actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). Here, Burgly serves only one customer, and that single customer was affected by the incident because the gas leak affected its service. However, I&E submits that the surrounding residents, while not customers of Burgly, were affected both by being evacuated and by suffering medical symptoms due to natural gas exposure. I&E and Burgly considered this factor carefully in arriving at the agreed-upon \$80,000 civil penalty and believe that this factor supports approval of the Settlement without modification.

The sixth factor to be considered involves the compliance history of Burgly. 52 Pa. Code § 69.1201(c)(6). "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." *Id.* As a previously unregistered utility, Burgly has no substantive compliance history with the Commission. I&E's review of the Commission's records did not reveal any past matters relating to safety concerns with Burgly, and Burgly has not had any complaints or investigations initiated since the filing of this Complaint. As such, I&E submits that Burgly's compliance history supports the agreed-upon civil penalty.

The seventh factor to be considered relates to whether Burgly cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). Burgly has cooperated with I&E and the Pipeline Safety Division throughout the investigatory, complaint, and

settlement processes and has complied with the requested remedial measures. As such, I&E submits that this factor supports the agreed upon civil penalty of \$80,000.

The eighth factor to be considered is the appropriate settlement amount necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). I&E submits that a civil penalty amount of \$80,000, which may not be claimed or included for recovery in future ratemaking proceedings, together with the costs of the terms of the settlement set forth above, is substantial and sufficient to deter Burgly from committing future violations.

The ninth factor to be considered relates to past Commission decisions in similar matters. 52 Pa. Code § 69.1201(c)(9). I&E review of Act 127 Pipeline Operator matters reveals few similar cases. In Pa. Pub. Util. Comm'n, I&E v. Brookhaven MHP Management LLC, Meadowview Management LLC, Mill Creek MHP Management LLC, Northwood Manor Management LLC, and ATG Properties LLC d/b/a Greenleaf Gas Company, 2018 WL 4185465 (Pa.P.U.C.), the Commission approved a settlement imposing a civil penalty of \$25,000 on a utility for failing to register as an Act 127 Pipeline Operator and for failing to pay annual assessments. In Pa. Pub. Util. Comm'n, I&E v. PECO Energy Company, Docket No. C-2015-2514773 (Order entered Apr. 20, 2017), the Commission approved a settlement assessing a civil penalty of \$15,000 where a third-party excavator struck a natural gas main and only minor injuries and damage resulted from the incident. Here, I&E submits that the length of time that Burgly operated while not registered with the Commission or with PA One Call, from around 1970 until just recently, and the medical care required due to the gas leak justify the imposition of a higher civil penalty. Therefore, the civil penalty agreed upon in this

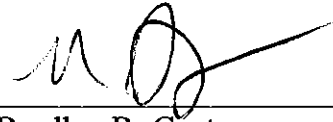
Settlement is consistent with past Commission actions and presents a fair and reasonable outcome.

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 corrective 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 and respectfully requests that the Commission approve the Settlement in its entirety, without modification.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'BRADLEY R. GORTER', written over a horizontal line.

Bradley R. Gorter
Prosecutor
PA Attorney ID No. 312666

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
PO Box 3265
Harrisburg, PA 17105-3265
bgorter@pa.gov

Dated: October 30, 2018

APPENDIX B

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
	:	
Complainant	:	
	:	Docket No. C-2014-2411284
v.	:	
	:	
Burgly Gas & Oil Company: and/or in	:	Electronically Filed
the alternative, Burgly Gas & Oil, Inc.;	:	
and/or in the alternative Burgly Drilling,	:	
Inc.,	:	
	:	
Respondents	:	

STATEMENT IN SUPPORT OF SETTLEMENT

I. INTRODUCTION

Burgly Gas & Oil Company, Inc. (“Burgly”) hereby files this Statement in Support of the Joint Petition for Settlement (“Settlement” or “Joint Petition”) entered into by the Bureau of Investigation and Enforcement (“I&E”) and Burgly (hereinafter collectively referred to as the “Parties”) in the above docketed matter. The Settlement, if approved, fully resolves all issues related to the I&E formal complaint proceeding involving allegations that Burgly committed various violations of the Public Utility Code, the Commission’s regulations and the federal Pipeline Safety Regulations, as codified in the Code of Federal Regulations, 49 C.F.R. Parts 190-199.

Burgly respectfully submits that the Settlement is in the public interest and requests that the Commission approve the Settlement, including the terms and conditions thereof, without modification.

II. BACKGROUND

The basis of the action against Respondent is a single gas well (hereafter, "Well") and production pipeline (hereafter, "Pipeline") located at 637 Eden Park Boulevard, McKeesport, Pennsylvania. The Pipeline at issue is a 4-inch diameter SDR-7 plastic pipe. It starts at the referenced gas well and stretches approximately 6,643 feet to Christy Park Industries (hereafter, "CPI"). Burgly owned and operated the Well and Pipeline since May 28, 1998.

On March 17, 2014, I&E filed a Formal Complaint ("Complaint") against Burgly alleging violations of the Public Utility Code, the Commission's regulations, Act 127, and the Code of Federal Regulations (collectively "Pipeline Safety Regulations"). In its Complaint, I&E requested that the Commission: (a) impose a civil penalty of \$2,000,000 against Burgly, pursuant to 66 Pa.C.S. § 3301(c); (b) prevent Burgly from recovering any portion of the civil penalty through rates; (c) order Burgly to cease and desist from committing any further violations of Pipeline Safety Regulations; (d) order Burgly to take any actions necessary to comply with all Pipeline Safety Regulations; and, (e) order Burgly to implement programs and procedures to correct all violations of Pipeline Safety Regulations. On April 24, 2014, Burgly filed preliminary objections to the Complaint asserting, *inter alia*, that it is not a public utility because it serves only a single end user. On May 5, 2014, I&E filed an Amended Complaint, to which Burgly filed preliminary objections on May 23, 2014.

III. TERMS OF SETTLEMENT:

Under the terms of the Settlement, the Parties have agreed that Burgly will perform the following corrective actions, which are intended to enhance safety:

- A. Burgly shall continue to comply with the requirements of Act 127 going forward, as specified in 58 P.S. §§ 801.101, et. seq., including, but not limited to, timely paying Act 127 annual assessments;
- B. Burgly shall continue to properly place markers as close as practical over its buried natural gas pipeline(s), both existing and future, as required by 49 C.F.R. § 192.707;
- C. Burgly shall continue to conduct leakage surveys in accordance with 49 C.F.R § 192.706 using leak detection equipment and promptly repair hazardous leaks that are discovered in accordance with § 192.703(c); and,
- D. Burgly has prepared and shall maintain a written damage prevention program as required by 49 C.F.R. § 192.614. This damage prevention program shall be submitted to the Commission's Pipeline Safety Division for review.

Burgly will pay a civil penalty in the amount of Eighty Thousand Dollars (\$80,000) to resolve the alleged violations included in the Complaint. Burgly will make this payment within sixty (60) days after the date of entry of a final Commission Order approving the Settlement in its entirety without modification or amendment.

IV. ANALYSIS OF THE *ROSI* STANDARDS:

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. In order to accept a settlement, the Commission must first determine that 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 Jan. 7, 2004).

Burgly submits that approval of the Settlement Agreement in the above-referenced matter is consistent with the Commission's Policy Statement for Litigated and Settled Proceedings Involving Violations of the 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 Mar. 16, 2000). The Commission's Policy Statement sets forth ten factors that the Commission shall 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 an alleged violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

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). I&E submits that the violations averred in the Complaint are serious in nature in that Burgly did not register its pipeline with PA One Call and did not place markers over the buried pipeline. Burgly has disputed the allegations. It is Burgly's contention that the Pipeline was exempt from registration and the alleged regulations as it was a production line. Furthermore, Burgly took steps to make sure all local municipalities and authorities were aware of the location of the Pipeline. Regardless, Burgly took steps to mitigate possible future harm and is currently in compliance.

The second factor considered is whether the resulting consequences of the Burgly'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). In this case, there were two minor injuries and property damage to the drill rig. However, there were no serious injuries or fatalities. The seriousness of this incident and Burgly's corrective actions have been taken into consideration in arriving at the civil penalty of \$80,000.

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.* Burgly has alleged that its acts were not intentional. Burgly has one gas well, one pipeline and one customer and determined in good faith that it was not subject to the Public Utility Code. Whether Burgly'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 Burgly has made efforts to change its practices and procedures to prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4). Following the incident, Burgly took several steps to prevent a similar recurrence. Burgly has registered with PA One Call and filed an application as an Act 127 Pipeline Operator. Burgly contracted with USIC: Underground Utility and Damage Prevention Service to handle all Act 127 compliance. With USIC's assistance, Burgly has installed pipeline markers as close as practical to its pipeline, and it has conducted leakage surveys of the pipeline. Finally, Burgly has implemented and maintains a

damage prevention program that has been submitted to the Commission's Pipeline Safety Division for review. These actions demonstrate that a reduced penalty amount is in the public interest.

The fifth factor to be considered relates to the number of customers affected by Burgly's actions and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). Here, Burgly serves only one customer, and that single customer was not affected by the incident because the single customer has alternative sources for natural gas available.

The sixth factor to be considered involves the compliance history of Burgly. 52 Pa. Code § 69.1201(c)(6). "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." *Id.* As a previously unregistered utility, Burgly has no substantive compliance history with the Commission. I&E's review of the Commission's records did not reveal any past matters relating to safety concerns with Burgly. Burgly has not had any complaints or investigations initiated since the filing of this Complaint and the Settlement reflects that Burgly is currently in full compliance with all laws and regulations. As such, Burgly's compliance history supports the agreed-upon civil penalty.

The seventh factor to be considered relates to whether Burgly cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). Burgly has cooperated with I&E and the Pipeline Safety Division throughout the investigatory, complaint, and settlement processes and has complied with the requested remedial measures. The Settlement reflects that Burgly is currently in full compliance with all laws and

regulations. As such, Burgly submits that this factor supports the agreed upon civil penalty of \$80,000.

The eighth factor to be considered is the appropriate settlement amount necessary to deter future violations. 52 Pa. Code § 69.1201(c)(8). Burgly submits that a civil penalty amount of \$80,000 is substantial and sufficient to deter Burgly from committing future violations. Burgly owns and operates one gas well, one pipeline and has one customer.

The ninth factor to be considered relates to past Commission decisions in similar matters. 52 Pa. Code § 69.1201(c)(9). The civil penalty agreed upon in this Settlement is consistent with past Commission actions and presents a fair and reasonable outcome.

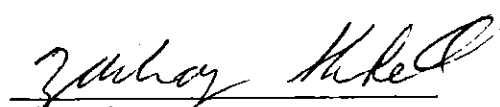
The tenth factor considers “other relevant factors.” 52 Pa. Code § 69.1201(c)(10). Like I&E, Burgly submits that an additional relevant factor – whether the case was settled or litigated -- is of pivotal importance to this Settlement Agreement. A settlement avoids the necessity for the governmental agency 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 corrective actions.

Burgly supports the terms and conditions of the Settlement Agreement. The terms of the Settlement Agreement reflect a 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, Burgly supports the Settlement Agreement and respectfully requests that the Commission approve the Settlement in its entirety, without modification.

Respectfully submitted,



At Lander, Esq.

Pa. Id. # 25821

Zachary R. Shekell, Esq.

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APPENDIX C

PROPOSED ORDERING PARAGRAPHS

1. That the Joint Petition between the Commission's Bureau of Investigation and Enforcement and Burgly Oil and Gas Company, Inc. is approved in its entirety without modification.

2. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, within sixty (60) days after the date this Order becomes final, Burgly shall pay a civil penalty of \$80,000. Said payment shall be made by certified check or money order payable to "Commonwealth of Pennsylvania" and shall be sent to:

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

3. That upon receipt of the payment as set forth in Ordering Paragraph No. 2, the Secretary shall mark this docket at C-2014-2411284 closed.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2014-2411284
	:	
Burgly Gas & Oil: and/or in the alternative,	:	
Burgly Gas & Oil, Inc.; and/or in the	:	
alternative Burgly Drilling, Inc.,	:	
Respondents	:	

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:

Harold E. Brown
Burgly Gas & Oil Company
710 First StREET
Apollo, PA 15613

Zachary R. Shekell, Esq.
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Bradley R. Gorter
Prosecutor
PA Attorney ID No. 312666
Bureau of Investigation and Enforcement

Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
Phone: 717-783-6150

Dated: October 30, 2018