



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

August 26, 2020

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement v.
Philadelphia Gas Works
Docket No. M-2020-2622907
Settlement Agreement and Statements in Support

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the **Settlement Agreement and Statements in Support** for the above-captioned proceeding.

Copies are being served on all parties of record as evidenced in the attached Certificate of Service. Should you have any questions, or concerns, please do not hesitate to contact me.

Sincerely,

Christopher M. Andreoli
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 85676
(717) 705-4366
chandreoli@pa.gov

CMA/ac
Enclosures

cc: Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

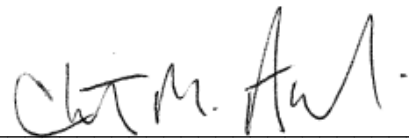
Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2020-2622907
	:	
Philadelphia Gas Works	:	

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Settlement Agreement and Statements in Support** on August 26, 2020, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by party):

Served via Electronic Mail Only

Daniel Clearfield, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
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Christopher M. Andreoli
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 85676

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2020-2622907
	:	
Philadelphia Gas Works	:	

SETTLEMENT AGREEMENT

Pursuant to 52 Pa. Code §§ 5.41 and 5.232, the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement and Philadelphia Gas Works hereby submit this Settlement Agreement to resolve all issues related to the above-docketed informal investigation.

INTRODUCTION

1. The Parties to this Settlement Agreement (“Settlement” or “Settlement Agreement”) are the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”), by its prosecuting attorneys, 400 North Street, Harrisburg, PA 17120 and Philadelphia Gas Works (“PGW” or “Company”), with a principal place of business at 800 W. Montgomery Avenue, Philadelphia, PA 19122.

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

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

4. The Commission has delegated its authority to initiate proceedings that are prosecutory in nature to I&E and other bureaus with enforcement responsibilities.

Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities, Docket No. M-00940593 (Order entered September 2, 1994), as amended by Act 129 of 2008, 66 Pa.C.S. § 308.2(a)(11). *See also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011) at 5 (transferring authority to prosecute assessment cases to I&E).

5. PGW is a city natural gas distribution operation as defined by 66 Pa.C.S. § 102, and its rates and service are regulated by the Commission pursuant to 66 Pa. C.S. § 2212. PGW is engaged in the distribution of natural gas in the City of Philadelphia as authorized by its Commission-approved Tariff.

6. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over PGW's actions as a natural gas distribution company.

7. Section 3301 of the Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or on any other person or corporation subject to the Commission's authority for violations of the Code, the Commission's regulations, or both. Section 3301 allows for the imposition of a fine for each violation and each day's continuance of such violation(s).

8. Pursuant to Sections 331(a) and 506 of the Code, 66 Pa.C.S. §§ 331(a) and 506 and Section 3.113 of the Commission's regulations, 52 Pa. Code § 3.113, Commission staff has the authority to conduct informal investigations or informal proceedings in order to gather data and/or to substantiate allegations of potential violations of the Commission's regulations.

9. I&E instituted an informal investigation of PGW based on information referred to I&E by the Commission's Bureau of Consumer Services ("BCS"). BCS notified I&E that PGW may have violated 52 PA Code § 56.191(b) regarding its refusal to restore service to a customer upon receipt of a valid medical certificate. I&E determined that these allegations warranted that a further investigation be conducted to examine whether the actions of PGW violated Commission regulations.

10. As a result of negotiations between I&E and PGW (hereinafter referred to as the "Parties"), the Parties have agreed to resolve their differences as encouraged by the Commission's policy to promote settlements. *See* 52 Pa. Code § 5.231. The duly authorized Parties executing this Settlement Agreement agree to the settlement terms set forth herein and urge the Commission to approve the Settlement Agreement as submitted as being in the public interest.

11. Proposed Ordering Paragraphs are attached as Appendix A. Statements in Support of the Settlement expressing the individual views of PGW and I&E are attached hereto as Appendix B and Appendix C, respectively.

BACKGROUND

12. On August 23, 2017, PGW terminated the customer's residential gas service at 2564 Emerald Street, Philadelphia, PA 19125.

13. On August 30, 2017, the customer provided a valid medical certificate to PGW.

14. In response, on August 30, 2017, PGW sent a technician to 2564 Emerald Street, Philadelphia, PA 19125 to restore service.

15. Upon arriving at the residence, the technician refused to enter the customer's basement to relight the pilot light due to what the PGW technician observed to be a very bad roach infestation.

16. That same day, the customer filed an informal complaint against PGW with BCS alleging that PGW failed to promptly restore service after being provided with a valid medical certificate.

17. On August 31, 2017, BCS directed PGW to restore service to this customer.

18. On September 1, 2017, PGW restored service to this customer at approximately 4:30 p.m.

19. Subsequently, on September 5, 2017, an Informal Complaint Decision was issued whereby PGW was ordered to immediately restore service and perform all tasks connected to this restoration. In the Informal Complaint Decision, it was determined that, "The presence of roaches does not constitute an imminent threat to the life and safety of company employees." The finding of an "imminent threat" would have justified PGW's

refusal to immediately restore the customer's gas service. As noted above, service was restored on September 1, 2017,

ALLEGED VIOLATIONS

20. Based on information obtained through its investigation, as described above, and a review of the Commission's regulations and relevant statutes, I&E was prepared to contend by the filing of a formal complaint that PGW violated certain provisions of Title 52 of the Pennsylvania Code in that PGW failed to promptly restore service upon receipt of a valid medical certificate from the customer. If proven, this would be a violation of 52 Pa. Code § 56.191(b).

21. Pursuant to 52 Pa. Code § 56.191(b), when service to a dwelling has been terminated, the public utility shall reconnect service **within 24 hours** upon receipt by the public utility of a valid medical certification (emphasis added).

22. Had this matter been litigated, PGW would have proffered evidence and legal arguments to demonstrate that its actions described above were justified by the circumstances and were consistent with 52 Pa. Code §§ 59.26, 59.29, 59.33 and Sections 6.1 and 6.1A of PGW PUC Tariff No. 2.

23. The Commission has consistently determined that a civil penalty is warranted where the public utility company failed to provide reasonable and adequate customer service.

24. PGW understands the nature of the allegations that I&E would have asserted in a formal complaint and, to ensure consistent and fair treatment of its customers, has put into effect appropriate measures to ensure that this type of incident is

not likely to reoccur without justification.

25. As a mitigating factor to the above allegations, I&E acknowledges that PGW fully cooperated with I&E's investigation. During the investigatory process, PGW complied with I&E's requests for information and documentation and provided I&E with records, correspondences, and other documents as requested by I&E.

SETTLEMENT TERMS

26. The purpose of this Settlement Agreement is to terminate I&E's informal investigation and settle this matter completely without litigation. There has been no Formal Complaint filed, no evidentiary hearing before any tribunal, and no sworn testimony taken in any proceeding related to this incident.

27. This Settlement does not constitute an admission that PGW violated any provision of PUC Regulations or the Public Utility Code. However, PGW acknowledges the seriousness of the aforementioned allegations and the need to have an established policy to deal with such an incident.

28. The Parties do not believe that there are any other potentially affected parties with respect to the subject of this Settlement Agreement who should directly receive notice hereof.

29. I&E and PGW, intending to be legally bound and for consideration given, desire to fully and finally conclude this informal investigation and agree to stipulate as to the following terms solely for the purposes of this Settlement Agreement:

- A. PGW will pay a civil penalty amount of seven hundred and fifty dollars (\$750.00) to resolve all allegations regarding the failure to restore service within 24 hours upon receipt of a valid medical certification and to fully and finally settle all possible liability and claims of alleged violations of the Commission's regulations arising from, or related to, the alleged violations investigated herein. Said payment shall be made within thirty (30) days of the date of the Commission's final order approving the Settlement Agreement and shall be made by certified check or money order made payable to the "Commonwealth of Pennsylvania" and sent to:

Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

- B. PGW will make a contribution of seven hundred and fifty dollars (\$750.00) to the Customer Assistance Referral and Evaluation Programs ("CARES"). PGW will provide I&E will proof of payment of this contribution to CARES within thirty (30) days of the date of the Commission's final order approving the Settlement Agreement. The CARES program assists customers with special needs, such as family emergencies, divorce, unemployment, or medical emergencies, to pay their utility bills.
- C. PGW has taken corrective action and implemented revisions to its operating procedures which will act as safeguards against future issues involving medical certificates. Specifically, PGW has implemented a new Medical Certification Gas Restoration Policy regarding how to properly handle these situations involving customers with medical certificates when potentially hazardous conditions exist at the customer's premises, including infestations. Additionally, PGW states that it has trained all of its field technicians and supervisors on this new policy at a cost of approximately \$7,500.

30. In exchange for the actions taken by PGW, as described above, I&E agrees not to institute any formal complaint relating to the failure to reconnect service within 24 hours upon receipt of a valid medical certificate from the residential customer at 2564 Emerald Street, Philadelphia, PA 19125, which is the subject of this Settlement Agreement.

31. In consideration of the Company's payment of a monetary civil penalty and its compliance with the other terms of this settlement, as specified herein, I&E agrees to forgo the institution of any formal complaint that relates to the Company's conduct as described in the Settlement Agreement. Nothing contained in this Settlement Agreement shall adversely affect the Commission's authority to receive and resolve any future informal or formal complaints filed by any affected party with respect to the incident, except that no penalties beyond the civil penalty amount agreed to herein may be imposed by the Commission for any actions identified herein.

32. I&E and PGW jointly acknowledge that approval of this Settlement Agreement is in the public interest and fully consistent with the Commission's Policy Statement for Litigated and Settled Proceedings Involving Violations of the Code and Commission Regulations, 52 Pa. Code § 69.1201. The Parties submit that the Settlement Agreement is in the public interest because it effectively addresses I&E's allegations of a violation under 52 Pa. Code §§ 56.191(b) and 56.421(4), regarding reconnection of service within 24 hours upon receipt by the public utility of a valid medical certificate from the customer, while taking into consideration PGW's position that its actions were

justified by, *inter alia*, 52 Pa. Code § 59.26 and § 59.33, and the advisability of having an established policy to handle such incidents in the future.

33. I&E and PGW also jointly acknowledge that approval of this Settlement Agreement avoids the time and expense of litigation, which entails hearings, travel for witnesses, and the preparation and filing of briefs, exceptions, reply exceptions, as well as possible appeals.

34. Attached as Appendices B and C are Statements in Support submitted by PGW and I&E, respectively, setting forth the bases upon which the Parties believe the Settlement Agreement is in the public interest.

CONDITIONS OF SETTLEMENT

35. This document represents the Settlement Agreement in its entirety. No changes to obligations set forth herein may be made unless they are in writing and are expressly accepted by the parties involved. This Settlement Agreement shall be construed and interpreted under Pennsylvania law.

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

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

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

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

40. The terms and conditions of this Settlement Agreement constitute a carefully crafted package representing reasonably negotiated compromises on the issues addressed herein. Thus, the Settlement Agreement is consistent with the Commission's

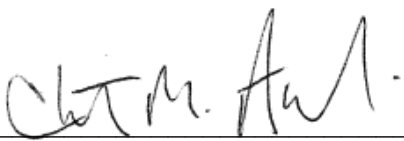
rules and practices encouraging negotiated settlements set forth in 52 Pa. Code §§ 5.231 and 69.1201.

WHEREFORE, the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement and Philadelphia Gas Works respectfully request that the Commission issue an Order approving the terms of this Settlement Agreement in their entirety as being in the public interest.


Respectfully Submitted,

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

Philadelphia Gas Works

By: 

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Date: August 26, 2020

Date: August 26, 2020

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement :
 :
v. : Docket No. M-2020-2622907
 :
Philadelphia Gas Works :

PROPOSED ORDERING PARAGRAPHS

1. That the Settlement Agreement filed on _____, between the Commission’s Bureau of Investigation and Enforcement and Philadelphia Gas Works (“PGW”) 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 thirty (30) days of the date this Order becomes final, PGW shall pay seven hundred and fifty dollars (\$750.00), which consists of the entirety of the civil penalty settlement amount. Said payment shall be made by certified check or money order payable to “Commonwealth of Pennsylvania” and shall be sent to:

Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

3. Additionally, PGW will make a contribution of seven hundred and fifty dollars (\$750.00) to the Customer Assistance Referral and Evaluation Programs (“CARES”). PGW will provide I&E will proof of payment of this contribution to CARES within thirty (30) days of the date of the Commission’s final order approving the Settlement Agreement.

4. A copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Office of Administrative Services.

5. Following compliance with above Ordering Paragraphs 2 and 3, this matter shall be marked closed.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement :
v. : Docket No. M-2020-2622907
Philadelphia Gas Works :

**STATEMENT OF PHILADELPHIA GAS WORKS
IN SUPPORT OF THE SETTLEMENT**

Philadelphia Gas Works (“PGW” or “the Company”) submits this Statement in Support of the Settlement in the above-captioned proceeding.

I. BACKGROUND

On August 23, 2017, PGW terminated a customer’s residential gas service at 2564 Emerald Street, Philadelphia, PA 19125. On August 30, 2017, the customer presented a valid medical certificate to PGW. On the same date, a PGW technician arrived at the property to restore gas service pursuant to the medical certification. Upon entering the house, the technician observed what he determined to be “a very bad roach infestation,” and he informed the occupants that they would need to call an exterminator and address the issue so that restoration could proceed. The customer’s grandson-in-law contacted PGW and confirmed that the property had cockroaches, stating that he thought they were coming from an adjoining property that was abandoned and being renovated.

That same day, the customer filed an informal complaint against PGW with the Commission’s Bureau of Consumer Services (“BCS”), alleging that PGW failed to promptly

restore service after being provided with a valid medical certificate. On August 31, BCS directed PGW to restore service to the property.

On the next day, September 1, 2017, PGW sent a supervisor to the property to further assess the situation. Upon entering the property, he observed multiple cans of insecticide lying around the first floor (which were not present on August 30), as well as live and dead roaches visible throughout the area. The supervisor asked the customer to clean up the debris and dead roaches in the basement and, thereafter, authorized a technician to visit the property to restore the gas service. Shortly thereafter that same day, a PGW technician arrived at the property and restored the gas service.

Upon being notified by BCS that PGW may have violated 52 Pa Code § 56.191(b) because of its initial refusal to restore service to the customer at 2564 Emerald Street upon receipt of a valid medical certificate, the Commission's Bureau of Investigation and Enforcement ("I&E") instituted an informal investigation of PGW to examine whether the actions of PGW violated Commission regulations or were justified under the circumstances. As a result of negotiations between I&E and PGW (hereinafter referred to as the "Parties"), the Parties have agreed to resolve their differences as encouraged by the Commission's policy to promote settlements. *See* 52 Pa. Code § 5.231. PGW submits this Statement in Support of the Settlement.

II. SETTLEMENT

Importantly, the Parties have agreed that the Settlement does not constitute an admission that PGW violated any provision of the Commission's regulations or the Public Utility Code. *Id.* at 27. PGW maintains that its actions in this matter were authorized under the Public Utility Code and the Commission's regulations and were reasonable. PGW is obligated to minimize

health and safety risks to its employees and others. Specifically, Section 1501 of the Public Utility code provides, in pertinent part: “Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities [...] as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, *employees*, and the public.” 66 Pa.C.S. § 1501 (emphasis added). Thus, it is clear that clear that PGW’s obligation to provide safe, adequate and reasonable service extends to its employees. It follows that, when conditions in a customer’s home or business create a dangerous, hazardous condition, PGW has an obligation to its employees, the customer and the public not to complete the restoration.¹

Further, under Section 59.26 of the Commission’s regulations, a public utility may decline to serve an applicant or customer if, in the judgment of the utility, the service requested is unreasonable and improper under the circumstances, or when the applicant has not complied with the rules of the utility. 52 Pa. Code § 59.26(a)(1) and (3); 52 Pa. Code § 59.26(a); *see also* 66 Pa.C.S. § 1407(b) (“When service to a dwelling has been terminated and *provided the applicant has met all applicable conditions . . .*”) (emphasis added).²

PGW takes its responsibilities to reestablish service when a customer has a medical

¹ PGW also has an obligation under Pennsylvania law pertaining to General Safety and Health Requirements to provide reasonable and adequate protection for the health and safety of its employees, as well as a common law duty to provide a safe working environment. 43 P.S. §§ 25-1 – 25-15.

² The Commission’s regulations are also replete with provisions enabling natural gas utilities to exercise their judgment in order to avoid hazardous or dangerous situations. *See e.g.* 52 Pa. Code § 59.26 (“A public utility may decline to serve an existing customer if, in the judgment of a utility, a hazardous condition exists regarding the piping or gas equipment of the customers.”); 52 Pa. Code § 59.24(b) (“if a dangerous condition is found to exist on the premises of customers, the gas may be shut off without advance notice”); 52 Pa. Code § 59.33(a) (“Each public utility shall at all times use every reasonable effort to properly warn and protect the public from danger, and shall exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities.”).

PGW’s Commission-approved Tariff, similarly, gives PGW the authority to take necessary action to avoid hazardous (or potentially hazardous) conditions. *See* PGW Gas Service Tariff at Original Pg. No. 45, Rule 8.4.A (access to premises) and Pg. No. 38, Rule 6.1.A (termination without notification for safety-related reasons or for unauthorized use; hazardous condition).

certificate very seriously. However, the position that a medical certification trumps any issue occurring at a property is unrealistic and could lead to safety issues and other negative consequences. It takes, on average, fifty (50) minutes for a PGW technician to restore natural gas service. Restorations to natural gas service occur 100% in the home at the meter and the furnace (as compared to shut-offs, which, for most customers occur outside the home). There are a number of circumstances in which PGW employees have encountered health hazards that would expose the employees to a variety of health risks if they were to spend 50 minutes in the house attempting to restore service. These circumstances include, but are not limited to, fleas, sewage water, flooded basements, feces/urine, bed bugs, excessive garbage/debris, rats/rodent infestation, and dead animals.³ Certainly no one would argue that restoration should occur pursuant to a medical certification when there is a legitimate safety issue that could result in harm to occupants and/or neighbors, and PGW employees should not fall outside this level of protection. The duty to restore customer service upon obtaining a medical certificate does not, and should not, invalidate health and/or safety issues found in a home that must be addressed before service restoration.⁴

Not only would it create a health hazard for PGW employees to restore service at a property under any of the circumstances discussed above, it also increases the chance that the employee might rush the process, creating a risk of malfunction, or worse, at the home. So, these situations pose both a health and a safety hazard. Accordingly, PGW submits that it is not only

³ These safety hazards are also contrary to the obligation for customers to provide reasonable access to their premises in order for utilities to engage in maintenance, operation, and meter reading. *See* 52 Pa. Code § 59.24(a) (“refusal on the part of customers to provide reasonable access to their premises for the purposes shall constitute sufficient cause for discontinuance of service”).

⁴ In fact, the BCS informal decision issued on September 5, 2017 recognizes that restoration of service under a medical certificate need not occur if there is an “imminent threat to the life and safety” of company employees.

within its rights, but that it has an affirmative duty, to not require employees to complete a turn-on when health and safety issues exist in the home.

In this instance, PGW determined that it was unreasonable and improper to perform the service requested due to the severe cockroach infestation encountered by its technician on August 30. While there are many homes in the City of Philadelphia that have roaches living in them, a roach infestation is an entirely different matter and exposes PGW employees to a variety of health risks. The National Center for Healthy Housing recognizes that cockroaches are a health hazard that cause illness⁵, which is a reality that PGW employees have experienced.⁶

Importantly, PGW policy is to affirm each instance when an employee declines to complete a medical certificate turn-on because of a health/safety hazard. PGW makes clear that if the health/safety hazard is mitigated, service will be restored as quickly as possible. PGW policy was followed with respect to the single instance that prompted I&E's investigation in this case. A PGW supervisor visited the home of the customer after the initial attempt to restore service and the report of the cockroach infestation. At this point, the cockroach infestation was significantly reduced to the point that service restoration could (and did) proceed. The unsafe conditions in the customer's basement resulted in a delay of just one day in restoring service. Accordingly, PGW firmly believes that its actions were reasonable and justified under the circumstances and consistent with the Public Utility Code and the Commission's regulations, as well as the duty PGW owes to its employees as their employer.

PGW, however, acknowledges the seriousness of the aforementioned allegations and the need to have an established policy to deal with such an incident. The purpose of the Settlement

⁵ <https://nchh.org/information-and-evidence/learn-about-healthy-housing/health-hazards-prevention-and-solutions/cockroaches/>.

⁶

is to terminate I&E's informal investigation and settle this matter completely without litigation. Settlement at ¶ 26. Pursuant to the Settlement, PGW has agreed to pay a civil penalty in the amount of seven hundred and fifty dollars (\$750.00) and to make a contribution of seven hundred and fifty dollars (\$750.00) to the Customer Assistance Referral and Evaluation Programs ("CARES"). *Id.* at 29(A)-(B).

PGW has also taken action and implemented revisions to its operating procedures to address future issues of this sort. *Id.* at 29(C). Specifically, PGW has implemented a new Medical Certification Gas Restoration Policy ("Policy") regarding how to properly handle these situations, and has trained all of its field technicians and supervisors on this new Policy. *Id.* In exchange, I&E has agreed not to institute any formal complaint arising from or relating to the alleged violations of the Commission's regulations investigated herein. *Id.* at 29(A) and 30-31.

PGW's new Policy and training thereof will help to safeguard against any future issues involving medical certificates and gas restoration. The new Policy requires a PGW supervisor to make the final determination as to whether gas service can be restored, upon the showing of a medical certificate, without posing a health risk or safety hazard to PGW employees. The Policy also ensures that gas restoration will occur as quickly as possible upon the mitigation of the health risk and/or safety hazard. Such safeguards are important to ensure the speedy and efficient restoration of natural gas to customers with valid medical certificates. Such measures will also help to ensure PGW's continued compliance with Commission regulations regarding same. For the reasons explained above, PGW submits that this Settlement is in the public interest and in the interest of PGW and its customers.

III. CONCLUSION

For the foregoing reasons, PGW submits that the Settlement provides a reasonable resolution to I&E's informal investigation and is in the public interest. PGW respectfully requests that the Joint Petition be approved without modification.

Respectfully submitted,



Kristine Marsilio, Esquire
Daniel Clearfield, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Floor
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717.237.6000

Date: August 26, 2020

Attorneys for
Philadelphia Gas Works

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement :
v. : Docket No. M-2020-2622907
Philadelphia Gas Works :

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

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 Settlement Agreement (“Settlement”) entered into by I&E and Philadelphia Gas Works (“PGW” or “Company”) (collectively, the “Parties”) in the above-captioned proceeding. The Settlement, if approved, fully resolves all issues related to I&E’s informal investigation into PGW’s issue pertaining to reconnecting a customer after the customer submitted a valid medical certificate.

I&E submits that the Settlement, which was amicably reached by the Parties after extensive negotiations and careful consideration, balances the duty of the Commission to

protect the public interest, including the Company's customers and all electric consumers in Pennsylvania, with the interests of the Company. Accordingly, I&E respectfully requests that the Commission approve the Settlement, including the terms and conditions thereof, without modification.

II. BACKGROUND

This matter involves PGW, a city gas distribution operation as defined by 66 Pa.C.S. § 102, and its rates and service are regulated by the Commission pursuant to 66 Pa. C.S. § 2212. PGW is engaged in the distribution of natural gas in the City of Philadelphia as authorized by its Commission-approved Tariff.

I&E instituted an informal investigation of PGW based on information referred to I&E by the Commission's Bureau of Consumer Services ("BCS"). BCS notified I&E that PGW may have violated 52 PA Code § 56.191(b) regarding its refusal to restore service to a customer upon receipt of a valid medical certificate. I&E determined that these allegations warranted that a further investigation be conducted to examine whether the actions of PGW violated Commission regulations.

I&E's investigation revealed that on August 23, 2017, PGW terminated the customer's residential gas service at 2564 Emerald Street, Philadelphia, PA 19125. Subsequently, on August 30, 2017, the customer provided a valid medical certificate to PGW. In response, on August 30, 2017, PGW sent a technician to 2564 Emerald Street, Philadelphia, PA 19125 to restore service. Upon arriving at the residence, the technician refused to enter the customer's basement to relight the pilot light due to what the PGW technician observed to be a very bad roach infestation. That same day, the customer filed

an informal complaint against PGW with BCS alleging that PGW failed to promptly restore service after being provided with a valid medical certificate. On August 31, 2017, BCS directed PGW to restore service to this customer. On September 1, 2017, PGW restored service to this customer at approximately 4:30 p.m.

Subsequently, on September 5, 2017, an Informal Complaint Decision was issued whereby PGW was ordered to immediately restore service and perform all tasks connected to this restoration. In the Informal Complaint Decision, it was determined that, “The presence of roaches does not constitute an imminent threat to the life and safety of company employees.” The finding of an “imminent threat” would have justified PGW’s refusal to immediately restore the customer’s gas service. As noted above, service was restored on September 1, 2017.

Upon investigation, I&E determined that PGW’s actions and failure to immediately restore service upon receipt of a valid medical certificate constitutes conduct of a serious nature and the consequences of this conduct is of a fairly serious nature. It should be noted that there is no evidence or documentation indicating that this violation was intentional.

In making the determination that the instant Settlement was appropriate, I&E weighed this violation against various mitigating circumstances that are present here. Importantly, I&E acknowledges that PGW fully cooperated with I&E’s investigation. PGW timely responded to I&E’s requests for information. Moreover, throughout the entire investigatory process, I&E and PGW remained active in communications and

informal discovery and continued to explore the possibility of resolving this investigation, which ultimately culminated in the Settlement Agreement reached here.

III. THE PUBLIC INTEREST

The Commission has consistently determined that a civil penalty is warranted where the public utility company failed to provide reasonable and adequate customer service.

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of settlement discussions. These discussions culminated in this Settlement Agreement, which, once approved, will resolve all issues related to I&E's investigation into PGW's violation, the civil penalty component of the Settlement serves to address I&E's allegations of billing violations.

I&E intended to prove the factual allegations set forth in its investigation at hearing. This Settlement Agreement results from the compromises of the Parties. PGW recognizes the concerns related to this violation and commits to fully complying with the Commission's regulations in the future.

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

I&E alleges that in connection with this incident, PGW committed a violation of the Commission's regulations. While the alleged violation was not intentional, I&E submits that PGW remains legally responsible for the alleged violation in this matter.

Based on I&E's allegations, I&E requests that the Commission approve the terms of the Settlement, which include directing PGW to pay a civil penalty in the amount of seven hundred and fifty dollars five (\$750.00) and make a contribution of seven hundred and fifty dollars (\$750.00) to the Customer Assistance Referral and Evaluation Programs ("CARES").

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

- (a) PGW will pay a civil penalty amount of seven hundred and fifty dollars (\$750.00) to resolve all allegations regarding the failure to restore service within 24 hours upon receipt of a valid medical certification and to fully and finally settle all possible liability and claims of alleged violations of the Commission's regulations arising from, or related to, the alleged violations investigated herein. Said payment shall be made within thirty (30) days of the date of the Commission's final order approving the Settlement Agreement and shall be made by certified check or money order made payable to the "Commonwealth of Pennsylvania" and sent to:

Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

- (b) PGW will make a contribution of seven hundred and fifty dollars (\$750.00) to the Customer Assistance Referral and Evaluation Programs ("CARES"). PGW will provide I&E will proof of payment of this contribution to CARES within thirty (30) days of the date of the Commission's final order approving the Settlement Agreement. The CARES program assists customers with special needs, such as family emergencies, divorce, unemployment, or medical emergencies, to pay their utility bills.

- (c) PGW has taken corrective action and implemented revisions to its operating procedures which will act as safeguards against future issues involving medical certificates. Specifically, PGW has implemented a new Medical Certification Gas Restoration Policy regarding how to properly handle these situations involving customers with medical certificates when potentially hazardous conditions exist at the customer's premises, including infestations. Additionally, PGW states that it has trained all of its field technicians and supervisors on this new policy at a cost of approximately \$7,500.

In consideration of PGW's payment of a civil penalty and contribution to CARES, in combination with the corrective actions undertaken by the Company, I&E agrees that its informal investigation relating to PGW's conduct as described in the Settlement Agreement shall be terminated and marked closed upon approval by the Commission of the Settlement Agreement in its entirety.

Upon Commission approval of the Settlement in its entirety without modification, I&E will not file any further complaints or initiate other action against PGW at the Commission with respect to the billing issues in question during the time period examined by I&E's investigation.

V. LEGAL STANDARD FOR SETTLEMENT AGREEMENTS

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. "The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a 'burden of proof' standard, as is utilized for contested matters." *Pa. Pub. Util. Comm'n, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, et

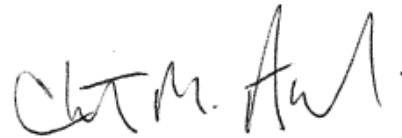
al. (Order entered July 14, 2011) at p. 11. Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

I&E submits that approval of the Settlement Agreement in the above-captioned matter is consistent with the Commission's Policy Statement regarding *Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* ("Policy Statement"), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission will not apply the standards as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases, the parties "will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest." 52 Pa. Code § 69.1201(b).

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

WHEREFORE, I&E supports the Settlement Agreement as being in the public interest and respectfully requests that the Commission approve the Settlement in its entirety without modification.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Chris M. Andreoli". The signature is cursive and somewhat stylized.

Christopher M. Andreoli
Prosecutor
PA Attorney ID No. 85676

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Dated: August 26, 2020