

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held August 25, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
John F. Coleman, Jr., Vice Chairman
Ralph V. Yanora

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

C-2020-3022293

v.

Golden Triangle Construction Co., Inc.

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a Joint Petition for Approval of Settlement (Settlement Agreement, Joint Petition or Settlement) filed on December 9, 2020, by the Commission's Bureau of Investigation and Enforcement (I&E) and Golden Triangle Construction Co., Inc. (GTC or Company) (collectively, Parties). Both I&E and GTC filed a Statement in Support of the Settlement (Statement in Support). For the reasons set forth herein, we will approve the Settlement as filed.

History of the Proceeding

This matter concerns alleged violations of the Underground Utility Line Protection Law, Act of October 30, 2017, P.L.806, No. 50 (PA One Call Law), 73 P.S. §§ 175, *et seq.*, which were raised in connection with a hit to a natural gas pipeline that occurred on October 3, 2018, in Bethel Park, Pennsylvania. Settlement at 1.

By letter dated June 2, 2020, I&E initiated an investigation of the Company and made requests for information and documents pursuant to 73 P.S. § 180(17).¹ I&E advised GTC that its investigation would focus on the excavation that resulted in damage to the underground pipeline, injury to a GTC employee, and property damage. I&E served GTC with one set of data requests on June 2, 2020, and GTC responded on July 2, 2020. The results of I&E's investigation, which included a review of the Company's responses to I&E's data requests, formed the basis for the Formal Complaint (Complaint) that was filed with the Commission on October 2, 2020, at Docket No. C-2020-3022293. On November 13, 2020, the Parties reached a Settlement in Principle. Settlement at 4-6.

The Parties filed the instant Settlement² on December 9, 2020.³ There has been no evidentiary hearing before any tribunal and no sworn testimony taken in I&E's

¹ See 73 P.S. § 180(17): "It shall be the duty of each excavator who intends to perform excavation or demolition work within this Commonwealth: . . . (17) To comply with all requests for information by the commission relating to the commission's enforcement authority under this act within thirty days of the receipt of the request."

² In formal proceedings where there is a settlement, the Commission encourages settlements. See 52 Pa. Code § 5.231(a). The criteria for evaluating settlements are set forth in 52 Pa. Code § 1201 – factors and standards for evaluating litigated and settled proceedings.

³ Under our Regulations when no presiding officer has been assigned, the Commission will review the settlement. See 52 Pa. Code § 232(g).

Complaint proceeding docketed at this docket. The Settlement was not published in the *PA Bulletin* for comment as this was not required.

Background

On October 3, 2018, at approximately 2:20 AM, GTC hit and damaged a marked, underground Columbia Gas of PA Inc. (Columbia Gas) pipeline with powered equipment in Bethel Park, Pennsylvania. Settlement at 3.

The damage to the pipeline resulted in the escape of flammable gas, which was ignited by heat from friction. The ignited gas injured a GTC employee and caused property damage. On June 2, 2020, I&E initiated a formal investigation of the Company. I&E's Complaint included the following averments:

- a. On August 20, 2018, GTC placed a locate request with the Pennsylvania One Call System (POCS) at POCS Serial No. 20182320939 to conduct an excavation with powered equipment;
- b. The purpose of the excavation was to install a water line for Pennsylvania-American Water Company;
- c. The locate request identified the work site as Clifton Road at the intersection of Library Road to Airedale Drive in Bethel Park, Pennsylvania, 15102;
- d. The lawful start date for the excavation was August 27, 2018;
- e. Columbia Gas is the facility owner of a four-inch medium pressure plastic gas main, which runs underground in the vicinity of the work site;
- f. The Columbia Gas pipeline is a "line" or "facility" as defined in 73 P.S. § 176;

- g. Columbia Gas accurately located and marked, in yellow paint, its underground pipeline at the work site within eighteen (18) inches horizontally from the outside wall of the line;
- h. GTC began excavating to install a water main after Columbia Gas responded “FIELD MARKED” through the POCS;
- i. At approximately 7:00 PM on October 2, 2018, GTC began hand-digging within the “tolerance zone” of the accurately marked, Columbia Gas pipeline to uncover the line;
- j. At approximately 2:00 AM on October 3, 2018, GTC stopped hand-digging;
- k. GTC did not locate the Columbia Gas pipeline via hand-digging or other prudent techniques;
- l. At approximately 2:20 AM on October 3, 2018, GTC used a Caterpillar 314E Excavator (Cat 314E) to excavate within the tolerance zone of the marked, Columbia Gas pipeline even though GTC had not located the line;
- m. GTC hit and damaged the Columbia Gas pipeline with the Cat 314E;
- n. The damage to the pipeline resulted in the escape of flammable gas, which was ignited by heat from friction;
- o. The ignited gas inflicted first and second degree burns to the face, neck, and upper extremities of a GTC employee;
- p. The ignited gas caused damage to the Cat 314E and damage to a nearby condominium’s sign, section of wood fencing, landscaping, and sidewalk; and

- q. GTC did not notify Columbia Gas of the damage to its pipeline or the escape of flammable gas, which endangered life, health, and property.

Settlement at 4-6.

In the Complaint, I&E requested that the Commission impose a cumulative administrative penalty of \$18,000 upon GTC and direct GTC to perform each of the corrective actions detailed in the Complaint. Settlement at 6.

The Parties entered into negotiations and agreed to resolve this matter in accordance with the Commission's policy to promote settlements at 52 Pa. Code § 5.231. As previously indicated, the Parties filed the instant Settlement on December 9, 2020.

Terms of the Settlement Agreement

Pursuant to the proposed Settlement, GTC will pay an administrative penalty of \$13,000.00 and take corrective actions as follows:

A. GTC will pay an administrative penalty in the amount of Thirteen Thousand Dollars (\$13,000.00) pursuant to 73 P.S. § 182.10(b). Said payment shall be made within thirty (30) days of the entry date of the Commission's Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania." The docket number of this proceeding, C-2020-3022293,

shall be indicated with the certified check or money order and the payment shall be sent to:

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

The administrative penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

B. GTC will take or has taken corrective action and implemented revisions to its operating procedures which will act as damage prevention measures. The pertinent portions of GTC's modified procedures are briefly described as follows:

i. GTC has implemented additional practices and procedures to ensure that due care be exercised to avoid injury to and interference with lines where positions have been provided and that prudent techniques be employed within the tolerance zone to ascertain the precise position of underground lines and facilities;

ii. GTC has implemented additional practices and procedures to ensure compliance with the Common Ground Alliance Best Practices;

iii. GTC has implemented additional practices and procedures to ensure the immediate notification to the facility owner of any damage to its lines made or discovered in the course of the excavation or demolition work;

iv. GTC has implemented additional practices and procedures to ensure the immediate notification of the facility owner if the damage results in the escape of any flammable, toxic, or corrosive gas or liquid which endangers life, health or property; and

v. GTC shall require its employees engaged in excavation work to attend annual, third-party training on excavation and trenching safety for three (3) years.

Settlement at 9-11.

I&E and GTC held a series of technical discussions that culminated in the Settlement. The Parties provide that the purpose of the Joint Petition is to resolve this matter without further litigation. There has been no evidentiary hearing before any tribunal and no sworn testimony taken in I&E's Complaint proceeding at Docket No. C-2020-3022293. Settlement at 8-9.

The Settlement is conditioned on the Commission's approval without modification of any of its terms or conditions. If the Commission does not approve the proposed Settlement or makes any change or modification to the proposed Settlement, either Party may elect to withdraw from the Settlement and proceed with litigation of this proceeding. Upon Commission approval of the Settlement in its entirety without modification and payment of the administrative penalty, I&E shall be deemed to have released GTC from all past claims that were made or could have been made for monetary and/or other relief based on allegations associated with the October 3, 2018 line hit. *Id.* at 11.

Additionally, the Settlement is made without any admission by any Party as to any matter of fact or law and is without prejudice to any position advanced by a Party

in this proceeding or that may be advanced by a Party in future litigation, except to the extent necessary to effectuate this Settlement. The Settlement does not preclude the Parties from taking other positions in any other proceeding. *Id.* at 12.

Discussion

This matter, as noted, is a Complaint proceeding under the PA One Call Law. Pursuant to the *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E) and 66 Pa. C.S. § 308.2(a)(11), the Commission's I&E is the entity authorized to prosecute complaints against public utilities and other entities for violations of the Public Utility Code, 66 Pa. C.S. §§ 101, *et seq.* (Code) and statutes which we have authority to administer. *See* Initial Decision, *Pa. PUC, Bureau of Investigation and Enforcement v. Sunoco Pipeline, L.P.*, Docket No. C-2018-3006534 (December 18, 2019) (ALJ Barnes); (final Order adopting settlement, August 19, 2020) (*Mariner East Settlement ID*).

A. Statements in Support

I&E and GTC filed Statements in Support of the Settlement.

1. I&E

In its Statement in Support, I&E explains that the crux of I&E's Complaint allegations, are that GTC hit and damaged a Columbia Gas pipeline while using a Caterpillar 314E Excavator to excavate within the tolerance zone of the accurately marked, Columbia Gas pipeline even though GTC had not located the line via hand-digging or other prudent techniques in violation of Section 180(4) of the applicable provision of the PA One Call Law. The damage to the pipeline resulted in the escape of

flammable gas, which was ignited by heat from friction. The ignited gas inflicted first and second degree burns to the face, neck, and upper extremities of a GTC employee and caused damage to the Cat 314E and damage to a nearby condominium's sign, section of wood fencing, landscaping, and sidewalk. *See Statement in Support.*

In reaching the proposed Settlement, I&E weighed the seriousness of the alleged violations averred in the Complaint against various mitigating circumstances that were presented. I&E advises that GTC has been cooperative with I&E related to identifying policies, procedures, and training that can be further improved to assist GTC in enhancing damage prevention to underground lines and facilities and to satisfy the commitments that I&E has required in the Settlement.

Based on the foregoing, I&E states that the Settlement results from the compromises of the Parties. 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 further litigation. I&E submits that the Settlement constitutes a reasonable compromise of the issues presented and is in the public interest as it provides for a number of relevant corrective measures as well as an administrative penalty. *Id.*

Additionally, a comprehensive list of the remedial actions that GTC has agreed to undertake is outlined in the Settlement at Paragraph 21(B). I&E notes that each of these remedial actions and commitments address the conduct at issue and are designed to enhance damage prevention to underground lines and facilities and prevent similar conduct from occurring again. *Id.*

2. GTC

In its Statement in Support, GTC notes that, at all times during the process of both I&E's investigation and the Complaint proceedings, GTC has been cooperative and responsive to all inquiries. GTC provided I&E with information regarding the post-accident changes made to the Company's policies and procedures, training, and additional safety equipment obtained by GTC in order to facilitate and enhance the safety and reliability of GTC's services, and to satisfy the commitments that I&E required in the Settlement. *See* Statement in Support.

GTC states that the Settlement, if approved, will provide substantial public benefits including additional and enhanced training for GTC employees and the implementation of additional practices and procedures by GTC to ensure continued compliance with the PA One Call Law. *See, e.g.*, Appendix C to Settlement.

GTC submits that the Settlement constitutes a reasonable compromise of the issues presented and is in the public interest as it provides for several relevant corrective measures as well as an administrative penalty for GTC. *Id.*

B. Disposition

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements. The Commission's evaluation of whether to approve a settlement is not based on a "burden of proof" standard, as is utilized for contested matters. *See Pa. PUC, et al. v. City of Lancaster - Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011), at 11. The Commission reviews proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. PUC v. C.S. Water and Sewer Assocs.*, 74 Pa. PUC. 767 (1991); *Pa. PUC LBPS v. PPL Utilities*

Corporation, Docket No. M-2009-2058182 (Order entered November 23, 2009);
Pa. PUC v. Phila. Gas Works, Docket No. M-00031768 (Order entered January 7, 2004);
Warner v. GTE North, Inc., Docket No. C-00902815 (Order entered April 1, 1996);
52 Pa. Code § 69.1201.

The Commission has traditionally defined the public interest as including ratepayers, shareholders, and the regulated community. *Pa. PUC v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. R-00953409 (Order entered September 29, 1995). What is in the public interest is decided by examining the effect of the proposed Settlement on these “stakeholder” entities. *Id.* The public interest is best served, however, by ensuring that the underlying transaction complies with applicable law. *See Dauphin County Indus. Dev. Auth. v. Pa. PUC*, 123 A.3d 1124 (Pa. Cmwlth. 2015) (Commonwealth Court Order reversing Commission approval of a joint settlement due to the Court's plenary review and disapproval of the Commission's interpretation of Section 2807(f)(5) of the Act, 66 Pa. C.S. § 2807(f)(5)). *See Mariner East Settlement ID.*

After a review of the terms of the Settlement, we find that the Settlement is in the public interest. We also find that approval of the Settlement Agreement in the above-captioned matter is consistent with Section 182.10(b)(2) of the PA One Call Law, 73 P.S. § 182.10(b)(2). Section 182.10(b)(2) sets forth six (6) factors that the

Commission must consider in determining the amount of the administrative penalty to be assessed for violation(s) of the PA One Call Law. 73 P.S. § 182.10(b)(2).⁴

The first factor considers the history of the party's compliance with the act prior to the date of the violation. 73 P.S. § 182.10(b)(2)(i). I&E avers that this incident was the first infraction on GTC's record with the Commission regarding violations of the PA One Call Law. I&E Statement of Support at 7. GTC provides that it has performed utility and trench work for over fifty (50) years working around live utilities and has had very few incidents. GTC notes that since the incident, it has had four unannounced inspections of its worksites by the Occupational Safety and Health Administration (OSHA) with zero citations. Each of the four sites inspected by OSHA had underground utilities navigated and open trenches. GTC Statement in Support at 8. We find that GTC's compliance history has been satisfactory and poses no barrier to approval of the Settlement between the Parties.

The second factor considers the amount of injury or property damage caused by the party's noncompliance. 73 P.S. § 182.10(b)(2)(ii). I&E states that as a result of this incident, a GTC employee was inflicted with first and second degree burns

⁴ 73 P.S. § 182.10(b)(2) The commission and committee shall consider the following factors in determining the administrative penalty to be assessed:

- (i) The history of the party's compliance with the act prior to the date of the violation.
- (ii) The amount of injury or property damage caused by the party's noncompliance.
- (iii) The degree of threat to the public safety and inconvenience caused by the party's noncompliance.
- (iv) The party's proposed modification to internal practices and procedures to ensure future compliance with statutes and regulations.
- (v) The degree of the party's culpability.
- (vi) Other factors as may be appropriate considering the facts and circumstances of the incident.

to his face, neck, and upper extremities. GTC advised I&E that after being treated, the employee returned to work fulltime without restrictions. The incident also resulted in minimal property damage, including damage to the Cat 314E and damage to a nearby condominium's sign, section of wood fencing, landscaping, and sidewalk. I&E Statement in Support at 7. GTC states that it recognizes and appreciates the seriousness of the injuries sustained by its employee and is thankful that the property damage was minimal. GTC Statement in Support at 9. We conclude that the civil penalty should be evaluated with a consideration of the seriousness of the allegations set forth in the Complaint. While an injury occurred, we note that the GTC employee was able to return to work without restrictions. We also note that property damage was minimal. GTC has agreed to three years of additional safety training for its employees. We find that the civil penalty assessed by I&E and agreed to by GTC is reasonable based on this factor.

The third factor is the degree of threat to the public safety and inconvenience caused by the party's noncompliance. 73 P.S. § 182.10(b)(2)(iii). As a result of this incident, two (2) people were evacuated from their homes and twenty-three (23) customers experienced less than twelve (12) hours of service interruption. I&E Statement in Support at 7-8. GTC provides that as a result of the incident, it has implemented additional safety initiatives throughout the Company. GTC Statement in Support at 9-10. We find that the civil penalty assessed by I&E and agreed to by GTC is reasonable based on this factor.

The fourth factor to be considered is GTC's proposed modification to internal practices and procedures to ensure future compliance with statutes and regulations. 73 P.S. § 182.10(b)(2)(iv). In response to this incident, GTC filed an alleged violation report (AVR) with the POCS in accordance with Section 180(16) of the PA One Call Law, 73 P.S. § 180(16), and called for a company safety stand-down where GTC required all utility crews to attend a four (4) hour safety seminar, which covered numerous topics, including a review of the incident, trenching and excavation safety,

proper planning for safety, competent person requirements, and soil classification. GTC employees also attended various trainings provided by the POCS regarding the tolerance zone, CGA Best Practices,⁵ prudent excavation techniques, and excavation safety. I&E Statement in Support at 8.

After the incident, GTC purchased new equipment, including a vacuum excavation truck and two (2) vacuum trailers, to assist the Company in safely locating underground lines and facilities. This technology provides for a less invasive and safer method of excavation than traditional methods of digging. I&E Statement in Support at 8.

Additionally, a comprehensive list of the remedial actions that GTC has agreed to undertake is outlined in the Settlement Agreement at Paragraph 21(B). Each of these remedial actions and commitments address the conduct at issue and are designed to enhance damage prevention to underground lines and facilities and prevent similar conduct from occurring again. I&E Statement in Support at 8.

GTC states that following the incident, numerous trainings related to trench and utility safety have been provided to GTC employees in ongoing efforts to educate its workforce in the hazards and control measures of trenches and utilities. GTC avers that despite the Covid-19 pandemic restrictions, training continues to be an integral part of GTC's commitment to safety. GTC avers that it has proposed modifications to internal practices and procedures to ensure future compliance with statutes and regulations while also agreeing to additional training for employees for three years. GTC Statement in

⁵ Common Ground Alliance is an underground utility industry group that developed CGA Best Practices designed to facilitate underground damage prevention covering the entire process from one call center notification to locating to excavation. Practices are updated annually. *See* <https://commongroundalliance.com>.

Support at 10-13. We find that the civil penalty assessed by I&E and agreed to by GTC reasonable based on this factor.

The fifth factor to be considered relates to the degree of GTC's culpability. 73 P.S. § 182.10(b)(2)(v). I&E states that it was advised by GTC that it used the CAT 314E within the tolerance zone of the marked, underground natural gas pipeline to perform a smoothing pass over loose soil that fell into the trench where the pipeline was located and that the damage to the pipeline was unintentional. I&E submits that the unintentional nature of the conduct in question is a valid mitigating factor in this case. I&E Statement in Support at 9. GTC contends that it performed hand digging for approximately four hours in an attempt to locate the marked Columbia Gas Line. GTC has taken responsibility for the incident. GTC Statement in Support at 13. We find that the civil penalty assessed by I&E and agreed to by GTC is reasonable based on this factor.

The sixth factor is other factors as may be appropriate considering the facts and circumstances of the incident. 73 P.S. § 182.10(b)(2)(vi). I&E submits that an additional relevant factor is whether the conduct at issue was of a serious nature. I&E alleges that the conduct in this matter involves the use of powered equipment within the tolerance zone of a marked, underground natural gas pipeline that had not been located via hand-digging. I&E submits that the alleged violations averred in I&E's Complaint are of a serious nature and were considered in arriving at the administrative penalty and remedial relief set forth in the terms of the Settlement. I&E Statement in Support at 9.

Another relevant factor is whether the resulting consequences of GTC's alleged conduct were of a serious nature. In this case, the alleged conduct resulted in damage to a natural gas pipeline, injury to a GTC employee, and property damage in the nearby area which are serious consequences. The terms and conditions of the Settlement acknowledge that serious consequences occurred and are designed to further enhance

damage prevention and excavation safety. I&E Statement in Support at 9. GTC provides that it has spent over \$500,000 on a new vac-truck and two vacuum trailers for the sole purpose of locating existing utilities and facilitating safe excavation around those utilities. GTC states that with this investment, GTC procedurally has implemented a utility locating crew whose purpose is to locate and communicate the precise locations of gas, electric, and any other underground utility deemed necessary to be located before excavation can begin. GTC offers that as part of GTC's procedural change, facility owners are now required to be contacted if a utility is not found or if there are any difficulties in the locating process. GTC Statement in Support at 14.

I&E submits that whether the Company cooperated with the Commission's investigation is another relevant factor to be considered. According to I&E, throughout I&E's investigation, the Parties remained active in communications and informal discovery. GTC promptly responded to I&E's requests for information and documentation and fully cooperated throughout all phases of the investigation and settlement process. I&E Statement in Support at 9-10.

Another relevant factor is the appropriate settlement amount necessary to deter future violations. I&E submits that an administrative penalty amount of \$13,000.00 is substantial and sufficient to deter a small business like GTC from committing future violations. I&E Statement in Support at 10.

I&E submits that whether the case was settled or litigated is another relevant factor of pivotal importance to the 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 while allowing the parties to move forward and to focus on implementing the agreed upon remedial actions. I&E Statement in Support at 10. We find that the civil penalty assessed by I&E and agreed to by GTC is reasonable based on the additional factors.

For the reasons set forth above, after reviewing the terms of the Settlement Agreement, we find that approval of the Settlement is in the public interest and is consistent with the terms of Section 182.10(b)(2) of the PA One Call Law.

Conclusion

It is the Commission's policy to promote Settlements. 52 Pa. Code § 5.231. The Parties herein have provided the Commission with sufficient information upon which to thoroughly consider the terms of the proposed Settlement. Based on our review of the record in this case, including the Settlement Agreement and the Statements in Support thereof, we find that the proposed Settlement is in the public interest and merits approval; **THEREFORE,**

IT IS ORDERED:

1. That the Joint Petition for Approval of Settlement filed on December 9, 2020, between the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and Golden Triangle Construction Co., Inc. is granted, and the Settlement is approved in its entirety, without modification.

2. That, in accordance with Section 182.10(b) of the Underground Utility Line Protection Law, 73 P.S. § 182.10(b), within thirty (30) days of the date this Order becomes final, Golden Triangle Construction Co., Inc. shall pay an administrative penalty of Thirteen Thousand Dollars (\$13,000.00). 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
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

3. That the administrative penalty shall not be tax deductible.
4. A copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Bureau of Administration.
5. That the above-captioned matter shall be marked closed upon receipt of the administrative penalty.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: August 25, 2022

ORDER ENTERED: August 25, 2022