

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

Public Meeting held April 20, 2023

Commissioners Present:

Gladys Brown Dutrieuille, Chairman  
Stephen M. DeFrank, Vice Chairman  
Ralph V. Yanora  
Kathryn L. Zerfuss  
John F. Coleman, Jr.

M-2022-3024040

Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement

v.

National Fuel Gas Distribution Corporation

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is a proposed Joint Petition for Approval of Settlement (Settlement), filed on December 27, 2022, by the Commission's Bureau of Investigation and Enforcement (I&E) and National Fuel Gas Distribution Corporation (NFGDC or the Company) (collectively, the Parties), with respect to an informal investigation conducted by I&E's Gas Safety Division (Safety Division), in connection with a natural gas main hit on November 2, 2020, resulting in a natural gas leak and subsequent fire inside of a

nearby apartment building in Erie County, Pennsylvania.<sup>1</sup> Both Parties filed a Statement in Support of the Settlement (Statement in Support). Further, both Parties submit that the proposed Settlement is in the public interest and is consistent with the Commission’s Policy Statement at 52 Pa. Code § 69.1201, *Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations— statement of policy* (Policy Statement). See Settlement at ¶¶ 34, 42, *infra*.

For the reasons set forth herein, we shall approve the proposed Settlement, consistent with this Opinion and Order.

### **I. History of the Proceeding**

This matter concerns allegations regarding NFGDC, a natural gas distribution company that provides service to the public for compensation.<sup>2</sup> Settlement at ¶ 8. The allegations against NFGDC are in connection with a gas main located in front of a four-unit residential apartment building at 1202 Brown Avenue, Erie, Pennsylvania (Brown Ave Building). Settlement at ¶¶ 9-12, 14-16, 19. The gas main was hit on November 2, 2020, which lead to a natural gas leak and subsequent fire in the basement of the Brown Ave Building, resulting in the evacuation of the Brown Ave Building’s residents. Settlement at ¶¶ 11, 17-19.

I&E and NFGDC held a series of discussions and negotiated compromises on the issues addressed herein, agreeing to resolve this matter in accordance with the

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<sup>1</sup> As noted, *infra*, residents of the apartment building were evacuated and no injuries or fatalities resulted from this incident. Settlement at ¶¶ 17-18.

<sup>2</sup> NFGDC is a “public utility,” as defined at 66 Pa. C.S. § 102. Settlement at ¶ 4.

Commission's policy to promote settlements at 52 Pa. Code § 5.231. Settlement at ¶¶ 31, 44.

As previously noted, on December 27, 2022, I&E and NFGDC filed the instant Settlement. Also, as noted earlier, the Parties to the Settlement in this instance have each filed a Statement in Support. See Appendix B and C to Settlement, which are Statements of Support filed by I&E and NFGDC, respectively.<sup>3</sup>

By Order entered February 9, 2023 (*February 2023 Order*), we directed that notice of the Order and the proposed Settlement be published in the *Pennsylvania Bulletin*, to provide an opportunity for interested parties to file comments with the Commission regarding the proposed Settlement within twenty-five days after the date of publication.

On February 25, 2023, the *February 2023 Order*, along with the Settlement and Statements in Support, were published in the *Pennsylvania Bulletin*, 53 Pa. B. 1126 (February 25, 2023). In accordance with the *February 2023 Order*, comments on the proposed Joint Settlement were due on or before March 22, 2023 (*i.e.*, twenty-five days after the *February 2023 Order* was published). No comments were filed.

## **II. Background**

### **A. Chronology of Events**

On November 1, 2020, at approximately 9:28 p.m., Parkside Utility Construction, LLC (Parkside) placed an Emergency One Call Ticket (Emergency Ticket) with the Pennsylvania One Call System, at Serial No. 20203060219, to replace a fallen

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<sup>3</sup> We note that the Settlement also includes supplemental Joint Proposed Ordering Paragraphs. See Appendix A to Settlement.

utility pole located in front of the Brown Ave Building. On November 1, 2020, at approximately 10:22 p.m., NFGDC responded to the Emergency Ticket and marked out NFGDC's underground facilities around the area of the Brown Ave Building. Settlement at ¶¶ 9-10.

On November 2, 2020, at approximately 12:30 a.m., during the installation of the replacement utility pole, Parkside damaged NFGDC's medium pressure main. The main was a two-inch plastic main with a maximum allowable operating pressure (MAOP) of 48 pounds per square inch gauge (psig).<sup>4</sup> At the time that the main was damaged, the operating pressure measured 27 psig. Settlement at ¶¶ 11-12, 23.

On November 2, 2020, at approximately 12:45 a.m., NFGDC arrived on-site in response to the damaged gas main and found high gas readings in bar holes at the northeast corner of the Brown Ave Building. Settlement at ¶¶ 13-14. NFGDC decided to isolate the damaged gas main by "squeezing [it] off" on each side of the damage. Settlement at ¶ 15. The nearest isolation valves to the damaged main were located at Cranberry and 20<sup>th</sup> Streets, Plum and 26<sup>th</sup> Streets, Elmwood and 26<sup>th</sup> Streets, and on Greengarden Avenue. Settlement at ¶ 16.

On November 2, 2020, at approximately 1:30 a.m., before the flow of gas could be stopped, gas moved into the basement of the Brown Ave Building, where a fire ignited and, consequently, residents of the Brown Ave Building were evacuated. The fire was quickly contained and there were no injuries or fatalities. Settlement at ¶¶ 17-18.

On November 2, 2020, at approximately 3:50 a.m., the Safety Division received Pennsylvania Emergency Management Agency Report No. 27402, notifying the

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<sup>4</sup> Specifically, the main was "2-inch, SDR 11, Polyethylene, medium density pipe" with 36 inches of cover, and the plastic pipe involved in the incident was manufactured and installed in 2001. Settlement at ¶¶ 21-22.

Safety Division of a gas line hit in front of the Brown Ave Building. On November 2, 2020, at approximately 4:32 a.m., NFGDC completed the squeeze off. Settlement at ¶¶ 19-20.

As a result of the incident, NFGDC reported 285 Mcf of lost gas and a total cost of \$136,054.00, which included: (1) private, public, and operator damages; and (2) NFGDC's replacement of the damaged section of gas main with new plastic pipe utilizing electrofusion couplings. Settlement at ¶¶ 24-25.

## **B. Alleged Deficiencies**

During its informal investigation, the Safety Division determined that the incident was the result of a mismarking of the gas main involved in the incident by the Company's line locator, as "the paint marks were off by approximately seven (7) feet in some areas." Settlement at ¶ 26. Further, the Safety Division observed that although NFGDC Map No. CE015 was inaccurate and a causable factor for the incorrect paint marks, a tracer wire was present in the ditch with the plastic gas main. *Id.* Therefore, the Safety Division concluded that the line locator did not utilize the tracer wire to locate the gas main. *Id.*

The Safety Division also found that "the Operator" failed to follow the NFGDC procedural manual for operations, maintenance, and emergencies (O&M Procedures Manual). Settlement at ¶ 27. The Safety Division observed that although the line locator utilized NFGDC's maps to locate the Company's buried facilities in the area to be excavated, the line locator did not utilize the tracer wire located along the damaged main line and, therefore, failed to follow Section 6.8(c) in Chapter 8 of O&M Procedures Manual. *Id.*

The Safety Division also determined that the maps provided to the line locator did not accurately represent the actual location of the NFGDC's underground facilities. Further, the Safety Division observed that failing to accurately locate the plastic main was a causable factor in the main being damaged. Therefore, the Safety Division found that, by failing to stop the flow of gas in a timely manner, the operator was a factor in the resulting fire at, and subsequent evacuation of, the Brown Ave Building. Settlement at ¶ 29.

### **C. Alleged Violations**

If this matter had been fully litigated, I&E was prepared to present evidence and legal arguments to demonstrate that NFGDC committed the following alleged violations, reprinted verbatim below:

- a) NFGDC inaccurately marked the gas main line as far as seven (7) feet off in some areas, which prevented their ability to protect the system from damage during excavation activity.

If proven, I&E alleges that such conduct violated 49 CFR § 192.614(c)(5) (relating to providing temporary marking of buried pipelines in the area of excavation activity) and 73 P.S. § 177(5)(i) (relating to locating the position of underground lines at a work site within eighteen inches horizontally of such line).

- b) NFGDC failed to follow its procedural manual by not utilizing the tracer wire located along the damaged main.

If proven, I&E alleges that such conduct violated 49 CFR § 192.605(a) (relating to procedural manual for operations, maintenance, and emergencies) and 52 Pa. Code § 59.33(b) (adopting the Federal pipeline safety regulations as the minimum safety standards for natural gas public utilities).

- c) NFGDC provided maps to the line locator that did not accurately represent the actual location of its underground facilities.

If proven, I&E alleges that such conduct violated 49 CFR § 192.603(b) (relating to operator record keeping necessary to administer procedures established under § 192.605) with respect to 49 CFR § 192.605(a) (relating to procedural manual for operations, maintenance, and emergencies) and 52 Pa. Code § 59.37 (relating to public utility record keeping of complete maps and plans of its entire distribution system).

- d) NFGDC failed to stop the flow of gas in a timely manner, a factor in the fire that occurred at 1202 Brown Avenue on November 2, 2020.

If proven, I&E alleges that such conduct violated 52 Pa. Code § 59.33(a) (relating to the responsibility of every public utility to always use every reasonable effort to protect the public and exercise reasonable care to reduce hazards of its equipment and facilities).

- e) NFGDC failed to alert the NRC of the incident within one hour, as the fire ignited at approximately 1:34 a.m. and NFG reported the incident at approximately at 3:28 a.m.

If proven, I&E alleges that such conduct violated 49 CFR § 191.5(a) (relating to the duty of each operator to provide immediate notice of certain incidents).

Settlement at ¶ 30.

### **III. Terms of the Settlement**

The Parties state that the purpose of the Settlement is to terminate I&E's informal investigation and settle this matter completely without litigation. Further,

although NFGDC may dispute or disagree with the allegations described in the Settlement, the Company fully acknowledges the seriousness of the allegations and recognizes the need to prevent similar allegations in the future. Moreover, the Parties note that they recognize that this is a disputed matter and, given the inherent unpredictability of the outcome of a contested proceeding, resolving the disputed issues through settlement and avoiding the additional time and expense of litigation and possible appeals can be beneficial. Furthermore, the Parties acknowledge that approval of this Settlement is in the public interest and consistent with the Commission's Policy Statement for evaluating litigated and settled proceedings involving violations of the Code and Commission Regulations, pursuant to 52 Pa. Code § 69.1201. Settlement at ¶¶ 31, 34, 42-43.

The conditions of the Settlement are reprinted verbatim below:

A. Civil Penalty:

NFGDC will pay a civil penalty in the amount of One Hundred Twenty-Five Thousand Dollars (\$125,000.00) pursuant to 66 Pa.C.S. § 3301(c). 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 shall be indicated on 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

NFGDC will not seek recovery of any portion of the total civil penalty amount in any future ratemaking



proceeding and agrees that it shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f).

B. Voluntary Modification of Business Practices:

NFGDC continuously monitors and reviews its business practices and policies in a spirit of continuous improvement. In this regard, NFGDC has already implemented various practices/procedures that would mitigate the likelihood of a similar occurrence. NFGDC also recognizes the seriousness of this matter. In furtherance of the foregoing, NFGDC represents, warrants, agrees, and covenants (as the case may be) as specified below:

- a. **Tracking of High Risk Excavations and Excavators.** NFGDC represents and warrants that it has developed a means to categorize certain excavations into risk categories by developing a “Risk Score” to excavations based on, among other things, the following data points: (1) excavator’s history (or lack of history); (2) excavation type; (3) depth of excavation; (4) type of excavation project. Depending on the Risk Score assigned, NFGDC Operations Supervisors are immediately notified via text message.

Using this “Risk Score,” NFGDC can sort excavators in order of those who pose the most risk to those who pose the least risk to its facilities (based on the excavators’ history). NFGDC has several Damage Prevention trainings, which it already shares with excavators, and which it will share with those excavators deemed assigned a sufficiently high “Risk Score.”

NFGDC will review this risk score on an annual basis for effectiveness, using but not limited to, hit, incident, and near miss data. This review

shall include updates to training materials if they are found to be ineffective.

NFGDC shall create a program based on this risk review to assign inspectors and more frequent inspections on projects where these high risk excavators are known to be working.

- b. **GIS/Mapping Updates.** Within thirty (30) days of the entry date of the Commission's Final Order approving any Settlement Agreement in this matter, NFGDC shall work internally with its GIS/Mapping Departments to identify a list of line locations which may have suspected mapping issues ("Update List"). Within thirty (30) days of finalizing the Update List, [NFGDC] will notify its Operations personnel of the Update List (so as to apprise them of possible need for extra resources to timely conduct facility locates in these areas).

Within thirty (30) days of identifying the Update List, [NFGDC] will ensure that mapping updates are made to each facility location specified in the Update List.

- c. **Annual Line Locate Trainings for Employees and Contractors.** NFGDC represents and warrants that it has developed trainings on various damage prevention topics and that those Operations line locating field employees (the "**Line Locating Employees**").

On or before May 1, 2023, NFGDC shall develop a specific training session which shall be attended annually by its Line Locating Employees, construction contractors responsible for performing excavations and/or line locates, and other contracted line locators, highlighting common and uncommon issues found in the field that have led to line hits ("Annual Training"). In addition to the common and uncommon issues found, this training shall

include a lesson learned portion from damages that NFGDC deems as significant.

NFGDC shall incorporate this additional training into the training conducted for new employees performing locating tasks.

- d. **Use of Specialized Tools/Technology for Locates.** NFGDC represents and warrants that it has deployed and currently utilizes specialized line-locating technologies (such as a soft dig vacuum trucks for low confidence locates, and the use of inline inspected technology such as a Jamison tool, etc.) and has meaningfully taken steps to ensure its personnel knows of the availability of such specialized tools/technologies available for certain excavations.

Within thirty (30) days of the entry date of the Commission's Final Order approving any Settlement Agreement in this matter, NFGDC shall add the following language to Chapter 8 of its O&M Procedures Manual ("Procedures Manual") to ensure that its field personnel are aware of and using such specialized technology in the appropriate circumstances:

[NFGDC] has acquired specialized line-locating technologies (e.g., soft dig vacuum trucks for low confidence locates, and the use of inline inspected technology such as Jamison tool, etc.).

When deemed appropriate by [NFGDC] employees and/or [NFGDC]'s contractors performing line locates, such specialized technology may be utilized in connection with line locates.

Upon making such update[s] to its Procedures Manual, NFGDC will communicate [the] same to its field

personnel. Additionally, NFGDC will ensure that its Annual Training (described *supra*) meaningfully discuss[es] the availability and uses of such technologies. NFGDC shall track the use and effectiveness of specialized technologies and review the [C]ompany's criteria for low confidence mark out classifications.

- e. **Damage Prevention – Quality Assurance/Quality Control [QA/QC].** NFGDC represents and warrants that it has established a “Quality Group” charged with, among other things, verifying that proper process/procedures with respect to line locating were followed by NFGDC employees/contractors. In this regard, the Quality Group serves an “audit” function.

In addition, NFGDC represents and warrants that it has a full-time employee whose sole responsibility is acting as a “Damage Prevention Supervisor” (“DPS”). Among other things, the DPS reviews trends with respect to damage to facilities, evaluates the overall effectiveness of NFGDC's damage prevention programs, and proposes enhancements to [the] same.

Beginning in calendar year 2023, NFGDC agrees that it will require its DPS to meet on a Quarterly Basis with the Pennsylvania Operations Superintendent and the Executive overseeing [the] Pennsylvania Operations Department. At such meetings, the Damage Prevention Supervisor will, among other things, discuss trends and findings resulting from the Company's Damage Prevention Program such that the Superintendent/Executive can make meaningful changes in real-time, as needed.

The QA/QC program shall include a field review of a representative sample, defined as at least twenty-five percent (25%) in each service territory, of employees performing locates, at least once a calendar year. If a damage occurs on NFGDC's system as a result of a line locator's error, a process shall be created to field audit the employee's past and present work to [ensure] that [the] employee is performing [their] duties as required.

- f. NFGDC represents and warrants that it has examined its emergency response to this line hit, reviewing [the] same to ascertain whether the decisions and actions taken furthered the goal of protecting life and property.
- g. NFGDC represents and warrants that following the occurrence of this incident, it has reviewed its reporting procedures to ensure it is notifying the proper regulatory agencies of incidents in the required time as outlined in 49 CFR § 191.5(a).
- h. Within thirty (30) days of the Company's completion of all items listed above, NFGDC shall file a report of compliance to verify that the Company performed each of the measures set forth in subparagraphs (b) through (g), *supra.*, pursuant to 52 Pa. Code § 5.591(a).

*See Settlement at ¶ 32 (emphasis in original).*

The Parties jointly agree that upon the Commission's approval of the Settlement in its entirety without modification and payment of the civil penalty, NFGDC shall be deemed to have been released from all prior claims that were made or could have been made by I&E for monetary and/or other relief, based on allegations that are the subject of I&E's informal investigation. Settlement at ¶ 33. Further, the Parties agree that the Settlement shall be construed and interpreted under Pennsylvania law. Moreover,

the Parties agree that changes to obligations set forth in the Settlement may be made if they are in writing and are expressly accepted by the Parties. Settlement at ¶ 35.

The Parties jointly request that the Commission issue a Final Order approving the Settlement without modification but note that, if the terms of the Settlement are modified by the Commission, the Parties agree that any party may withdraw from the Settlement, may proceed with litigation, and, in such event, the Settlement shall be void and of no effect. The Parties indicate that the election of any Party withdrawing from the Settlement must be made in writing, filed with the Commission's Secretary, and served upon the Parties within twenty (20) days after entry of an Order modifying the Settlement. Settlement at ¶¶ 38-39.

The Parties also jointly agree that the underlying allegations were not the subject of any hearing and I&E's informal investigation did not result in an order, findings of fact, or conclusions of law. Further, the Parties understand that, by entering into the instant Settlement, the Company 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, including, but not limited to, any civil proceedings, that may arise as a result of the circumstances described in the Settlement. Moreover, the Parties agree that the Settlement may not be used as a concession or admission of fact or law by any other person or entity. Settlement at ¶ 40.

The Parties also acknowledge that, in order to resolve this matter in a fair and reasonable manner, the Settlement is being presented in the context of this informal investigation and without prejudice to any position that I&E or NFGDC may advance in any future proceeding on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of the Settlement. The Parties also jointly agree that they are not precluded by the Settlement from taking other positions in any other proceeding. However, the Parties note that the Settlement is

conclusive in the instant proceeding and may not be reasserted in any other proceeding or forum, except for enforcing the Settlement by a Party. Settlement at ¶ 41.

Finally, the Parties note that the terms of the Settlement constitute “a carefully crafted package representing reasonably negotiated compromises on the issues” addressed in the Settlement. Settlement at ¶ 44. The Parties, therefore, provide that the Settlement is consistent with the Commission’s rules and practices encouraging negotiated settlements set forth in 52 Pa. Code §§ 5.231 and 69.1201. *Id.*

#### **IV. Discussion**

Initially, we note that any issue or argument that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider, expressly or at length, each contention or argument raised by the Parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

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. PUC, et al. v. City of Lancaster - Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011). Rather, the benchmark for determining the acceptability of the proposed Settlement is whether the proposed terms and conditions are in the public interest. *Id.* (citing *Warner v. GTE North, Inc.*, Docket No. C-00902815 (Order entered April 1, 1996); *Pa. PUC v. C.S. Water and Sewer Associates*, 74 Pa. P.U.C. 767 (1991)).

Pursuant to the Commission’s Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. The Commission must, however, review

proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004). Based on our review of the Settlement terms and conditions, we find that the Settlement is in the public interest.

Consistent with the Commission’s policy to promote settlements, we have promulgated a Policy Statement at 52 Pa. Code § 69.1201, which sets forth ten factors that we may consider in evaluating whether a civil penalty for violating a Commission Order, Regulation, or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of a proposed settlement agreement is in the public interest. The Commission will not apply the factors as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases, the parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters as long as the settlement is in the public interest.” *Id.* The Policy Statement sets forth the guidelines we use when determining whether, and to what extent, a civil penalty is warranted. In this case, application of these guidelines supports approval of the Settlement.

The first factor we may consider is whether the conduct at issue is of a serious nature. 52 Pa. Code § 69.1201(c)(1). “When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.” *Id.*

The alleged violations against NFGDC are in connection with an underground pressure main that was hit during a utility pole replacement, resulting in a natural gas leak that caused a fire in the basement of the Brown Ave Building. Prior to the underground main being hit, NFGDC marked out its underground facilities in the area of the Brown Ave Building. Settlement at ¶¶ 10-11, 17. I&E alleged that NFGDC failed



to: (1) follow its own procedures that were in place at the time of the incident; and (2) accurately locate and mark the gas main near the Brown Ave Building, “resulting in disastrous consequences.” I&E Statement in Support at 10-11. Both I&E and NFGDC acknowledged that the conduct in this matter was of a serious nature, and I&E noted that the serious nature of such conduct was considered in determining the civil penalty and remedial safety measures provided in the Settlement. I&E Statement in Support at 11; NFGDC Statement in Support at 11.

We agree with I&E that the conduct involved – NFGDC’s failure to follow its own procedures and accurately locate and mark the gas main near the Brown Ave Building – was the result of conduct of a serious nature and, accordingly, we find the proposed penalty to be fair and reasonable given the circumstances.

The second factor is whether the resulting consequences of the conduct are of a serious nature. 52 Pa. Code § 69.1201(c)(2). “When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.” *Id.*

Here, I&E submitted that, although no personal injury resulted from the alleged violations, serious consequences occurred because the gas line strike and the ensuing natural gas leak resulted in a residential basement fire, thereby causing the evacuation of at least four (4) building tenants. NFGDC agreed with I&E that while no injuries occurred, the fire that occurred at the Brown Ave Building was a serious consequence. However, NFGDC noted that when notified of the gas line strike, the Company responded promptly and took the best actions to resolve the problems as fast as possible. NFGDC Statement in Support at 11. I&E and NFGDC both noted that the terms and conditions of the Settlement: (1) acknowledge that serious consequences occurred; and (2) further enhance the safety of the Company’s service, facilities, and facility-locating techniques. I&E Statement in Support at 11. NFGDC added that the

terms and conditions of the Settlement minimize the likelihood of a similar incident from occurring in the future. NFGDC Statement in Support at 11.

Although nobody was injured, we agree with I&E that serious consequences resulted from the alleged conduct. Indeed, the natural gas leak that resulted from the gas line strike caused a residential building fire that ultimately required the evacuation of the building's tenants. We agree with I&E that serious consequences resulted from the alleged conduct and, accordingly, we find that this factor warrants a higher penalty.

The third factor is “[w]hether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.” 52 Pa. Code § 69.1201(c)(3). The third factor pertains to litigated cases only. *Id.* Because this proceeding was settled prior to the filing of a complaint by I&E, this factor is not applicable to this Settlement.

The fourth factor is whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered. 52 Pa. Code § 69.1201(c)(4). In this case, the Parties both noted that, in response to the incident, NFGDC has proactively adopted several changes to the Company's policies and procedures. I&E Statement in Support at 11; NFGDC Statement in Support at 12. I&E noted that some of NFGDC's changes to internal procedures and commitments address the alleged conduct at issue and are designed to prevent a similar

incident in the future. I&E highlighted some of the Company's more significant changes, which are reprinted verbatim below:

1. Develop procedures or a process to track high risk excavators and focus its efforts on outreach and education programs to bring greater awareness of gas facilities and the dangers of damaged facilities.
2. Develop and improve its GIS system for higher accuracy of maps and records available to field personnel[,] as to provide all data necessary to correctly mark out gas facilities. Areas with suspected mapping issues must be identified on maps and provided to locating personnel to indicate the need for extra resources to timely conduct facility locates in these areas.
3. Develop a training session, to be held annually, for its employees, construction sub-contractors and line locators, highlighting common and uncommon issues found in the field that have led to line hits.
4. Implement and enhance the use of technologies to perform locates including but not limited to expanding the availability of soft dig vacuum trucks for low confidence locates, the use of inline inspected technology such as a Jamison tool, and other line-locating technology.
5. Take steps to enhance their damage prevention program by developing a [QA/QC] system to oversee all areas of damage prevention.
6. Examine its emergency response to this line hit to ensure all decisions and actions taken correctly protected life and property.
7. Review its reporting procedures to ensure it is notifying the proper regulatory agencies of incidents in the required time as outlined in 49 CFR § 191.5(a).

I&E Statement in Support at 11-12. NFGDC added that the terms and conditions of the Settlement properly acknowledge the Company's efforts to modify and adopt internal policies and procedures to address the alleged issues. NFGDC Statement in Support at 12. Accordingly, we conclude that NFGDC's corrective measures support a lower civil penalty.

The fifth factor is the number of customers affected and the duration of the violations. 52 Pa. Code § 69.1201(c)(5). I&E noted that on November 2, 2020, a residential basement fire occurred in the Brown Ave Building, resulting in the evacuation of its occupants and the temporary loss of natural gas service. I&E Statement in Support at 12-13. NFGDC submitted that two (2) customers were affected, with gas service impacted for approximately eight (8) hours. NFGDC acknowledged that such service interruption can have an impact on any customer. Further, NFGDC noted that upon review of this incident for the purpose of understanding the Company's response and "lessons learned," the Company identified the amount of time it took to call-in NFGDC employees to resolve the incident as a factor contributing to the response time. NFGDC Statement in Support at 12. Moreover, NFGDC noted that the Company has taken internal steps to improve response time for such "call-outs." *Id.* Specifically, NFGDC provided that in its most-recent negotiations with the labor organizations that represent the Company's operations field employees, NFGDC negotiated the requirements for responding to such call-outs. *Id.* Given these considerations, we find the proposed civil penalty to be fair and reasonable.

We may also consider the compliance history of the regulated entity. 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.* Here, I&E noted that on May 19, 2020, NFGDC incurred a line hit in Hermitage, Pennsylvania, and, consequently, the loss of service to 187 customers. As a result, NFGDC was issued a Non-Compliance Letter (NC Letter)

NC-13-20. Further, I&E noted that on May 7, 2019, NFGDC incurred a line hit at 45 East Townhall Road, Waterford, Pennsylvania, after the Company's subcontractor had mismarked a two-inch plastic main by eight feet. As a result, thirty (30) customers temporarily lost natural gas service and NFGDC was issued a NC Letter NC-10-19. I&E Statement in Support at 13. NFGDC noted that the Company has "an excellent compliance history with the Commission," adding that over the last several years, NFGDC has significantly improved its line hit ratio. NFGDC Statement in Support at 13. Accordingly, we find that the civil penalty does not warrant further consideration regarding this factor.

Another factor we may consider is whether the regulated entity cooperated with the Commission's investigation. 52 Pa. Code § 69.1201(c)(7). According to I&E, NFGDC cooperated during the investigation and settlement process. I&E noted that NFGDC timely and appropriately responded to data requests and other correspondence from Commission staff. Further, I&E noted that such cooperation demonstrates a consistent commitment with public safety goals and objectives. I&E Statement in Support at 13. Therefore, we find this factor leans toward a lower penalty.

In addition, we may consider the amount of the civil penalty or fine necessary to deter future violations, as well as past Commission decisions in similar situations. 52 Pa. Code §§ 69.1201(c)(8) and (c)(9). I&E submitted that the civil penalty amount of \$125,000, which is not tax deductible, and the monetary cost of the performance of all the remedial safety measures (*i.e.*, the purchase of soft dig vacuum trucks) is sufficient to deter NFGDC from committing future violations of the same nature. I&E Statement in Support at 13-14. NFGDC also noted that the civil penalty amount recognizes: (1) the seriousness of the matter; (2) a negotiated compromise by the Parties; and (3) the Company's efforts since the incident occurred. NFGDC Statement in Support at 13.

Regarding past Commission decisions, I&E submitted that the instant Settlement provides comparable relief to prior enforcement matters involving similar pipeline safety violations. Further, I&E noted that, given the relevant factors that are comparable to other pipeline matters involving violations of public safety which resulted in similar serious consequences, the instant Settlement is consistent with past Commission actions because of the civil penalty and several corrective actions that have been or will be instituted to address the alleged violations. I&E Statement in Support at 13-14. NFGDC also noted that, when all relevant factors are considered, the Settlement is consistent with past Commission actions, adding that because the instant matter was settled, it should be considered on its own merits. NFGDC Statement in Support at 13. Considering the terms of the Settlement, we agree and find that the proposed civil penalty will help deter future violations and presents a fair and reasonable outcome.

The tenth factor to consider is other “relevant factors.” 52 Pa. Code § 69.1201(c)(10). NFGDC submitted that a settlement avoids the necessity for the prosecuting agency to prove elements of each allegation and, in return, the opposing party agrees to a lesser fine/penalty, or other remedial action. Further, NFGDC noted that the results of a litigated proceeding are difficult to predict and can differ from the result of a settlement. NFGDC Statement in Support at 13. Both I&E and NFGDC submitted that whether the case was settled or litigated is an important factor to the instant Settlement, noting that the terms of a reasonable settlement can represent a compromise while allowing the parties to move forward and focus on implementing the agreed-upon remedial safety actions. To that end, I&E provided that its review of NFGDC’s self-reported damage prevention statistics indicates that following the incident at the Brown Ave Building and the Company’s implementation of damage prevention measures, discussed *supra*, the number of gas line hits per 1,000 gas line locate tickets that NFGDC marked for excavation activities has decreased. I&E Statement in Support

at 14; NFGDC Statement in Support at 13-14. We believe that it is in the public interest to settle this matter, so as to avoid the expense of litigation.

Finally, as asserted by the Parties, we agree that it is in the public interest to settle this matter, so as to avoid the expense of litigation and to conserve administrative and judicial resources.

For the reasons set forth above, after reviewing the terms of the Settlement, we find that approval of the Settlement is in the public interest and is consistent with the terms of our Policy Statement and our past decisions.

### **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, the Commission's Regulations and policy statements, as well as the foregoing discussion, we find that the proposed Settlement between the Commission's Bureau of Investigation and Enforcement and NFGDC is in the public interest and merits approval. Accordingly, we will approve the Settlement, consistent with this Opinion and Order; **THEREFORE**,

### **IT IS ORDERED:**

1. That the Joint Petition for Approval of Settlement filed on December 27, 2022, between the Commission's Bureau of Investigation and Enforcement and National Fuel Gas Distribution Corporation, at Docket No. M-2022-3024040, is approved entirely 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 Opinion and Order becomes final, National Fuel Gas Distribution Corporation shall remit a civil penalty of One Hundred Twenty-Five Thousand Dollars (\$125,000), payable by certified check or money order to “Commonwealth of Pennsylvania” and sent to:

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

3. That National Fuel Gas Distribution Corporation will annually review excavation risk scores for updates to ineffective training materials and effectiveness using, but not limited to, hit, incident, and near-miss data.

4. That National Fuel Gas Distribution Corporation shall create a program based on its review of risk scores review to assign inspectors and more frequent inspections on projects where high-risk excavators are known to be working.

5. That within thirty (30) days of entry of this Opinion and Order, National Fuel Gas Distribution Corporation shall work internally with its GIS/Mapping Departments to identify a list of line locations which may have suspected mapping issues and, within thirty (30) days of finalizing such list, will: (1) apprise its operations personnel of the possible need for extra resources to timely conduct facility locates in these areas; and (2) ensure that mapping updates are made to each facility location specified by the list.



6. That on or before May 1, 2023, National Fuel Gas Distribution Corporation shall develop a training session that: (1) highlights common and uncommon issues found in the field that have led to line hits; (2) includes a lesson learned portion from damages deemed as significant; (3) shall be attended annually by its line locating employees, construction contractors responsible for performing excavations and/or line locates, and other contracted line locators; and (4) shall be incorporated into the training conducted for new employees performing locating tasks.

7. That within thirty (30) days of entry of this Opinion and Order, National Fuel Gas Distribution Corporation shall add the following language to Chapter 8 of its Procedural Manual for Operations, Maintenance, and Emergencies (O&M Procedures Manual) and communicate the same to its field personnel:

National Fuel has acquired specialized line-locating technologies (e.g., soft dig vacuum trucks for low confidence locates, and the use of inline inspected technology such as Jamison tool, etc.).

When deemed appropriate by National Fuel employees and/or National Fuel's contractors performing line locates, such specialized technology may be utilized in connection with line locates.

8. That National Fuel Gas Distribution Corporation will ensure that its annual training (described in Paragraph 6 above) meaningfully discusses the availability and uses of specialized line-locating technologies.

9. That National Fuel Gas Distribution Corporation shall track the use and effectiveness of its specialized line-locating technologies and review the criteria for low confidence mark out classifications.

10. That beginning in calendar year 2023, National Fuel Gas Distribution Corporation agrees that it will require its Damage Prevention Supervisor to meet quarterly with the Pennsylvania Operations Superintendent and the Executive overseeing the Pennsylvania Operations Department, to discuss, among other items, trends and findings resulting from National Fuel Gas Distribution Corporation's Damage Prevention Program, such that the Superintendent/Executive can make meaningful changes in real-time, as necessary.

11. That National Fuel Gas Distribution Corporation's Quality Assurance/Quality Control Program shall include a field review of a representative sample, defined as at least twenty-five percent (25%) in each service territory, of employees performing locates, at least once per calendar year.

12. That, if damage occurs on National Fuel Gas Distribution Corporation's system as a result of a line locator's error, National Fuel Gas Distribution Corporation shall create a process to field audit the employee's past and present work to ensure that the employee is performing their requisite duties.

13. That within thirty (30) days of entry of this Opinion and Order, National Fuel Gas Distribution Corporation shall file a report of compliance to verify that National Fuel Gas Distribution Corporation performed each of the measures set forth in Paragraph 32, subparagraphs b through g, of the Joint Petition for Approval of Settlement, pursuant to 52 Pa. Code § 5.591(a)

14. That a copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Bureau of Administration.

15. That, after National Fuel Gas Distribution Corporation remits the civil penalty as set forth in Ordering Paragraph No. 2, above, and upon the receipt of the civil penalty and National Fuel Gas Distribution Corporation's compliance with Ordering Paragraphs 3 to 13 above, the Secretary's Bureau shall mark this proceeding closed.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is fluid and cursive, with the first letter of each word being significantly larger and more prominent.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: April 20, 2023

ORDER ENTERED: April 20, 2023