



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

June 27, 2024

Via Electronic Filing

Secretary Rosemary Chiavetta
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. C-2022-3033834
Exceptions of the Bureau of Investigation and Enforcement

Dear Secretary Chiavetta:

Enclosed for electronic filing are the **Exceptions** of the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission in the above-referenced matter.

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'Colby B. Widdowson', is written over a light blue circular stamp.

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CBW/jfm
Enclosures

cc: Per Certificate of Service
Hon. Dennis J. Buckley, Office of Administrative Law Judge (*via email*)
Michael L. Swindler, Deputy Chief Prosecutor (*via email*)
Office of Special Assistants (*via email* – ra-OSA@pa.gov)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2022-3033834
	:	
Philadelphia Gas Works,	:	
Respondent	:	

**EXCEPTIONS OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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Dated: June 27, 2024

I. INTRODUCTION

On June 7, 2024 the Recommended Decision of presiding Administrative Law Judge Dennis J. Buckley (“ALJ” or “ALJ Buckley”) was issued in the instant proceeding. The Recommended Decision grants the Joint Petition for Approval of Settlement filed on August 18, 2023 (“Joint Petition for Settlement” or “Settlement”) filed by the Commission’s Bureau of Investigation and Enforcement (I&E) and the Philadelphia Gas Works (PGW) and approves without modification the proposed Settlement. The Recommended Decision recommends:

1. That the Joint Petition for Settlement at Docket No. C-2022-3033834 submitted by the Commission’s Bureau of Investigation and Enforcement and the Philadelphia Gas Works be granted and the proposed Joint Settlement be adopted by the Commission without modification.
2. That the Commission direct the parties to implement the commitments made in the Joint Petition for Settlement as described and consistent with the agreed upon timelines therein and as though fully set forth in individual Ordering Paragraphs herein.
3. The Formal Complaint filed by the Bureau of Investigation and Enforcement at Bureau of Investigation and Enforcement v. Philadelphia Gas Works, Docket No. C-2022-3033834 is satisfied.
4. That upon acceptance and approval of the Joint Petition for Settlement by the Commission the proceeding at Docket No. C-2022-3033834 be marked closed.¹

I&E does not take exception to the recommendation in and of itself, and in fact believes that ALJ Buckley’s recommendation is the correct result. Nevertheless, these exceptions are filed based on the reasoning and findings used by ALJ Buckley to support the recommendation.

¹ *Pa. Pub. Util. Comm’n, Bureau of Investigation and Enforcement v. Philadelphia Gas Works*, Docket No. C-2022-3033834 (Recommended Decision entered June 7, 2024) at 36-37.

II. I&E EXCEPTIONS

1. **The Record does not support the finding that the Parties agreed that no violations of the Public Utility Code or the regulations of the Commission exist.**

For the reasons described in greater detail below, I&E respectfully submits that the record of the case does not support a conclusion that there were no violations and that the parties agreed as much. In the opening paragraph of the Recommended Decision, the ALJ states that “while no determination as to the cause of the explosion on December 19, 2019, is made, what was agreed to and subsequently confirmed at a hearing of May 17, 2024, is that PGW did not violate any provision of the Public Utility Code or the rules and regulations of the Commission, and consequently no civil penalty or other sanction by the Commission is warranted.”² This statement has no support in either the Joint Petition for Settlement that was filed in this matter or the transcript of the May 17, 2024 hearing. Further the Joint Petition for Settlement explicitly contradicts this statement.

ALJ Buckley convened a hearing on May 17, 2024 to ask counsel for I&E and PGW questions, while on the record, regarding the Joint Petition for Settlement.³ During the hearing on May 17, 2024, PGW’s counsel, while advocating for their client indicated that they do not believe they committed any violations of the Code, Commission regulations, or the Code of Federal Regulations. However, at no time during the May 17, 2024 hearing did counsel for I&E concede or agree to the fact that no violations existed in this matter.⁴

The Joint Petition for Settlement - in no less than six different places - explicitly contradicts the suggestion that there was an agreement that no violations existed in this

² Id. at 1.

³ Notes of Testimony (May 17, 2024) (“N.T.”).

⁴ N.T. pages 1-23.

matter. The following are excerpts from the Joint Petition for Settlement:

1. As set forth in I&E's formal complaint, had this matter been litigated, I&E would have alleged that PGW violated certain provisions of the Pennsylvania Code, the Code, and the Code of Federal Regulations with regard to natural gas pipeline safety.⁵
2. I&E avers that its Direct Testimony supports the allegations advanced in I&E's complaint. I&E's Pre-Served Direct Testimony is included as Appendix C to this Settlement.⁶
3. The Parties recognize that this is a disputed matter, and nothing contained herein should be construed as an admission against either party as to the merits of the other party's claims or defenses.⁷
4. Through this stipulation for admission of testimony, neither I&E nor PGW make any concessions to the other party's positions raised in testimony.⁸
5. In the event that a Party withdraws from this Settlement as set forth in this paragraph, I&E and PGW jointly agree that nothing in this Settlement shall be construed as an admission against or as prejudice to any position which any party might adopt during litigation of this case.⁹
6. The Parties further recognize that their positions and claims are disputed.¹⁰

Further, both I&E's and PGW's Statements in Support of the Joint Petition for Settlement demonstrate an understanding that there was not an agreement on whether or not violations existed. Specifically:

1. I&E intended to prove the factual allegations set forth in its investigation at hearing which PGW would have disputed. This Settlement Agreement results from the compromises of the Parties.¹¹

⁵ Joint Petition for Settlement in the matter of *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Philadelphia Gas Works*, Docket No. C-2022-3033834, ("Joint Petition for Settlement") at 12.

⁶ Id. at 15.

⁷ Id. at 20.

⁸ Id. at 21.

⁹ Id. at 36.

¹⁰ Id. at 37.

¹¹ I&E's Statement in Support of Joint Petition for Settlement in the matter of *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Philadelphia Gas Works*, Docket No. C-2022-3033834, ("I&E's Statement in Support") at 4.

2. In agreeing to the Settlement, PGW is not accepting the validity of the allegations set forth in the Complaint or in BI&E's direct testimony. The Settlement reflects a compromise between BI&E and PGW concerning the claims raised in the BI&E Complaint and testimony.¹²

Additionally, the Recommended Decision contradicts the finding that there was agreement by the parties, as it relates to the absence of violations. The Recommended Decision stated the following:

1. The Parties recognize that this is a disputed matter, and nothing contained herein should be construed as an admission against either party as to the merits of the other party's claims or defenses.¹³
2. The Parties further recognize that their positions and claims are disputed and, given the inherent unpredictability of the outcome of a contested proceeding, the Parties recognize the benefits of amicably resolving the disputed issues through settlement.¹⁴

Based upon the above citations from the record, which unmistakably contradict the assertion that the Parties agreed that PGW did not violate any provision of the Public Utility Code, Commission regulations, or Code of Federal Regulations, I&E requests that in approving the Joint Petition for Settlement without modification, the Commission set aside the Recommended Decision's finding that "PGW did not violate any provision of the Public Utility Code or the rules and regulations of the Commission and consequently no civil penalty or other sanction by the Commission is warranted."

¹² PGW's Statement in Support of Joint Petition for Settlement in the matter of *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Philadelphia Gas Works*, Docket No. C-2022-3033834, ("PGW's Statement in Support") at 6.

¹³ *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Philadelphia Gas Works*, Docket No. C-2022-3033834 (Recommended Decision entered June 7, 2024) at 5.

¹⁴ *Id.* at 18.

2. The Recommended Decision errs in weighing the stipulated facts and testimony that were presented as part of the Record with the Joint Petition for Settlement and concluding that no violations exist.

The Recommended Decision engages in a weighing of the evidence to determine if I&E has met its burden of proof and if violations exist. The weighing of evidence to determine whether to approve or recommend a settlement is erroneous on its face, as the only standard for determining if the settlement should be approved is if it is in the public interest. The Recommended Decision is inconsistent and contradicts itself on this point.

The Recommended Decision cites to I&E's Statement in Support and states that I&E's Statement in Support correctly cites the standard for analysis of a settlement.¹⁵ I&E's Statement in Support quotes the following:

“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).¹⁶

However, the Recommended Decision goes on to contradict the above statement and states the following:

Here, I hasten to add that which may seem self-evident, but which bears repeating: As the proponent of a rule or order, the Complainant in this proceeding (I&E) bears the burden of proof pursuant to Section 332(a) of the Public Utility Code. 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must demonstrate that Respondent was responsible for the problems alleged in his Complaint through a violation of the Public Utility

¹⁵ Pa. Pub. Util. Comm’n, *Bureau of Investigation and Enforcement v. Philadelphia Gas Works*, Docket No. C-2022-3033834 (Recommended Decision entered June 7, 2024) at 26.

¹⁶ I&E's Statement in Support at 5.

Code or a regulation or order of the Commission. This must be shown by a preponderance of the evidence. 66 Pa.C.S. §701; *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). In addition, the Commission's findings of fact must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980). As I have stated, nowhere in the record do I see evidence of failure to comply with the requirements of the Public Utility Code or the regulations of the Code by PGW, and I&E did not establish that any violations occurred.¹⁷

The Recommended Decision goes on to give weight to, and voice agreement with, PGW's position and justifies that agreement by stating that "[t]he testimony of the PGW witnesses who offered these assertions was not challenged by I&E which, I note, did not file surrebuttal testimony."¹⁸ Not only, does the Recommended Decision engage in a weighing of the evidence as it relates to the testimony, but it also draws improper conclusions from the lack of I&E surrebuttal testimony. Both the Joint Petition for Settlement and PGW's Statement in Support make it clear that the Parties did not offer further testimony because a settlement had been reached. Specifically, the Joint Petition for Settlement and PGW's Statement in Support provide the following:

1. In light of the settlement and the suspension of the litigation schedule, I&E did not provide any additional testimony, such as pre-served surrebuttal testimony, in this proceeding.¹⁹

¹⁷ *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Philadelphia Gas Works*, Docket No. C-2022-3033834 (Recommended Decision entered June 7, 2024) at 29-30.

¹⁸ *Id.* at 30.

¹⁹ Joint Petition for Settlement at 16.

2. In light of settlement and the suspension of the litigation schedule, PGW did not provide any additional testimony in this proceeding.²⁰
3. Had the parties continued through litigation, each party would have had the opportunity to undertake additional discovery, provide additional testimony, cross examine the witnesses, and would have had other opportunities to present their respective case in litigation in further development of the record.²¹
4. In light of settlement and the suspension of the litigation schedule, BI&E did not provide any additional testimony in this proceeding.²²

Ultimately, no conclusions should be drawn from the absence of I&E's surrebuttal testimony.

Further, the Recommended Decision concludes that no violations exist because “[t]he fact is that PGW at no point agreed to culpability, nor did it acquiesce in the imposition of a civil penalty,” and “after a review of the record in this case, I can find no substantial evidence that PGW violated the Code or the regulations of the Commission.”²³ First, it is irrelevant to the recommending adoption of a settlement, whether or not there is substantial evidence that PGW violated the Code or regulations of the Commission. As stated above, the focus of an inquiry into a settlement is not a ‘burden of proof’ standard, but simply whether the settlement serves the public interest. Second, as discussed in Part II(A), the Parties maintain their positions as it relates to culpability, which, consistent with prior Commission approved settlements, is an acceptable position to take and is not indicative of the lack of violations. Finally, the lack of civil penalty in this case is not determinative of whether or not violations exist, but is simply a factor that should be considered in determining whether the agreement is in the public interest.

²⁰ Id. at 19.

²¹ Id. at 21.

²² PGW's Statement in Support at 9.

²³ *Pa. Pub. Util. Comm'n, Bureau of Investigation and Enforcement v. Philadelphia Gas Works*, Docket No. C-2022-3033834 (Recommended Decision entered June 7, 2024) at 27.

For the foregoing reasons, I&E requests that in approving the Joint Petition for Settlement without modification, the Commission set aside the Recommended Decision's weighing of the stipulated facts and testimony and conclusion that no violations exist.

3. The Recommended Decision errs in suggesting that there is no sanction and 52 Pa. Code § 69.1201 should not be applied.

In addressing the applicability of 52 Pa. Code § 69.1201, the Recommended Decision states “[w]ith all due respect to counsel, the foregoing Policy Statement [on 52 Pa. Code § 69.1201] is not appropriate to an evaluation of this Proposed Joint Settlement because there has been neither any finding of a violation of the Code or the Commission’s regulations nor the agreement by PGW to any sanction whatsoever.”²⁴ It is abundantly clear from the Joint Petition for Settlement and the Parties Statements in Support, that the corrective and remedial actions that PGW has agreed to undertake to resolve this matter without the need for further litigation are sanctions. Sanctions is defined as “the detriment, loss of reward, or coercive intervention annexed to a violation of a law as a means of enforcing the law.”²⁵

In this Settlement, PGW is explicitly agreeing to take numerous and significant actions to improve public health and safety.²⁶ These actions are wide ranging and will not be restated here, but the most important action is the implementation of a Pilot Residential Methane Detection Program. The remedial and corrective actions contemplated in the Joint Petition for Settlement, especially the Pilot Residential Methane Detection Program, are actions that are outside what is required by the Code, Commission regulations, or Federal regulations, and represent an effort by PGW to go above and beyond what is required to

²⁴ Id. at 20.

²⁵ *Sanction*, Merriam-Webster Dictionary (2024).

²⁶ See Joint Petition for Settlement at 42-55.

promote public health and safety and to resolve a disputed matter. These remedial and corrective actions all represent a cost to PGW in time, money, and manpower, that may not have otherwise been undertaken without this Settlement. As such, though there is not a monetary civil penalty in this Settlement, there are non-monetary sanctions involved. Finally, these corrective and remedial measures were considered to be sanctions by the Joint Petition for Settlement and the Parties Statements in Support, as evidenced:

1. In light of the monies spent for the remedial and enhanced safety measures outlined below, no civil penalty will be imposed.²⁷
2. I&E submits that while the Parties have agreed that no civil penalty shall be imposed, the monetary commitment by PGW in creating and implementing the methane detector program (\$800,000) coupled with the costs to implement the various remedial measures outlined in the Joint Petition are substantial and sufficient to deter PGW from committing future violations. Moreover, the unique nature of PGW further supports the Parties' agreement of no civil penalty as any monetary relief sought by I&E would be paid or incurred by PGW's customers. Instead, the monetary commitments by PGW in this Joint Petition will not be passed on to the ratepayers in any future rate case, but the benefit of the remedial measures will be reaped by the ratepayers. Thus, the cost for PGW to implement the various remedial measures is an appropriate amount to deter future violations.²⁸
3. Rather than sending a civil penalty to the General Fund, the parties have agreed to the proactive safety improvements and creation of a pilot methane detector program that will benefit public safety.²⁹

The Recommended Decision forgoes using the Commission policy for analyzing settlements, found at 52 Pa. Code § 69.1201, because of a perceived lack of violations and sanctions. In relevant part 52 Pa. Code § 69.1201 provides that:

(a) The Commission will consider specific factors and standards in evaluating litigated and settled cases involving violations of 66 Pa.C.S. (relating to Public Utility Code) and this title. These factors and standards will be utilized by the Commission in

²⁷ Joint Petition for Settlement at 22.

²⁸ I&E's Statement in Support at 8.

²⁹ PGW's Statement in Support at 5.

determining if a fine for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest.

(b) Many of the same factors and standards may be considered in the evaluation of both litigated and settled cases. When applied in settled cases, these factors and standards will not be applied in as strict a fashion as in a litigated proceeding. The parties in settled cases will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest. The parties to a settlement should include in the settlement agreement a statement in support of settlement explaining how and why the settlement is in the public interest. The statement may be filed jointly by the parties or separately by each individual party.

The purported lack of violations or sanction has been addressed above and, for the purposes of brevity, will not be restated here. The requirement to find or admit to a violation would be counter to the Commission's policy to promote settlements³⁰ and affording parties "flexibility in reaching amicable resolutions to complaints and other matters as long as the settlement is in the public interest."³¹ This Settlement should be found to be reasonable and in the public interest, under the analysis of 52 Pa. Code § 69.1201, as contemplated and advocated by both Parties in this Settlement.

For the foregoing reasons, I&E requests that in approving the Joint Petition for Settlement without modification, the Commission set aside the Recommended Decision's conclusion that there is no sanction and properly apply 52 Pa. Code § 69.1201 in analyzing the Settlement.

³⁰ 52 Pa. Code § 5.231(a).

³¹ 52 Pa. Code § 69.1201.

III. CONCLUSION

For the reasons set forth above, I&E respectfully requests that the Commission adopt the Recommended Decision's ultimate conclusion that the Joint Petition for Settlement be adopted without modification, but set aside the Recommended Decision's analysis and findings and substitute its own, consistent with the terms of the Settlement.

Respectfully submitted,



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Dated: June 27, 2024

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Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2022-3033834
	:	
Philadelphia Gas Works,	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Exceptions of the Bureau of Investigation and Enforcement** dated June 27, 2024, upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Served via Electronic Mail:

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