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July 8, 2024

**Via Electronic Filing**

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

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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' ("PGW") Reply Exceptions in the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

*Norman J. Kennard*  
Norman J. Kennard

NJK/lww  
Enclosure

cc: Hon. Dennis J. Buckley w/enc.  
Cert. of Service w/enc.  
[Ra-osa@pa.gov](mailto:Ra-osa@pa.gov) w/enc.

**CERTIFICATE OF SERVICE**

I hereby certify that this day I served a copy of PGW's Reply Exceptions upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

**Via Email Only**

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Dated: July 8, 2024

*Norman J. Kennard*  
Norman J. Kennard, Esq.

**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.	:	

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**REPLY EXCEPTIONS OF  
PHILADELPHIA GAS WORKS**

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*Counsel for Philadelphia Gas Works*

Dated: July 8, 2024

## I. INTRODUCTION

Philadelphia Gas Works (“PGW” or “Company”) files these Reply Exceptions in response to the Exceptions filed by the Bureau of Investigation and Enforcement (“BI&E”) to the Recommended Decision (“RD”) issued by Administrative Law Judge Dennis J. Buckley on June 7, 2024.

After a comprehensive and careful review, the RD recommended approval of the Joint Petition for Settlement between PGW and BI&E without modification. Both PGW and BI&E support this ultimate result and urge the Commission to reach this same outcome. Both parties agree that the settlement is in the public interest for the reasons explained in their respective statements in support of the settlement.

BI&E’s Exceptions takes issue with some aspects of the RD’s analysis (but not the outcome). Exceptions Nos. 1 and 2 except to the RD’s analysis of the evidentiary record and review of the merits which BI&E argues was not necessary to approve the settlement, especially where the record is not complete and the matter was not litigated to finality. *See* BI&E’s Exceptions at 6-7. PGW takes no position on BI&E’s Exception Nos. 1 and 2 and encourages the Commission to approve the settlement without modification – the outcome sought by both parties. However, PGW does seek to clarify its position on BI&E’s Exception No. 3 as discussed below.

To be clear, whether the Commission addresses the legal nuances in BI&E’s exceptions and/or PGW’s replies is immaterial to the result sought by both BI&E and PGW – approval of the settlement without modification.

## II. REPLY TO EXCEPTIONS OF BI&E

### A. **Reply to BI&E Exception No. 3 – BI&E’s argument that PGW’s voluntary safety enhancements, education/coordination outreach to third party excavators, the Residential Methane Detector Pilot, and other settlement provisions amount to “sanctions” is misplaced, but, even if adopted, should not affect the Commission’s approval of the Settlement as in the public interest.**

In its Exception No. 3, BI&E correctly advocates that the Commission’s policy statement at 52 Pa. Code § 69.1201 provides the appropriate standard to evaluate the Joint Petition for Settlement. BI&E Exceptions at 8-10. Section 69.1201’s ten point analysis is designed to gauge whether a settlement is in the public interest. As both parties have previously explained in their respective statements in support, the Settlement meets each of the Section 69.1201’s standards and should be approved in its entirety without modification.

However, PGW disagrees with BI&E’s position that any of the actions that PGW has voluntarily agreed to undertake can or should be fairly characterized as “sanctions.” BI&E Exceptions at 8. The settlement terms are voluntarily agreed to *concessions* and safety enhancement measures made in order to resolve the complaint in a way that benefits the public and PGW’s customers and avoids the cost and risks of continuing litigation.

The term “sanction” is not employed in § 69.1201, and the insertion of such a requirement is inappropriate when reviewing whether the Joint Settlement is in the public interest. As discussed in PGW’s Statement In Support, and likewise recognized in BI&E’s Statement In Support, these substantial concessions, include safety enhancement measures and substantial monetary commitments<sup>1</sup> which are in the public interest.

BI&E’s description of those commitments as amounting to a “detriment, loss of reward, or coercive intervention annexed to a violation of a law as a means of enforcing the law” is

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<sup>1</sup> See PGW statement in support at 2-6; BI&E statement in support at 4, 8.

inappropriate. BI&E Exceptions at 8 (citing as defined “*Sanction*, Merriam-Webster Dictionary (2024)”). PGW’s voluntary agreement to affirmative measures (excavator education and coordination to reduce the likelihood of similar third-party failures to communicate conditions which may impact PGW’s infrastructure, residential customer safety enhancements, and enhancements to PGW’s standard procedures) are not a “detriment, loss of reward, or coercive intervention.”

The Settlement was further not voluntarily agreed to as “annexed to a violation of law as a means of enforcing the law.” PGW has forcefully and consistently maintained throughout this case that it violated no law, regulation, or standard and is not culpable for the allegations levied in BI&E’s complaint. For its part, BI&E maintains that, if it had continued to litigate this proceeding, it would have pursued the complaint allegations to their fullest extent.

PGW appreciates the RD’s recognition that the settlement was “commendable,” having led to the resolution of a sensitive matter in a novel manner (e.g., the methane detector pilot) that improves the safety of the public and provide benefits to both PGW and its customers. RD at 34. To achieve that result, the parties “laid down their arms” to focus on resolving this matter with substantial, real-world benefits to the public safety and PGW’s customers not achievable by litigation, rather than continuing the pursuit of proving or disputing culpability for the series of events leading to the tragic accident on December 19, 2019. See Joint Petition at ¶¶ 40-45.

Indeed, while they disagree on the merits of the alleged violations in the complaint, BI&E and PGW *do agree* about one of the core issues in the case - that observations by third party excavators prior to the events of December 19, 2019, of potentially adverse conditions involving PGW’s pipelines were never communicated to PGW. See Joint Petition at ¶ 45. The Settlement addresses this situation. While this fact, in PGW’s view, conclusively precludes any finding of

culpability on its part, PGW nonetheless voluntarily agreed to enhancements to encourage better excavator communications in the future. These include voluntarily agreeing to undertake substantial educational and coordination safety enhancement efforts to encourage increased communications from those excavating in and around PGW's infrastructure. PGW's efforts are designed to increase the likelihood that observations by third-party excavators of potentially adverse conditions involving PGW's infrastructure will be shared with PGW in the future. *See* PGW's statement in support at 2-3.

Moreover, PGW has voluntarily agreed to enhanced Standard Operating Procedures, using "trigger points" to define when observations made by PGW personnel will initiate the underground street trouble investigation process. *See* Settlement Provision V – Amendments to Street Trouble Process, Procedures, and Training; *see also* PGW statement in support at 5, 17-18 (Internal Practice and Procedures).

Additionally, and most significantly, PGW has voluntarily agreed to undertake a novel Residential Methane Detector Pilot Program which will distribute methane detectors directly to residential customers at no charge to potentially enhance customer leak detection. *See* Settlement Provision IV – Residential Methane Detector Pilot Program; *see also* PGW Statement In Support at 4-5. The efficacy of the program will be evaluated at the conclusion of the pilot. BI&E confirms that no other natural gas utility in Pennsylvania has a methane detector program and PGW could not have been compelled to undertake one absent its voluntary agreement since such a requirement is outside of the Public Utility Code and Commission's regulations, as well as Federal regulations. BI&E Exceptions at 8-9.

In view of these provisions, and when applying the Commission's Statement of Policy, the concessions made by PGW and the terms of the Settlement are clearly beneficial and in the

public interest, such that they should be approved without modification. Simply stated, even if the Commission chooses to address or clarify any of the legal nuance drawn out by BI&E's Exceptions, the RD's approval of the settlement without modification should be affirmed to allow PGW to implement the substantial public benefits of the settlement. On this, both PGW and BI&E agree.

### III. CONCLUSION

PGW respectfully requests that the Commission adopt the Recommended Decision's ultimate conclusion that the Joint Petition for Settlement is approved without modification as in the public interest.

Respectfully submitted,

*/s/ Norman J. Kennard*

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Dated: July 8, 2024

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