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January 13, 2026

Via Electronic Filing

Matthew Homsher, Secretary
PA Public Utility Commission
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v.
Philadelphia Gas Works – Docket No. C-2024-3052277

Dear Secretary Homsher,

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

Sincerely,

A handwritten signature in blue ink that reads "Bryce R. Beard".

Bryce R. Beard

BRB/red

cc: Hon. Christopher Pell w/enc.
Certificate of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PGW's Main Brief, 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: January 13, 2026

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2024-3052277
	:	
Philadelphia Gas Works,	:	
Respondent.	:	

**PHILADELPHIA GAS WORKS’
MAIN BRIEF**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
I. INTRODUCTION	1
II. STATEMENT OF FACTS AND PROCEDURAL HISTORY	2
A. Statement of Facts.....	2
B. Procedural History	3
III. SUMMARY OF ARGUMENT	5
IV. BURDEN OF PROOF AND LEGAL STANDARDS	11
A. Burden of Proof	11
B. Legal Standard for PGW’s Pipeline Safety	12
C. Expert Testimony Must Have a Requisite Degree of Certainty to Be Competent Evidence.....	13
V. ARGUMENT	15
A. PGW is Providing Safe and Adequate and Has Upheld Its Duty to Protect Its Facilities. 15	
1. PGW’s Cast Iron Main Replacement Initiatives.....	15
2. PGW’s Efforts to Maximize Public Safety in Third-Party Excavations.....	17
3. PGW’s Safety Enhancements Recently Approved by the Commission.....	18
B. BI&E Failed to Demonstrate that PGW Violated its Procedures and Bulletins	20
1. BI&E’s Expert Witness’ Speculation of Theoretical Underground Street Conditions at 815 Jackson Street Prior to the Incident is Not Competent Evidence and was Disproven Under Cross Examination.....	22
2. The Fact That There Were Two Unique One Call Tickets for Two Excavations Near 815 Jackson Street is Not Evidence of UST.....	26
3. BI&E Failed to Meet Its Burden on Counts 1–3 In the Complaint and the Record Reflects that PGW’s Procedures and Bulletins Complied with Existing Law.....	31
4. BI&E Failed to Meet Its Burden Regarding Counts 4-7 - Alleged Federal Regulatory Violations	37
5. BI&E Failed to Meet Its Burden Regarding Counts 9–10 - Alleged Violations of State Rules	39
C. BI&E’s Requested Relief and Application of Civil Penalties	40
D. Strict Liability Is Not the Standard for BI&E’s Burden of Proof of Alleged Violations 42	
E. BI&E has Previously Conceded that PGW’s Obligation to Inspect UST is Not Triggered for Third-Party Excavations Absent an Observed or Noticed UST.....	44
VI. CONCLUSION	48
Appendix A – Proposed Findings of Fact	
Appendix B – Proposed Conclusions of Law	
Appendix C – Proposed Ordering Paragraphs	

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Burleson v. Pa. PUC</i> , 443 A.2d 1373 (Pa. Commw. Ct. 1982), <i>aff'd</i> , 461 A.2d 1234 (Pa. 1983)	12
<i>Consolidated Edison Co. of New York v. National Labor Relations Board</i> , 305 U.S. 197 (1938).....	11
<i>Duquesne Light Co. v. Pa. PUC</i> , 507 A.2d 433 (Pa. Commw. Ct. 1986)	12
<i>Erie Resistor Corp. v. Unemployment Comp. Bd. of Review</i> , 166 A.2d 96 (Pa. Super. Ct. 1961).....	11,12
<i>Flagiello v. Crilly</i> , 187 A.2d 289 (Pa. 1963).....	14
<i>Gibson v. WCAB</i> , 861 A.2d 938 (Pa. 2004).....	13
<i>Karle v. National Fuel Gas Distribution Corp.</i> , 448 F. Supp. 753 (W.D. Pa. 1978).....	43
<i>Menarde v. Phila. Transp. Co.</i> , 103 A.2d 681 (Pa. 1954).....	14, 22
<i>Milkie v. Pa. PUC</i> , 768 A.2d 1217 (Pa. Commw. Ct. 2001)	12
<i>Monaci v. State Horse Racing Com'n</i> , 717 A.2d 612 (Pa. Commw. Ct. 1998), 717 A.2d.....	14
<i>Murphy v. Comm. Dept. of Public Welfare, White Haven Center</i> , 480 A.2d 382 (Pa. Commw. Ct. 1984)	12
<i>Norfolk & Western Ry. Co. v. Pa. PUC</i> , 413 A.2d 1037 (Pa. 1980) (<i>Norfolk</i>).....	11
<i>Patterson v. Bell Telephone Co. of Pa.</i> , 72 Pa. P.U.C. 196 (1990).....	11
<i>Pocono Water Co. v. Pa. PUC</i> , 630 A.2d 971 (Pa. Commw. 1993).....	12

<i>Povacz v. PECO Energy Co.</i> , Docket No. C-2015-2475023, Opinion and Order (Opinion and Order entered Mar. 28, 2019), <i>aff'd in relevant part</i> , Dkt. No. 492 C.D. 2019, 241 A.3d 481, 2020 WL 5949866 (Pa. Commw. Ct. Oct. 8, 2020)	14
<i>Samuel J. Lansberry, Inc. v. Pa. PUC</i> , 578 A.2d 600 (Pa. Commw. Ct. 1990), <i>app. denied</i> , 602 A.2d 863 (Pa. 1992)	11
<i>Se-Ling Hosiery v. Margulies</i> , 70 A.2d 854 (Pa. 1950)	11
<i>Tincher v. Omega Flex, Inc.</i> , 628 Pa. 296, 104 A.3d 328 (Pa. 2014)	43
<i>Vertis Group, Inc. v. Duquesne Light Co.</i> , 2003 WL 1605744, Docket No. C-00003643 (Order entered Feb. 24, 2003), <i>aff'd</i> , 840 A.2d 390 (Pa. Commw. Ct. 2003), <i>app. denied</i> , 859 A.2d 770 (Pa. 2004)	14, 22
<i>W. Penn Power Co. v. Pa. PUC</i> , 478 A.2d 947 (Pa. Commw. Ct. 1984)	11
Administrative Cases	
<i>Baker v. Sunoco Pipeline L.P.</i> , Docket No. C-2018-3004294, Opinion and Order (Order entered Sept. 23, 2020)	11, 13
<i>Bennett v. UGI Central Penn Gas, Inc.</i> , Docket No. F-20132396611, 2014 WL 1747713 (Initial Decision entered Apr. 10, 2014) (David A. Salapa, J.) (Final by Act 294, May 29, 2014)	13
<i>Bureau of Investigation and Enforcement v. Philadelphia Gas Works</i> , Docket No. C-2022-3033834, Opinion and Order (Order entered Jan. 8, 2025)	29, 47
<i>Bureau of Investigation and Enforcement v. Philadelphia Gas Works</i> , C-2022-3033834, Recommended Decision of Dennis J. Buckley, Administrative Law Judge	46
<i>Randall v. PECO Energy Co.</i> , Docket No. C-2016-2537666, 2019 WL 2250792 (Order entered May 9, 2019)	13
<i>Smalls, Sr. v. UGI Penn Natural Gas, Inc.</i> , Docket No. C-20142421019, 2014 WL 6807073 (Initial Decision entered Oct. 24, 2014) (Ember S. Jandebeur, J.) (Final by Act 294, Dec. 30. 2014)	13

<i>Township of Spring. v. Pennsylvania-American Water Co.,</i> Dkt. Nos. C-20054919	11
--	----

Statutes

73 P.S. § 180	30
2 Pa. C.S. § 505.....	13
2 Pa. C.S. § 704.....	11
66 Pa. C.S. § 332(a)	11, 47
66 Pa. C.S. § 701.....	11
66 Pa. C.S. § 1501.....	11, 12, 39
66 Pa. C.S § 3301.....	43
49 U.S.C. §§ 60101–60503.....	12
45 P.S. §§ 1102 et seq.....	31
71 P.S. §§ 745.1 et seq.....	31

Regulations

49 C.F.R. § 192.459	45
49 C.F.R. § 192.605	31, 32, 37
49 C.F.R. § 192.614.....	32
49 C.F.R. §§ 192.701–192.756	37
49 C.F.R. § 192.703	37, 38
49 C.F.R. § 192.755	37, 38
49 CFR Parts 191-93, 195, 199.....	12, 13
52 Pa. Code § 59.33	12, 39

I. INTRODUCTION

Pursuant to Your Honor’s November 18, 2025 Briefing Order and the Pennsylvania Public Utility Commission’s (“Commission” or “PUC”) regulations, Philadelphia Gas Works (“PGW”) hereby submits this Main Brief on the merits of the above captioned Complaint filed by the Commission’s Bureau of Investigation and Enforcement (“BI&E”) on November 24, 2024.

This proceeding is an exercise by BI&E to forge a new and unprecedented requirement that PGW should function as the “street sheriff” for more than 70,000 per year third-party tickets submitted to the Pennsylvania One Call System (“One Call”) involving PGW’s facilities in the streets and roadways of Philadelphia. Then, after submitting this novel proposal, BI&E asks the Commission to retroactively penalize PGW based on this misinterpretation of PGW’s internal operating procedures (i.e., its “Bulletins”). Indeed, BI&E seeks to expand the requirements of PGW’s One Call marking procedures even when no underground street trouble (“UST”) is identified by PGW’s professional, in-house, unionized One Call responders/inspectors either at the time of marking or subsequently on investigation.

No matter the facts, no matter the circumstances, BI&E claims that PGW should know the unknown and be responsible for invisible, subsurface conditions near any excavation in Philadelphia — an excavation that could occur weeks, months, or even years prior to a cast iron main break. Those arguments are tantamount to making PGW strictly liable by regulatory enforcement for virtually *all* main breaks in its service territory. This includes, under the circumstances here, where there never was a loss of support for the main and no UST, as conceded on the record by BI&E. As discussed herein, PGW respectfully asks Your Honor to dismiss the complaint for BI&E’s failure to prove PGW violated any provision in the Public Utility Code, the Commission’s regulations, federal regulations, or PGW’s internal procedures.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

A. Statement of Facts

Notwithstanding the profoundly different interpretations of applicable law, regulations, and PGW’s Bulletins held by the PGW and BI&E, there are few, if any, underlying facts in actual dispute. A highlight of the many core factual matters *not* in dispute between the parties, include:

- This case involves a natural gas explosion that occurred at 815 Jackson Street in Philadelphia, Pennsylvania on November 30, 2021.¹
- The explosion occurred after natural gas was released from a circumferential crack on PGW’s 4-inch cast iron main located in front of 815 Jackson Street, Philadelphia, Pennsylvania.²
- The incident resulted in an estimated \$55,000 in damage to property (buildings and cars) with no personal injuries or loss of life.³
- The incident was not a “reportable incident” under federal Pipeline and Hazardous Materials Safety Administration (“PHMSA”) rules and regulations.⁴
- In July and September 2021 — months prior to the incident — PGW was notified of three One Call tickets for work related to sewer lines at 815 Jackson Street and 813 Jackson Street.⁵
- All three One Call tickets by third-party plumbers (of which one was a repeat ticket) involved sewer facilities (sewer traps on customer-owned service lines at the curb) located over seven (7) feet from PGW’s main, with the closest distance of possible excavation by the plumbers to occur over three (3) feet from PGW’s main.⁶
- None of the three One Call tickets indicated any imminent sewer system failures, and in fact, the third-party plumbers did not act on their initial ticket from July of 2021— indicating no urgency of a sewer failure.⁷
- BI&E is not aware of and failed to present any evidence whatsoever that the One Call tickets were the result of sewer service line failures, leaks, or any other underground street trouble that could reasonably have put PGW on notice of risk to its pipeline facilities.⁸

¹ BI&E St. 1 at 7; PGW St. 1-R at 3; I&E Exhibit 10.

² BI&E St. 1 at 14; PGW St. 1-R at 9; BI&E Exhibit 9.

³ PGW St. 1-R at 3, 22; **CONFIDENTIAL** Exhibit JH-2 at page 15; PGW St. 2-R at 9; BI&E St. 1 at 4, 7–8.

⁴ PGW St. 1-R at 22; Exhibit JH-1, BI&E Response to PGW Set II, No. 15; I&E St. 1 at 3–4.

⁵ PGW St. 1-R at 5, 26; PGW St. 2-R at 11–13; I&E St. 1 at 12; I&E Exhibits 6–8.

⁶ PGW St. 1-R at 34; BI&E St. 1 at 12; BI&E Exhibits 6–8; NT at 134.

⁷ NT at 46:8–23; PGW St. 1-R at 26, 35–36, BI&E Exhibits 6–8.

⁸ NT at 38–42.

- PGW Damage Prevention Inspectors responded to each of these One Call tickets in compliance with the law and PGW’s Bulletins, and the location of its facilities were accurately marked.⁹
- In each One Call ticket response, PGW’s personnel did not find any UST to institute a UST process.¹⁰
- Neither of the third-party plumbers that did the excavations reported to anyone, at any time, that there were adverse sub-surface conditions present that could impact PGW’s main.¹¹
- While BI&E’s testimony initially theorized that undermining *may* have occurred or that the main may not have been supported, BI&E’s witness fully admitted at the hearing that there was no evidence of this whatsoever. Instead, the evidence shows that PGW’s cast iron main was supported and surrounded by soil when excavated on November 30, 2021.¹²
- While a void was found just below the sidewalk surface on November 30, 2021 during post-incident excavation, the void was only to a maximum depth of 17 inches and did not impact the soil surrounding and supporting PGW’s main buried at or below two feet in depth at 815 Jackson Street.¹³

These agreed to or un rebutted facts, as well as others discussed below, compel the conclusion that BI&E failed to meet its burden of proof to show that PGW violated any law, regulation, or procedure involving the incident at 815 Jackson Street, either in the months prior to the incident where plumbers excavated, or subsequent thereto, including in response to the explosion.

Pursuant to the November 18, 2025 Briefing Order, PGW has provided detailed Proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs as Appendices A–C to this Brief.

B. Procedural History

On November 25, 2024, BI&E filed a Formal Complaint against PGW, alleging that PGW violated the Public Utility Code, the Commission’s regulations, and related Code of

⁹ BI&E St. 1 at 13; PGW St. 1-R at 26, 38; PGW St. 2-R at 2–7; NT at 138.

¹⁰ BI&E St. 1 at 13; PGW St. 1-R at 5; PGW St. 2-R at 5–7; NT at 134. ¹¹ NT at 60:15–23; PGW St. 1-R at 5–6, 32; PGW St. 2-R at 12.

¹² NT at 33; BI&E Exhibit 3.

¹³ PGW St. 2-R at 11, 14; NT at 29–30.

Federal Regulations in connection with an unreportable¹⁴ natural gas explosion that occurred at 815 Jackson Street, Philadelphia on November 30, 2021. In its Complaint, BI&E requested corrective actions that almost exactly duplicated those subsequently approved by the Commission in a prior BI&E complaint case by Order entered January 8, 2025 at Docket No. C-2022-3033834. The instant complaint further requested a civil penalty of \$300,000 for the alleged violations.

On January 29, 2025, PGW filed an Answer denying the alleged violations in the Formal Complaint. A Prehearing Conference convened on February 20, 2025, where a procedural schedule was established. An evidentiary hearing was convened on October 16, 2025. Subsequently, Your Honor issued a Briefing Order, scheduling main briefs for submission on January 13, 2026 and any reply briefs on February 13, 2026.

¹⁴ PGW St. 1-R at 22; Exhibit JH-1, BI&E Response to PGW Set II, No. 15.

III. SUMMARY OF ARGUMENT

Initially, PGW would like to state that it has the highest respect for the work done by the BI&E investigators to protect public safety and believes that PGW has established a productive working relationship with BI&E management and staff. For example, BI&E and PGW have worked jointly to support and implement an accelerated pace of cast iron main replacement in PGW's system¹⁵ and recently initiated and implemented an unprecedented – first in Pennsylvania – residential methane detector pilot program. These are clear demonstrations that PGW prioritizes safety and public health in operating its gas system and responding to known hazards.

Notwithstanding these sentiments, however, this Complaint should never have been filed. The record proves PGW violated no law or regulation or any of its internal procedures. Furthermore, there is no support in the law or facts presented by BI&E that would justify the \$300,000 civil penalty it seeks, or, indeed, any fine whatsoever.

BI&E, after investigation, has not found any deficiency with: (1) PGW's main maintenance programs; (2) the way PGW responded to the One Call marking requests at issue; or (3) PGW's emergency response to the explosion. As the party with the burden of proof, BI&E simply did not present any evidence beyond speculation and unsupported theories that are not competent evidence, and, therefore, the Complaint must be dismissed.

BI&E's basic premise is that, because PGW did not dispatch crews to monitor and watch over third-party sewer excavation work on a third-party sewer trap in front of 815 Jackson Street in September 2021, it failed a generalized duty to safeguard its facilities. However, this level of third-party excavation supervision is not required by law, regulation, or PGW's internal procedures, and *there was no reason for PGW to have done so* where there were, in fact, no

¹⁵ See PGW St. 1-R at 11–12.

USTs (i.e., evidence of an issue with PGW's facilities observable or resulting from the excavation) at 815 Jackson Street ever known by anyone.

The two underlying unique One Call tickets in July and September 2021¹⁶ described minor repairs on end-user owned sewer *service lines* (the sewer traps located on customer owned laterals connecting to the sewer system owned by the City of Philadelphia ("City") located 7.5 feet from PGW's mains at the location. There was nothing unusual about the tickets. They were routine among the over 70,000 One Call requests that PGW receives each year. PGW correctly and timely responded and marked the location of its main.

The PGW inspectors marking the lines are trained to look for UST *and none were observed*. The sewer trap work itself was performed by City-licensed excavators/plumbers, who are required by law to report any observed adverse conditions to PGW under the Pennsylvania One Call Law. There was no indication from the sewer repair crew to PGW or anyone else, to PGW's knowledge, that PGW's main could be or was in jeopardy. As the evidence shows, the PGW employees "did their job."¹⁷

On November 30, 2021, almost three months after the last One Call markings were made, there was an explosion at 815 Jackson Street causing approximately \$55,000 in property damage. There were no personal injuries and no fatalities. No civil suits were filed. The parties agree that the cast iron gas main in front of 815 Jackson Street cracked, releasing gas into the basement at that address and creating the accelerant for the explosion, but disagree on how and when that crack may have occurred, as BI&E has failed to provide any evidence whatsoever linking the excavations in question to the crack in the cast iron gas main.

¹⁶ There were three One Call tickets in total, but one was a repeat, reissued ticket because the excavator did not timely undertake the work.

¹⁷ PGW St. 1-R at 42.

Shortly before being barred by the statute of limitations, BI&E filed this Complaint, alleging that PGW should have known somehow that the underground support in front of 815 Jackson Street *might* have been compromised and that it should have dispatched crews to supervise the third-party excavations. However, the record shows that there was no basis to support these assertions; the one-call markings were routine, no USTs were found during the marking and inspection, the excavators did not give PGW, or anyone else, a heads-up that there were any issues with PGW's main, or that if PGW personnel had been in attendance at the excavations it would have prevented the line break.

Moreover, BI&E's investigation was incomplete. BI&E failed to pursue statements from key players, including PGW and the plumber/excavators. Concerningly, BI&E's own investigative report, which was the sole basis for its witness' entire knowledge of the case, focused solely on PGW's potential culpability rather than completing a thorough investigation that also included the sewer repair crew.

The conclusions drawn from this incomplete investigation are equally flawed. BI&E's factual theory of undermining, scouring, or other UST as the cause of the explosion is based entirely on speculation and devoid of proof, as BI&E's witness candidly conceded on the witness stand. The gas main crack can be explained by other causes that do not involve the actions of the sewer excavators or the loss of underlying support.

BI&E's legal position, flowing from an expansive and unprecedented reading of PGW's operating bulletins, is equally defective. There was no legal obligation requiring PGW to be on site for routine sewer service line maintenance once it accurately marks its facilities and investigates the site for any indication of UST as it did here. BI&E's legal position is based on an illogical misunderstanding of PGW's internal operating procedures, incorrectly asserting that,

even in the absence of any evidence or knowledge of safety concerns, PGW is nevertheless still required to attend and monitor routine maintenance of sewer laterals.

Part of PGW's concern with BI&E's position in this case is a direct departure from the settlement BI&E and PGW agreed to at Docket No. C-2022-3033834 (the "8th Street Settlement"). BI&E is now attempting to vastly expand the standard of PGW's expected conduct beyond which it previously agreed and approved by Commission Order.¹⁸ PGW and BI&E entered into the 8th Street Settlement to establish a definitive statement of PGW's post-marking obligations. This settlement established clear "trigger points" for further monitoring after marking occurs that are limited to instances "when PGW has direct knowledge through notice or observation" and stating that "in no other circumstances is any obligation imposed, after marking, to be present during subsequent excavation." BI&E has failed to show that PGW violated these triggers, and its Complaint should be dismissed on that admission and independent basis alone.

Binding Commission settlement aside, fines (i.e., the only remaining relief sought that is not explicitly moot) require a violation of the Public Utility Code, Commission regulation, or Commission order. Yet, BI&E's position is that, because PGW's main experienced a break, PGW should be fined \$300,000.00. There is no basis in law to apply a strict standard of liability upon which BI&E can demand civil penalties. BI&E's basis for its position rests on the novel theory that simply because there had been more than a single One Call ticket and marking event

¹⁸ As approved by the Commission on January 8, 2025: "Nothing in this settlement shall imposed on PGW any obligation, after marking, to be present during subsequent excavation, except as required under Section V(3) above." The caveat as Section V(3) is for circumstances where PGW has "direct knowledge through notice or observation that any portion of a buried pipeline is exposed." See Section V(3). BI&E put forth zero evidence that PGW's main was exposed on or before November 30, 2021 at 815 Jackson Street, and by the terms of the Commission's approved settlement, BI&E's instant case must fail.

on the 800 block of Jackson Street in 2021, PGW “should have known” that there could be some issue with its cast iron main that should have been investigated.

Moreover, the new rule that BI&E seeks to establish is undefined and completely subjective. The BI&E testimony only ambiguously describes its proposal as “[a] risk-based approach that considers excavation tickets, excavation types, gas pipe type, age and leak history.”¹⁹ There is no other description presented. No solid, defined parameters upon which PGW can run a business are proposed or any detail that would guide the utility’s field operations such as was contained in the 8th Street Settlement. There is no workable prioritization of concern or details. BI&E litigation position did not describe how these factors should be recognized and shaped into a useful and practical set of metrics. There is only BI&E’s subjective, after the fact, opinion that PGW “should have known.”

BI&E’s litigation position is principally based on the occurrence of two One Call excavations on Jackson Street.²⁰ However, two excavations of sewer lateral traps on a street in Philadelphia is a routine matter. Overall, approximately 50% of the 70,000 tickets directed at PGW’s facilities submitted to One Call occur on the same block in the same year. PGW’s personnel are trained to recognize and act on USTs when marking One Call tickets.

Nor is BI&E’s position realistic. The implementation of such a “two ticket” standard would require PGW to be on site at *tens of thousands* of third-party excavations without any empirical evidence offered by BI&E tying the number of One Call tickets to a higher incident of risk. Such a mandate would be enormously costly for PGW’s ratepayers in terms of equipment and personnel. PGW would be forced to hire hundreds of new employees to try and cover all

¹⁹ BI&E St. 1-R at 5.

²⁰ BI&E secondarily raises the specter of three repaired main breaks on the north side of Jackson Street since 2009 (the last of which occurred in 2016). This topic is addressed *infra*. But the unrebutted testimony here is that the repaired breaks were not evidence of systemic risk.

excavator activities where more than a single One Call ticket is received (over an unstated and unregulated amount of time)—at an estimated annual cost to PGW ratepayers in the tens of millions of dollars per year.

Moreover, BI&E's proposal would require PGW to pursue all of the water and sewer excavators filing One Call tickets in Philadelphia to determine when excavation will actually occur in order to be on site. This is *unworkable*, placing a major burden on PGW to track, monitor, and police when excavation will occur from excavators that have no duty to inform PGW of their intentions after the submission of the One Call ticket.²¹

In view of the above, PGW urges that Your Honor find that BI&E's Complaint should be dismissed as factually and legally unsupported.

²¹ One Call tickets do not identify the date of excavation.

IV. BURDEN OF PROOF AND LEGAL STANDARDS

A. Burden of Proof

As the proponent of a rule or order, BI&E has the burden of proof to demonstrate the elements of its claims by a preponderance of the evidence.²² To establish a fact or claim by a preponderance of the evidence means to offer the greater weight of the evidence, or evidence that outweighs, or is more convincing than, the probative value of the evidence presented by the other party.²³ To satisfy their burden of proof, BI&E must show that PGW is responsible or accountable for the problem described in its Complaint.²⁴

BI&E, as the complainant here, must prove that PGW violated the Public Utility Code, a Commission regulation or Order, or a Commission-approved tariff:

We hold that in order for the PUC to sustain a complaint brought under this section [66 Pa. C.S. § 1501], the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require any action by the utility.²⁵

Moreover, the Commission's factual findings must be supported by "substantial evidence" in the record.²⁶ "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.²⁷ A legal decision must be based on real

²² 66 Pa. C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Commw. Ct. 1990), *app. denied*, 602 A.2d 863 (Pa. 1992).

²³ *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

²⁴ *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. P.U.C. 196 (1990).

²⁵ *W. Penn Power Co. v. Pa. PUC*, 478 A.2d 947, 949 (Pa. Commw. Ct. 1984) (emphasis added, *West Penn*); see also *Township of Spring. v. Pennsylvania-American Water Co.*, Dkt. Nos. C-20054919 et al., 2007 WL 2198196, at *6 (Order entered July 27, 2007) ("If we were to order PAWC to conduct testing of the property in the Stonegate community, we would have to base that order on credible evidence that some act or omission by PAWC in violation of the Code or our Regulations would be remedied by the testing.") (citing *West Penn*). "The offense must be a violation of the Public Utility Code (Code), a Commission Regulation or Order or a violation of a Commission approved tariff." *Baker v. Sunoco Pipeline L.P.*, Docket No. C-2018-3004294, Opinion and Order at 6 (Order entered Sept. 23, 2020) (citing 66 Pa. C.S. § 701) ("*Baker*").

²⁶ 2 Pa. C.S. § 704; *Lansberry*, 578 A.2d at 602.

²⁷ *Consolidated Edison Co. of New York v. National Labor Relations Board*, 305 U.S. 197, 229 (1938). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980) (*Norfolk*); *Erie Resistor Corp. v. Unemployment Comp. Bd.*

and credible evidence that is found in the record of the proceeding, affording the utility the opportunity to respond.²⁸

Upon presentation of evidence sufficient to initially establish a prima facie case, the burden to rebut the complainant's evidence shifts to the respondent. If the evidence that the respondent presented is of co-equal weight, then the complainant has not satisfied their burden of proof. Complainant now must provide some additional evidence to rebut that of the respondent.²⁹ While the burden of going forward with the presentation of evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission.³⁰

As demonstrated in this Brief, BI&E has failed to identify any duty or obligation that PGW failed to meet and has presented no evidence that PGW did not provide service consistent with the Public Utility Code, Commission regulations, or prior orders of the Commission. Moreover, the facts relied on by BI&E consist of speculation and are rebutted by the actual facts of record. BI&E has failed to meet its burden of proof, and its Complaint should be dismissed.

B. Legal Standard for PGW's Pipeline Safety

The Commission regulations at 52 Pa. Code § 59.33³¹ require that natural gas public utilities meet minimum safety standards consistent with the pipeline safety laws at 49 U.S.C. §§ 60101–60503 and the regulations at 49 C.F.R. Part 192. To find that PGW's actions were

of Review, 166 A.2d 96 (Pa. Super. Ct. 1961); *Murphy v. Comm. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Commw. Ct. 1984).

²⁸ *Pocono Water Co. v. Pa. PUC*, 630 A.2d 971, 973–74 (Pa. Commw. 1993) (finding that the Commission violated the utility's due process rights "because it assessed liability after determining an issue which [the utility] had not been afforded a reasonable opportunity to defend at the hearing."); *Duquesne Light Co. v. Pa. PUC*, 507 A.2d 433, 437 (Pa. Commw. Ct. 1986) (holding that the Commission violated the utility's due process rights because the utility was "not given adequate notice of the specific conduct being investigated, and hence its defense was gravely prejudiced.").

²⁹ *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Commw. Ct. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

³⁰ *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Commw. Ct. 2001).

³¹ Promulgated pursuant to 66 Pa. C.S. § 1501.

unsafe requires proof that it violated these existing regulatory pipeline safety standards.³² The Commonwealth Documents Law and the Independent Regulatory Review Act require that regulatory changes occur through notice and comment procedures with accompanying governmental review, not as the result of administrative adjudications.

Thus, when BI&E’s complaint and testimony argue that PGW violated its view of required standards, as such actions are not required by current federal or state pipeline safety regulations, these allegations do not demonstrate a violation of applicable law or regulation.³³ What BI&E may think the law or regulations *should* require in terms of ongoing street surveillance following One Call markings is not – and cannot be – the basis for finding a violation and imposing a fine upon PGW.

C. Expert Testimony Must Have a Requisite Degree of Certainty to Be Competent Evidence

Pennsylvania Rule of Evidence 702 establishes the standard for the admission of expert testimony.³⁴ The Pennsylvania Rules of Evidence, including Rule 702, are applied by the Commission in its administrative hearings and proceedings.³⁵

³² See, e.g., *Smalls, Sr. v. UGI Penn Natural Gas, Inc.*, Docket No. C-20142421019, 2014 WL 6807073 (Initial Decision entered Oct. 24, 2014) (Ember S. Jandebour, J.) (Final by Act 294, Dec. 30, 2014) (reasoning because there are safety regulations that apply to gas pipelines, but there was no federal or state regulation that prohibited the specific action of placing a gas line within close proximity to a home, there cannot be a violation since there was not a set standard finding a safety violation where Complainant failed to show violation of relevant portion of 49 C.F.R.); *Bennett v. UGI Central Penn Gas, Inc.*, Docket No. F-20132396611, 2014 WL 1747713 (Initial Decision entered Apr. 10, 2014) (David A. Salapa, J.) (Final by Act 294, May 29, 2014) (“In the absence of any evidence that [UGI] failed to comply with these regulations [49 CFR 191-93, 195, 199], I cannot conclude that [UGI] acted unreasonably or violated any Commission regulation in failing to prevent the leaks that occurred at the Complainant's property.”).

³³ *Baker* at 26 (reversing relief granted that is subject of proposed rulemaking).

³⁴ Pa. R.E. 702. (“A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) the expert’s scientific, technical, or other specialized knowledge is beyond that possessed by the average layperson; (b) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; and (c) the expert’s methodology is generally accepted in the relevant field.”)

³⁵ See *Randall v. PECO Energy Co.*, No. C-2016-2537666, 2019 WL 2250792, at *43 (Order entered May 9, 2019) (citing *Gibson v. WCAB*, 861 A.2d 938, 947 (Pa. 2004) (holding, in part, that notwithstanding 2 Pa. C.S. § 505, which mandates a relaxation of the strict rules of evidence in agency hearings and proceedings, the “evidentiary Rules 602, 701, and 702 are applicable to agency proceedings in general”).

An expert opinion exhibiting equivocation and speculation based on mere possibilities is not competent evidence. The Commission has explained:

An expert need not testify with absolute certainty or rule out all possible causes of a condition. Likewise, the testimony need not be expressed in precisely the language used to enunciate the legal standard. *Rather, expert testimony must be viewed in its entirety to assess whether it expresses the requisite degree of certainty. Expert testimony based upon mere probability, however, e.g., “more probable than not,” that the alleged cause “possibly” or “could have” led to the result, that it “could very properly account” for the result, or even that it “was very highly probable” that it caused the result, lacks the requisite degree of certainty to be accepted as competent evidence.*³⁶

Competent expert testimony requires the witness to testify that in their professional opinion, the result in question came from the cause alleged; anything less falls below the required standard of proof and does not constitute legally competent evidence.³⁷

In testimony, the BI&E witness — who had no direct involvement in the underlying investigation — nevertheless set forth conclusive opinions regarding the cause of the incident based upon speculation, with no supporting facts supplied.³⁸ Upon cross-examination, the witness agreed that the actual circumstances at the scene did not support BI&E’s theory.

³⁶ *Vertis Group, Inc. v. Duquesne Light Co.*, 2003 WL 1605744, Docket No. C-00003643 (Order entered Feb. 24, 2003), *aff’d*, 840 A.2d 390 (Pa. Commw. Ct. 2003), *app. denied*, 859 A.2d 770 (Pa. 2004) (emphasis added, citations omitted).

³⁷ *Menarde v. Phila. Transp. Co.*, 103 A.2d 681, 684 (Pa. 1954) (“[T]he expert has to testify, not that the condition of claimant might have, or even probably did, come from the cause alleged, but that in his professional opinion the result in question came from the cause alleged. A less direct expression of opinion falls below the required standard of proof and does not constitute legally competent evidence.”). *see also Povacz v. PECO Energy Co.*, Docket No. C-2015-2475023, Opinion and Order at 61–62 (Opinion and Order entered Mar. 28, 2019), *aff’d in relevant part*, Dkt. No. 492 C.D. 2019, 241 A.3d 481, 2020 WL 5949866 (Pa. Commw. Ct. Oct. 8, 2020).

³⁸ If a party is relying upon circumstantial evidence to reasonably infer a factual conclusion, “the evidence must be adequate to establish the conclusion sought and must so preponderate in favor of that conclusion so as to outweigh . . . any other evidence and reasonable inferences therefrom which are inconsistent therewith.” *Monaci v. State Horse Racing Com’n*, 717 A.2d 612, 618 (Pa. Commw. Ct. 1998), 717 A.2d at 618 (quoting *Flagiello v. Crilly*, 187 A.2d 289, 290 (Pa. 1963)).

V. ARGUMENT

A. **PGW is Providing Safe and Adequate and Has Upheld Its Duty to Protect Its Facilities.**

This section describes the many initiatives PGW has undertaken to improve its facilities, maintain them, and protect public safety, particularly with respect to its inventory of cast iron main, as detailed in the underlying evidentiary record.

It is notable that BI&E, after investigation, has found no deficiency with PGW's main maintenance programs, the accuracy of PGW's One Call marking practices, or PGW's emergency response to the explosion that occurred at 815 Jackson Street on November 30, 2021. None was alleged in the Complaint. None was set forth in testimony. That no shortcoming was found is a testament to the fact that PGW seriously and thoroughly undertakes its duty to protect its facilities and in providing safe and adequate service to the public.

1. **PGW's Cast Iron Main Replacement Initiatives**

The amount of cast iron mains in PGW's distribution system is well known to the Commission and has been of historic concern to both PGW and the Commission.³⁹ PGW is the nation's largest municipally owned gas distribution company⁴⁰ and one of the oldest. Due to its history, PGW has a large amount of installed legacy cast iron mains compared to other natural gas distribution companies, and much of it is of relatively older vintage.

Cast iron is of obvious concern, because it metallurgically becomes brittle over time (a process known as graphitization) and is susceptible to breaking/cracking with very limited, or even no, prior notice.⁴¹ To address this, PGW aggressively targets its cast iron mains for accelerated replacement:

³⁹ PGW St. 1-R at 8.

⁴⁰ PGW St. 1-R at 8.

⁴¹ PGW St. 1-R at 29 ("Cast iron can also break without warning and without any apparent cause.").

PGW concentrates on cast iron main replacement because the amount of cast iron main replacement is positively correlated with [reduction of leaks and the associated risk of serious incidents; reduction of breakage repairs and future breakage repair costs; reduction in leak maintenance and repair; and an improvement in pressure, and lower levels of unaccounted-for gas].⁴²

None of this is news to the Commission or any other informed observer.

The evidence in this case shows that PGW has and continues to diligently accelerate cast iron main replacement in its system consistent with just and reasonable rates, its financial limitations⁴³ and labor force constraints, as Mr. Hawkinson testified:

In the last ten plus years, with the help of the Commission, PGW has made tremendous strides in reducing the amount of cast iron main in its system and replacing these mains with modern materials such as protected steel and plastic. *In 2010*, PGW was annually replacing approximately *18 miles* of “at risk” pipe, mostly cast iron main.

In contrast, *currently PGW is replacing cast iron mains at a rate of over 30 miles per year*. In each Long-Term Infrastructure Improvement Plan (“LTIIP”) filing with the Commission, PGW has consistently reduced the projected date of complete cast iron main replacement. The current projected completion of replacing all cast iron main inventory is approximately 35 years. PGW also applied for and has been awarded \$125 million in federal grant funds through PHMSA to replace an additional 66 miles of cast iron main over the next five years, which will accelerate PGW’s cast iron removal program by approximately 2 years.⁴⁴

In the past twelve (12) fiscal years, PGW has successfully removed 374 miles of this “at-risk” pipe from inventory⁴⁵ and approximately 121 miles of cast iron main are planned for replacement in FY 2025 – FY 2027 which includes replacement funded through base rates, the Distribution

⁴² PGW St. 1-R at 10.

⁴³ “Financial limitations are the primary impediment to more rapid replacement of cast iron mains. PGW finances replacement in four ways: (1) Funds made available from its current base rates; (2) Debt financing; (3) PGW’s distribution system improvement charges (“DSIC”), currently set at 7.5% of PGW’s distribution revenues; and (4) Third party grants.” PGW St. 1-R at 9.

⁴⁴ PGW St. 1-R at 9 (Emphasis added).

⁴⁵ PGW St. 1-R at 14.

System Improvement Charge (“DSIC”) mechanism, and PHMSA grant funding.⁴⁶ As a result of these efforts, safety is improving and the trend in number of leaks has dropped precipitously.⁴⁷

2. PGW’s Efforts to Maximize Public Safety in Third-Party Excavations

The record in this case shows that PGW undertakes numerous steps in the field to protect its facilities, particularly cast-iron mains, maximize public safety and provide safe and adequate service. PGW has a multi-pronged set of programs that include formal statements of procedure and employee training on these topics.

1. PGW utilizes in-house trained employees to perform Pennsylvania One Call mark outs.^[48] Their title is Damage Prevention Inspectors.
2. PGW staffs dedicated in-house trained crews/technicians for maintenance and emergency response on a 24/7 basis.
3. PGW’s leak survey goes beyond code requirements by performing an annual City of Philadelphia-wide mobile survey.⁴⁹

PGW Damage Prevention Inspectors and Foremen “are thoroughly trained that when working on a job, they must look for paving depressions, cavities, cave-ins, paving faults such as surface cracks, or settlement that are in proximity to PGW facilities and which could reduce or eliminate support of PGW pipe.”⁵⁰ When these circumstances are identified, a UST investigation is triggered.⁵¹

PGW acknowledges and diligently pursues its obligation to investigate UST:

When an UST is identified by a PGW trained employee or by an outside source – such as another utility, a City department, an excavator, member of the public or others – a UST work order is

⁴⁶ PGW St. 1-R at 16.

⁴⁷ PGW St. 1-R at 12–14.

⁴⁸ The use of in-house inspectors is significant, as Mr. Hawkinson testified: “Unlike many other utilities, PGW does not utilize third-parties to perform our . . . Pennsylvania One Call markouts. We utilize experienced Local Union 686 inspectors who are - who have worked their way up through the union. Essentially, they have hands on experience and knowledge of both installing, and repairing and maintaining natural gas facilities.” NT at 128.

⁴⁹ PGW St. 1-R at 17–18.

⁵⁰ PGW St. 1-R at 17.

⁵¹ PGW St. 1-R at 18.

created in PGW's work management system ("AIMS") and assigned to a crew to investigate.⁵²

PGW is not under any obligation, however, to be on-site during a third-party excavation where no UST is apparent that would affect PGW facilities:

PGW cannot possibly be present at all third-party street construction sites in the City of Philadelphia to supervise and observe all third-party excavators. PGW responds to approximately 70,000 PA One Calls each year. Once we have knowledge of an UST, however, PGW promptly dispatches the appropriate personnel. PGW relies on the experience and expertise of excavators and other utilities (facility owners) and the requirements of PA One Call Act 287 as amended "to protect the public health and safety by preventing excavation or demolition work from damaging underground lines."⁵³

3. PGW's Safety Enhancements Recently Approved by the Commission

While PGW has many safety-focused initiatives, the Commission recently approved additional safety enhancements in the settlement between BI&E and PGW at Docket No. C-2022-3033834 as a result of a complaint brought by BI&E which addressed circumstances similar to those here.⁵⁴ As Mr. Hawkinson testified:

In settlement, BI&E agreed that no fine should be applied. Rather the parties agreed, among other things, that PGW would undertake extensive educational efforts involving both the City Water Department and the excavators working on water and sewer service lines, as well as refine a set of "trigger points" requiring additional underground street trouble investigations near cast iron structures under certain conditions.

The terms of the settlement highlights are as follows:

⁵² PGW St. 1-R at 18.

⁵³ PGW St. 1-R at 19.

⁵⁴ "BI&E's complaint theory in that case was the same as it is here – a strict liability standard requiring that PGW be held responsible for any explosion regardless of cause even where PGW was unaware of the underground conditions and had no reason to monitor the street The parties, as part of that settlement, however, agreed to establish observable trigger points for the investigation of underground troubles, which did not include the number of One Call tickets." PGW St. 1-R at 7–8.

1. Coordination Efforts With The Excavator Community

The core issue in 8th Street complaint, in PGW's view, was a lack of communication from the excavators who completed work in September and October 2019 on the sewer lines on the 1400 block of South 8th Street. To address this and to increase awareness of the need for open channels of communication and the level of care needed when working around cast iron mains, the Parties created an outreach and education plan tailored to reduce the potential for similar incidents in the future. First, PGW agreed to implement automatic distribution of PGW's *Cast Iron Damage Prevention Brochure* to all Project Owners to continue until PGW's at-risk cast iron inventory is fully removed. Additionally, PGW agreed to provide targeted outreach, education, and training including two training sessions per year regarding: 1) One Call requirements; and 2) the protection of underground utility infrastructure. This education and training will be made available to Philadelphia Water Department ("PWD") personnel, City of Philadelphia ("City") officials, other facility owners, and excavators and contractors who perform work in or around PGW's infrastructure. PGW will track the attendance of its training sessions for review by BI&E upon request.

2. Cast Iron Main Replacement Commitments

PGW committed to applying for the Natural Gas Distribution Infrastructure Safety and Modernization Grant Program administered by the federal Pipeline and Hazardous Materials Safety Administration each year it is offered and, subject to grant approval, to present a shortened timeframe for cast iron main replacement in its subsequent LTIIP filings.

3. Residential Methane Detector Pilot Program

BI&E had advanced in its direct testimony that PGW should implement a residential methane detector program. The parties agreed to a Pilot program which will create Pennsylvania's first natural gas utility-wide residential methane detector pilot in which audible style methane alarms will be made available to PGW residential customers with to a pilot cap of \$800,000 to run for three years, or until the spending cap is reached.

4. Amendments To Street Trouble Process, Procedures, And Training

Lastly, the parties agreed that PGW will implement "trigger points" for requiring additional underground street trouble investigations near cast iron structures. While PGW believed then, as it does now, that its procedures and training which were in place at the time of the accident are sufficient and in compliance with all laws and regulations, PGW recognized that improving safety measures above minimum standards can lead to meaningful, cost-effective results.

In this light, the Parties have agreed to additional instances in which PGW will investigate underground street troubles that might affect cast iron mains. The 8th Street settlement did not require that PGW oversee all excavations for their durations throughout the City, each and every day.⁵⁵

Many of these terms supplemented existing PGW initiatives.⁵⁶

These settlement provisions approved by the Commission on January 8, 2025 are almost entirely identical to BI&E’s relief requested here (except there was no civil penalty in that case).⁵⁷ Indeed, PGW has implemented all “action items” within the 8th Street Settlement. But, importantly, and as BI&E’s witness testified, even if the 8th Street Settlement “Trigger Points” for UST were retroactively applied in this matter, there is no evidence that PGW would have found any subsurface condition that would have been detrimental to PGW facilities.⁵⁸

In summary, PGW and BI&E have already agreed on a set of criteria to be applied to determine whether PGW needs to take additional action in response to a planned excavation, and the Commission has approved those criteria. PGW has implemented those standards and BI&E agreed that those standards, even if applied back to 2021, would not have required PGW to take additional actions in response to the Jackson Street excavations. BI&E’s complaint is moot, and the “evidence” it presents fails to show that the procedures and standard of care that BI&E itself agreed would have been triggered on Jackson Street.

B. BI&E Failed to Demonstrate that PGW Violated its Procedures and Bulletins

BI&E’s essential legal theory is the novel and unprecedented proposition that PGW’s internal operating procedures obligate it to be present at and inspect all third-party water and sewer excavations while the work is occurring because the simple receipt of a One Call ticket

⁵⁵ PGW St. 1-R at 48–49.

⁵⁶ See Joint Petition for Settlement, Docket No. C-2022-3033834, Appendix D (PGW’s rebuttal testimony). <https://www.puc.pa.gov/pcdocs/1796544.pdf>.

⁵⁷ PGW St. 1-R at 50.

⁵⁸ NT at 69.

(regardless of its contents) relating to the repair of customer-owned water and sewer service lines is *suggestive* of water and sewer “system failures” that *could* indicate jeopardy to PGW’s gas mains. At its core, BI&E amounts to asserting that PGW is obligated to be the “street sheriff” (or excavation overseer and regulator) in the City of Philadelphia, required to monitor all third-party excavations involving third-party underground facilities occurring near (here over 7 feet away) its low-pressure natural gas mains. Not only is this a complete misreading of the existing procedures, it is also inconsistent with the law.

In effect, BI&E proposes that PGW should be penalized for not adopting unprecedented and costly third-party oversight procedures not required by any federal or state law or regulation (and inconsistent with the procedures BI&E just agreed to in the 8th Street Settlement). BI&E’s proposition is unworkable, as PGW’s Mr. Hawkinson explained: “This would involve almost all underground street excavation in the City of Philadelphia.”⁵⁹

By attempting to fine PGW for *any* incident by *any* gas leak regardless of cause, BI&E is seeking to implement a standard of strict liability divorced from any cause-and-effect analysis or the existence of violating actions by PGW. This standard has never been applied anywhere in the industry for regulatory enforcement of which PGW is aware and is inconsistent with the burden of proof for a formal complaint before this Commission.⁶⁰

The evidence shows that PGW provided responsible, adequate, and reasonable service to protect the public in its One Call markings in July – September 2021 in the 800 block of Jackson Street, as well as all emergency response and other actions. BI&E presented exactly zero evidence of PGW failing to follow its procedures, and rather seeks to retroactively impose new, never stated UST procedure obligations on PGW relating to One Call responses.

⁵⁹ PGW St. 1-R at 24–25.

⁶⁰ PGW St. 1-R at 7.

1. BI&E’s Expert Witness’ Speculation of Theoretical Underground Street Conditions at 815 Jackson Street Prior to the Incident is Not Competent Evidence and was Disproven Under Cross Examination.

PGW accepted Ms. Terri Cooper Smith, Supervisor, Fixed Utility Valuation Engineer as a qualified expert in gas safety on behalf of BI&E and did not challenge her *credentials* as a witness or the admission of her testimony into the record.

However, the *substance* of that expert testimony is not derived from any direct first-hand knowledge and, most importantly, is based entirely upon speculation as to: (1) the underground conditions surrounding PGW’s gas distribution main in front of 815 Jackson Street; (2) the supposed actions of excavators; (3) the underground street conditions; and (4) other claimed causes of the fracture of the main. By law, an expert opinion exhibiting equivocation and speculation based on mere possibilities is not competent evidence.⁶¹ Competent expert testimony requires the witness to testify that in their professional opinion, the result in question came from the cause alleged; anything less falls below the required standard of proof.⁶² Here, The witness’ testimony is replete with generalized and unsupported observations about the *potential* causes of cracks in cast iron mains that lacks the requisite degree of certainty to be accepted as competent evidence involving the incident.⁶³

⁶¹ *Vertis Group, Inc. v. Duquesne Light Co.*, 2003 WL 1605744, Docket No. C-00003643 (Order entered Feb. 24, 2003), *aff’d*, 840 A.2d 390 (Pa. Commw. Ct. 2003), *app. denied*, 859 A.2d 770 (Pa. 2004) (emphasis added, citations omitted). (“An expert need not testify with absolute certainty or rule out all possible causes of a condition. Likewise, the testimony need not be expressed in precisely the language used to enunciate the legal standard. *Rather, expert testimony must be viewed in its entirety to assess whether it expresses the requisite degree of certainty. Expert testimony based upon mere probability, however, e.g., “more probable than not,” that the alleged cause “possibly” or “could have” led to the result, that it “could very properly account” for the result, or even that it “was very highly probable” that it caused the result, lacks the requisite degree of certainty to be accepted as competent evidence.*”

⁶² *Menarde v. Phila. Transp. Co.*, 103 A.2d 681, 684 (Pa. 1954) (“[T]he expert has to testify, not that the condition of claimant might have, or even probably did, come from the cause alleged, but that in his professional opinion the result in question came from the cause alleged. A less direct expression of opinion falls below the required standard of proof and does not constitute legally competent evidence.”).

⁶³ *See, e.g., BI&E St. 1* at 6–7 (“[L]eakage due to undermining could be prevented if timely remedial measures are taken such as supporting or reinforcing the cast iron pipe.”).

First, the testimony, with no citation to any actual evidence or authority, opines that the crack in the Jackson Street cast iron main was attributable to soil undermining:

Undermining of pipelines is well known to be detrimental to the integrity of aged pipes such as gas, sewer, or water. Water and sewer leaks can cause softening and/or erosion of support for pipelines and excavation removing supporting material around and below a pipeline can lead to undermining of pipelines.⁶⁴

Then, the testimony offers the following unsupported conclusion:

The cast iron main cracked due to the instability of the soil due to sewer failures and excavations to repair sewer laterals in the vicinity of the main. Undermining in the area caused sufficient softening or removal of material supporting the cast iron main which led to the material failure. Graphitization of the cast iron main coupled with lack of support and downward bending movements caused the crack and subsequent release of gas.⁶⁵

For this, BI&E faults PGW's absence on scene during the third-party sewer line excavations that took place in front of 813 and 815 Jackson Street.

However, on cross examination, Ms. Cooper Smith admitted there is zero evidence to support the conclusion that there was subsidence of support undermining the main before or after the incident of November 30, 2021.⁶⁶ In other words, the witness' speculations about condition and causation were not based on any actual evidence.

With deference to the witness, Ms. Cooper-Smith testified in this proceeding without first-hand knowledge of any of the facts of the case.⁶⁷ The witness performed "no on-site visits either on November 30th, 2021, or at any time as a part of BI&E's investigation" and relied upon "documents, pictures, and other materials from the investigative report and the November 30th,

⁶⁴ BI&E St. 1 at 14–15 (the testimony concedes that the lab report did not make any conclusion regarding the cause of the crack only that there were "external stresses"); BI&E St. 1 at 15 ("The lab report concluded that external stresses applied to a graphitized gas main induced a circumferential crack whereby gas could escape.").

⁶⁵ BI&E St. 1 at 25.

⁶⁶ NT at 32–34.

⁶⁷ NT at 24, 75–76.

2021, investigation, [that] were not created by” her.⁶⁸ The actual inspectors with actual knowledge were not called by BI&E—for reasons unknown.

In contrast, PGW’s Mr. Hawkinson subsequently testified that, when excavated:

A. The main that was excavated at that time was shown to have full soil support around it, appeared to be virgin soil that was supporting the gas main.

Q. So - and what was - was there any evidence of water or sewer causing a lack of support?

A. No, there was no definitive evidence to say that it was water or sewer.

[Q.] Was there any evidence of water or sewer leakage around that gas distribution main?

A. No, there was no evidence for - to that.

Q. So while there may be risk to cast iron generally, some of those risks that were in the discussion with counsel for I&E didn't - don't exist in this case? ...

A. - there was no clear or definitive evidence that those were the risks associated in this situation.⁶⁹

In rebuttal testimony, Mr. Hawkinson explained why BI&E’s conclusions as to cause and effect were unfounded:

I think that the BI&E conclusion that the excavators caused the loss of underlying support for the gas main is a possibility but certainly not the only possibility. This is especially true where the 3 One Call tickets did not indicate that the excavators would be undermining PGW’s main, and at most were to only work on a sewer curb trap in the street and a small 4x4 section of sidewalk that was over 3 feet from PGW’s main. See I&E Exhibits 6-8. Based on the images I’ve reviewed, PGW’s main was not exposed (or should not have been exposed) by the excavations, and the new sections of sidewalk were not above PGW’s main. See I&E Exhibit 1. Mains can break from several causes. But, even if accurate, BI&E’s conclusions were based on several glaring investigative omissions. As part of a thorough investigation, BI&E should have investigated the excavators to determine:

⁶⁸ NT at 23.

⁶⁹ NT at 132–33; see also PGW St. 2-R at 11.

1. What they observed about the underlying soil support of the gas mains;
2. Whether poor trenching and/or backfilling was, in fact, the actual cause; and
3. If caused by the excavators or not properly remedied by them when the trench was open (or notification not given to PGW as required), whether they should be the subject of enforcement action and not PGW.

Simply stated, BI&E did not fully investigate the incident at 815 Jackson Street and has no basis to now prosecute PGW simply because they own the gas mains.⁷⁰

BI&E refuted *none* of this testimony. Pure speculation based on theories or general engineering principles without ties to hard evidence is insufficient to meet BI&E's burden to present actual facts of the events to support its position.

All BI&E witness' conclusion as to underground conditions, excavator activities, and potential causes of the crack in the main is speculative because BI&E—unbelievably—never interviewed or otherwise spoke to the excavator about what they did or saw. The BI&E witness agreed on cross-examination that there was no evidence whatsoever to justify this opinion about the loss of support.⁷¹ BI&E conceded that the gas main was supported when excavated on November 30, 2021, thus completely undercutting BI&E's speculative theories and the resulting assignment of fault to any PGW activity or procedure. PGW witnesses, on the other hand, testified that the main was fully supported when excavated as part of the post explosion investigation.⁷²

⁷⁰ PGW St. 1-R at 34–35.

⁷¹ NT at 30–33.

⁷² NT at 132–33. See also PGW St. 2-R at 11.

2. The Fact That There Were Two Unique One Call Tickets for Two Excavations Near 815 Jackson Street is Not Evidence of UST.

The BI&E conceded in discovery that PGW had no notice whatsoever of any UST on Jackson Street.⁷³ BI&E agreed that PGW neither observed nor was made aware of any safety concerns and that nothing was brought to PGW's attention regarding any potential adverse condition involving its gas main on Jackson Street.⁷⁴ BI&E did not assert that the PGW Damage Prevention Inspectors failed to observe signs of a UST. BI&E did not challenge PGW's testimony that:

The experienced PGW Damage Prevention Inspectors responding to the One Call tickets of Clements Brothers and Lepore Plumbing who marked the PGW facilities looked for indications of underground street troubles as they are trained to do and saw none.⁷⁵

On the witness stand, PGW's Mr. Hawkinson explained further:

Q. Is, in fact, a One Call ticket evidence of a system - water or sewer system failure?

A. No, it is not a specific evidence of a failure. PGW treats all 70,000 One Call tickets that we respond to, approximately 70,000 per year, as a potential for risk to any of our infrastructure. And that's why we have thoroughly experienced, and dedicated and qualified Damage Prevention Inspectors that perform all that work so that they can both not just do the markout like other utilities may have, where they just look at a map and then they put paint on the ground. They do a full assessment of the site conditions, they evaluate where our infrastructure is in relation to that, the excavation that is projected to happen and then they - you know, they report out accordingly.

Q. So when the Damage Inspectors went to 815 Jackson Street to markout, was there any - did they observe any evidence of water system sewer - water or sewer system failure?

A. No, they did not.

Q. And just to be clear for the record, we're - we're not talking about the main water line or sewer lines, we're talking about the service

⁷³ See PGW St. 1-R at 25; PGW Exhibit JH-1 (e.g., PGW Set I, Nos. 8, 20).

⁷⁴ PGW St. 1-R at 25 citing BI&E response to interrogatories ("I&E is not aware of any reports of adverse conditions (such as voids) during {the plumbers} work at or proximate to 815 Jackson Street . . . I&E is not aware of any individual or entity that knew of the void prior to November 30, 2021 [date of explosion].").

⁷⁵ PGW St. 1-R at 35.

drops, that's what was being excavated for the individual homes service line from the water[/sewer] main to their - to their home at 815?

A. It was more specifically the sewer lateral. So the sewer lateral curb trap at the curb. So it was the - they have - according to their One Call, they were making a four by four excavation at the curb. Again, our facilities are seven and a half feet away, further into the curb sidewalk.⁷⁶

Nevertheless, BI&E argues that the *mere presence* of the two sewer service line excavations and two unique One Call tickets to repair customer sewer curb traps located over seven feet from PGW's gas main were, *in and of themselves*, notice of UST involving PGW's mains, which PGW was obligated to investigate.⁷⁷

BI&E's legal position on this matter is wrong as it is based upon an unreasonable interpretation of the One Call tickets and PGW's procedures. As Mr. Hawkinson testified, "[t]here was nothing unusual or conspicuous about these three requests that could have triggered any concern out of the ordinary by PGW. The level of One Call activity in the area was routine."⁷⁸ And, as noted above, Mr. Hawkinson testified that, based on the images he reviewed, PGW's main was not exposed (or should not have been exposed) by the excavations, and the new sections of sidewalk [post excavation] were not above PGW's main.⁷⁹ BI&E's witness agreed, on cross examination, that the photographic evidence showed no new sections of sidewalk above PGW's main.⁸⁰

The three One Call tickets for the repair of sewer traps contain no indication one way or the other about *the condition of PGW's gas mains*. The tickets are only notice that work was to

⁷⁶ NT at 133–34.

⁷⁷ BI&E St. 1 at 20–21.

⁷⁸ PGW St. 1-R at 26.

⁷⁹ PGW St. 1-R at 34. For the year 2021 prior to the event, only one other One Call notice of excavations was received in the area near 815 and 813 Jackson Street. PGW St. 1-R at 5.

⁸⁰ NT at 72.

be done on two sewer traps.⁸¹ As PGW’s Mr. Hawkinson testified, they provide no evidence that PGW received “notice of water or sewer system failures, or surface conditions, such as cavities or cave ins.”⁸²

BI&E also claims that there were “five (5) cast iron main breaks” repaired in the 800 block of Jackson Street in the twelve (12) years prior to the incident.⁸³ This is an overstatement. In actuality, there are two cast-iron mains serving Jackson Street, one on the northside and one on the southside. The northside main is the only main serving 815 Jackson Street.⁸⁴ This main experienced three (3) breaks since 2009: January 2, 2009, January 4, 2010, and January 25, 2016.⁸⁵

As PGW’s Mr. Hawkinson testified, “[t]hree (3) breaks over a 12+ year period is not out of the ordinary, is not indicative of any unique problem on the 800 block – it is just the reality of PGW’s cast iron which PGW is continuing to accelerate the replacement of.”⁸⁶ Each of the breaks were timely repaired by PGW and the issues addressed. “From this, PGW had no reason to believe that there was any continuing unsafe condition in the 800 block of Jackson Street.”⁸⁷ BI&E did not address, let alone rebut, this position.

The allegations raised by BI&E hinge on the issue of what constitutes notice of UST sufficient to trigger a duty to monitor third-party excavations. PGW’s position is that there must be an observable indication of trouble (such as a sunken sidewalk) or notice provided by a third-party of adverse conditions observed (such as the excavator, as they are obligated to notify under

⁸¹ PGW St. 1-R at 34; NT at 45, 134.

⁸² PGW St. 1-R at 35.

⁸³ BI&E St. 1 at 8.

⁸⁴ PGW St. 1-R at 20.

⁸⁵ PGW St. 1-R at 27.

⁸⁶ PGW St. 1-R at 27–28.

⁸⁷ PGW St. 1-R at 27.

the One Call Law⁸⁸), before it is reasonable to deploy equipment and personnel to monitor third-party excavations. PGW's position is supported by a plain reading of its bulletins, federal requirements, and the terms of the 8th Street Settlement. This position is also reasonable in light of the practical real-world challenge of invisible risks to PGW's cast iron mains as historically recognized by this Commission.⁸⁹

Conversely, BI&E would create new requirements that repudiate and virtually annul the 8th Street Settlement. Rejecting its acknowledgement in the 8th Street Settlement that awareness of UST is required, BI&E now retroactively asserts that *any One Call ticket* (or *maybe two*—it is unclear what new triggers are entailed since BI&E presents none) to service individual homes' sewer traps is constructive notice that a UST exists and activates a duty by PGW to dispatch employees to the site for the duration of excavation (the exact timing of which it would not know).

To be clear, there is no law, regulation, or procedure—cited by BI&E or otherwise—to support this position. PGW employees *do not* oversee all third-party construction activities in the vicinity of low-pressure distribution facilities⁹⁰ as a matter of routine nor could they, given the sheer volume of One Call tickets PGW receives each year. Rather, some observable condition that indicates a UST – or notice of a problem observed by the excavator – must exist before an inspection is justified.

⁸⁸ Excavators are legally obligated to exercise care to avoid damage to PGW's facilities and report immediately any damage to the gas made or discovered in the course of the excavation work. PGW St. 1-R at 30–31.

⁸⁹ The Commission has stated that “[t]he urban nature of PGW's service is no doubt complex, and the measures set forth in the Settlement call for great strides by PGW to prevent hazards and to catch and correct leaks on PGW's system, from the causes that are invisible to the naked eye.” See *BI&E v. PGW*, Docket No. C-2022-3033834, Opinion and Order at 47 (Order entered Jan. 8, 2025).

⁹⁰ Of course, in the instance of excavation in the direct area of a high-pressure natural gas transmission line “PGW would certainly be on-site from excavation start to the conclusion of backfilling.” PGW St. 1-R at 42.

BI&E's witness conceded that, under 73 P.S. §180.6, excavators are encumbered with separate, legally enforceable obligations to report any adverse conditions to the utility facilities owner:

[I]f sewer excavation crews who excavated the street had encountered any voids or cavities under PGW's or - under PGW's facilities or damaged PGW's facilities, they were obligated to notify the proper authorities, including PGW.⁹¹

Moreover, BI&E witness Ms. Cooper-Smith agreed that excavators are required to exercise due care and take reasonable steps necessary to avoid injury to or otherwise interfere with other utility facilities that have been marked.⁹² And, the witness further agreed that 73 P.S. § 180(6)(ii) requires excavators to provide such support and provide mechanical protection at the construction worksite during excavation or demolition work, including during backfill operations as may be reasonably necessary for the protection of such lines.⁹³

Nevertheless, BI&E postulates that PGW had an obligation to be on-site to "observe contractor [excavator] activities or offer assistance to safeguard PGW facilities during construction [and] institute necessary actions such as patrolling, supporting, replacing, relocating or removing from service the affected gas facilities when those facilities *are or may be* endangered."⁹⁴ The simple existence of a One Call ticket for sewer repairs is, apparently, sufficient to trigger this duty according to BI&E's argument.⁹⁵

⁹¹ NT at 60 (BI&E witness agreeing with Hawkinson testimony at PGW St. 1-R at 31).

⁹² NT at 58.

⁹³ NT at 58. *See, e.g.*, 73 P.S. § 180 – Excavator, duties.

⁹⁴ BI&E St. 1 at 21–22 (emphasis added).

⁹⁵ BI&E's predicate for insisting that PGW should have been on site during the two excavations, while generally true, is inaccurate in the specific facts of this case ("Water and sewer leaks weaken the surrounding soil which is the foundation for pavement and underground utilities such as water, gas, or sewer facilities. Sewers and sewer laterals are located well below gas facilities, making the probability of gas mains losing support high. The repair process to excavate sewer facilities will also loosen and weaken supporting soil due to the size of the excavation during the sewer repair process."). BI&E St. 1 at 21. There was no evidence that these theoretical concerns occurred as to the Jackson Street main.

As discussed below, there is no obligation imposed upon PGW to engage, absent actual knowledge of a UST, in the ongoing monitoring of third party sewer lateral repairs in the Public Utility Code, the Pennsylvania One Call Law, Federal law, or any regulations governing PGW's public utility service. The 8th Street Settlement established a clear set of Commission-approved rules to be followed in such instances, which should not be repudiated now, and which, moreover, would be an impermissible retroactive rulemaking to create a new requirements for utilities through a complaint proceeding, which does not comply with due process. Further, regulatory changes of general application can only occur through notice and comment procedures with accompanying governmental review, not as the result of administrative adjudications.⁹⁶

3. BI&E Failed to Meet Its Burden on Counts 1–3 In the Complaint and the Record Reflects that PGW's Procedures and Bulletins Complied with Existing Law.

BI&E asserts that PGW's obligation to conduct ongoing monitoring of third-party excavations involving third-party facilities stems from PGW's internal procedures Bulletin Nos. 312, 313, and 54⁹⁷—all of which are routinely submitted to BI&E for its review and approval.⁹⁸ The contents and limitations of the Bulletins are well known to BI&E and do not remotely support BI&E's claims.⁹⁹

Counts One, Two, and Three¹⁰⁰ of the BI&E Complaint aver that a failure to follow these procedures itself constitutes a violation of PHMSA regulations found at Title 49 of the Code of

⁹⁶ See Commonwealth Documents Law (45 P.S. §§1102 et seq.) and the Regulatory Review Act (71 P.S. §§745.1 et seq.).

⁹⁷ NT at 56.

⁹⁸ PGW St. 2-R at 7.

⁹⁹ PGW Bulletin Nos. 54, 312, and 313 were reviewed many times by BI&E, including on February 28, 2019 and March 5, 2019 prior to the incident, and most recently on July 31, 2025. In each of these reviews of Bulletin Nos. 54, 312, and 313, *BI&E noted no deficiencies with the procedures*, PGW St. 2-R at 7.

¹⁰⁰ **Count One.** Respondent failed to follow Respondent's procedures found at Bulletin #312. If proven, this is a violation of 49 CFR § 192.605(a) (Procedural Manual for Operations, Maintenance, and Emergencies).

Federal regulations.¹⁰¹ Despite the rhetoric, BI&E failed to meet its burden to show that PGW at any time failed to comply with its Bulletins. Therefore, BI&E's Counts One, Two, and Three of the Complaint must fail, as discussed below.

a. Bulletin 312¹⁰²

As to Bulletin 312, BI&E claims that:

PGW employees did not observe contractor activities or offer assistance to safeguard PGW facilities during construction, institute necessary actions such as patrolling, supporting, replacing, relocating or removing from service the affected gas facilities when those facilities are or may be endangered or promptly dispatch personnel to determine the effect of water or sewer system failures or surface conditions on PGW facilities in accordance with Bulletin #312.¹⁰³

There is no such obligation. BI&E's selective paraphrasing of Bulletin 312's general intent to "safeguard PGW facilities during construction" is from a section of the "Mission Statement," which provides that part of the damage prevention's mission is "[t]o observe contractor activities *when necessary* and to offer assistance to safeguard PGW facilities during construction."

This generalized "Mission Statement" is not a prescriptive procedure or action item for PGW or its personnel.¹⁰⁴ The record shows that PGW employees fulfilled the purpose of the mission statement by accurately marking the location of the gas main while reviewing the site for

Count Two. Respondent failed to follow Respondent's procedures found at Bulletin #313. If proven, this is a violation of 49 CFR § 192.605(a) (Procedural Manual for Operations, Maintenance, and Emergencies).

Count Three. Respondent failed to follow Respondent's procedures found at Bulletin #54. If proven, this is a violation of 49 CFR § 192.605(a) (Procedural Manual for Operations, Maintenance, and Emergencies).

¹⁰¹ 49 C.F.R. § 192.605(a) simply requires that: "Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response." 49 C.F.R. § 192.614 is similar, requiring that "each operator of a buried pipeline must carry out, in accordance with this section, a written program to prevent damage to that pipeline from excavation activities."

¹⁰² Bulletin 312 is set forth in the record as BI&E Exhibit 11.

¹⁰³ BI&E St. 1 at 21.

¹⁰⁴ PGW St. 1-R at 39.

evidence of UST, thereby rendering “assistance to safeguard PGW facilities.” No further action was indicated as “necessary.”¹⁰⁵

The actual directory language of Bulletin No. 312 specifies as follows:

Upon receipt of notice of water or sewer system failures, or surface conditions, such as cavities or cave-ins which may be caused by such failures, the location of gas pipeline facilities shall be determined. Where pipeline facilities may be affected, appropriate personnel shall be dispatched promptly to determine the effect of the failure on pipeline facilities. Inspection and necessary follow-up action shall be in accordance with the “Protection of PGW Facilities from Underground Street Troubles” procedure.¹⁰⁶

As explained above, PGW had *no* notice of water or sewer system failures or any other underground conditions either as observed by PGW personnel or reported by any excavator at any time. Therefore, PGW was under no obligation to monitor and observe third party sewer excavation, as such action was not “necessary” or *known* to be “necessary” by PGW.

In surrebuttal testimony, BI&E attempted to double down—claiming that two excavations of isolated customer service line to replace household sewer traps were in and of themselves reports of “*water or sewer system failures.*”¹⁰⁷ But, as admitted by the BI&E witness on cross examination, simply digging up a sewer trap is not a sewer “system” failure.¹⁰⁸ Rather, it is routine maintenance of the type commonly occurring in a household sewer system,¹⁰⁹ which does not involve the City’s sewer mains to which the customer service line connects. It is a

¹⁰⁵ PGW St. 1-R at 39.

¹⁰⁶ PGW St. 1-R at 39 (emphasis in original).

¹⁰⁷ BI&E St. 1-SR at 6.

¹⁰⁸ The BI&E witness conceded on cross examination that repair of a sewer curb trap “doesn’t mean that the main - the sewer main has failed or is leaking in any way . . . THE WITNESS: I can’t answer that.” NT at 46. Moreover, repairing a sewer curb trap seven feet away from PGW’s main, that also does not indicate a cause and effect necessarily for any undermining, even if there was a leak from that curb trap . . . A. I wouldn’t be able to answer that as well.” NT at 47.

¹⁰⁹ A sewer trap prevents sewer gases from escaping into the residence and operates to vent any gas in the main sewer system, Sewer vents become clogged due to deposit build up so that the sewer backs up and does not empty into the main system. NT at 135.

feeder to the system and not the sewer “system” itself. As Mr. Hawkinson testified, “repairs” of sewer feeder lines are not “sewer system failures as an [UST].”¹¹⁰

Nor was there notice that “[gas] pipeline facilities may be affected.”¹¹¹ The One Call tickets did not indicate that there would be any activity within the “tolerance zone”¹¹² or even cross PGW’s main, given the more than seven feet of separation involved.

As such, Count One of the Complaint must fail.

b. Bulletin #313¹¹³

BI&E also selectively misreads PGW’s Bulletin 313, where it testified that:

PGW employees did not inspect third-party construction activities for the main purpose of protecting PGW underground structures and facilities, visit the underground street trouble and report the same to Distribution Dispatching and supervisor, re-visit the on-going job without a watchman, in which PGW facilities will be undermined, in order to report and/or recommend replacement or protection, or report an undermined gas main as required by Bulletin #313.¹¹⁴

There is no such requirement under Bulletin 313.

The operative directive of Bulletin 313 is this:

When performing a pipeline patrol, *the inspector should be looking* for any activity or changes in the environment that could affect the safety of the pipeline. An activity or changes found *must* be reported to the Supervisor immediately and documented in the corresponding AIMS order.¹¹⁵

As Mr. Hawkins explained, Bulletin 313:

¹¹⁰ NT at 117.

¹¹¹ BI&E St. 1-SR at 7.

¹¹² As BI&E’s witness testified, the “tolerance zone” set by the Pennsylvania One Call Law is the zone within 18-inches from the outside wall of utility facilities. NT 44.

¹¹³ Bulletin 313 is set forth in the record as BI&E Exhibit 12.

¹¹⁴ BI&E St. 1 at 22.

¹¹⁵ PGW St. 1-R at 40. The Bulletin continues: “The following is a sampling of items the inspector should always report or act upon: Any excavations (including backfilled openings that are not familiar to the inspectors), grading, demolition, or other construction activity which could result in damage to a pipeline, loss of support due to settlement or shifting of soil around a pipeline, undermining or damage to a pipeline support, or loss of cover or excess fill.” *Id.* at 40–41.

This requires the Damage Prevention Inspector to be alert for and report adverse conditions. Once again, there was no observation of “damage to a pipeline, loss of support due to settlement or shifting of soil around a pipeline, undermining or damage to a pipeline support, or loss of cover or excess fill.” As stated above, without notice to PGW, there is no way for PGW to have known that undermining may occur.¹¹⁶

Again, the One Call locate requests were typical and there was no evidence presented by BI&E to meet their burden of proof that PGW Damage Prevention Inspector did not perform their job as specified under Bulletin 313. There was no observable need to return to the Jackson Street location after properly marking to investigate an exposed PGW facility that would warrant “protecting.” In fact, the record evidence shows that PGW’s main was not exposed, as the sidewalk above the main was never removed until after the incident.¹¹⁷

In surrebuttal, the BI&E testimony continued to argue that cleaning a sewer trap on an individual customer-owned sewer line is evidence of a potential adverse pipeline condition under Bulletin 313. This is pure speculation as described above. The One Call tickets described routine events that occur daily in Philadelphia and repair of a sewer trap completely fails to indicate in any way jeopardy to PGW’s low pressure gas mains.

As such, Count Two of the Complaint must also fail.

c. Bulletin #54¹¹⁸

Next, BI&E argues that Bulletin 54 required that PGW dispatchers should have generated “a UST order in AIMS^[119] upon receipt of a PA One Call System notice that a third party contractor would be performing excavations to repair an individual sewer trap” and “PGW

¹¹⁶ PGW St. 1-R at 41.

¹¹⁷ NT at 51 and 70–72.

¹¹⁸ Bulletin 54 is set forth in the record as BI&E Exhibit 13.

¹¹⁹ “AIMS” a reference to a UST work order created in PGW’s work management system. PGW St. 1-R at 18.

employees did not visit the location before, during, or after construction activities to perform inspection, investigation, or necessary follow-up actions.”¹²⁰

However, BI&E’s statement of Bulletin 54 is again incomplete and disconnected from its full context. A UST investigation only occurs *when a UST is noticed by PGW personnel or brought to PGW’s attention*. Bulletin 54 clearly states:

Underground troubles are usually *brought to PGW’s attention* due to a condition observed on the street surface; or as a result of a preexisting condition encountered in the performance of PGW work but not caused by PGW activity. Some underground troubles are:

- Water Leaks
- Washouts
- Sewer System Failure – Signs of a sewer system failure are as follows: cavity, cave-in, or paving faults such as a surface crack, settlement, or depression in the street or curb area.
- Paving depressions – These may be caused by settlement in “area” fill or settlement caused by poor backfill.¹²¹

PGW Bulletin No. 54 expressly requires that, *before* any action is directed on PGW’s part, the trouble must be “*brought to PGW’s attention*.”

Mr. Hawkinson testified that “PGW’s Damage Prevention Inspectors are trained to look for potential underground street troubles and implement a UST investigation when one is identified. BI&E points to no pre-excavation indication a UST investigation by PGW was warranted. As Mr. Leva notes in his testimony, the PGW employees “did their job.”¹²²

As such, Count Three of the Complaint must also fail.

¹²⁰ BI&E St. 1 at 22.

¹²¹ PGW St. 1-R at 41 (citing Bulletin 54, Sec, III).

¹²² PGW St. 1-R at 42.

4. BI&E Failed to Meet Its Burden Regarding Counts 4-7 - Alleged Federal Regulatory Violations

a. Count Four¹²³

Count Four is a generalized, nonspecific reference to a broad swath of federal regulations (49 C.F.R. §§ 192.701–192.756), without reference to any specific section. It appears to be duplicative of Counts One, Two, and Three as a reference to PGW’s Bulletins where 49 C.F.R. § 192.605 requires PGW to follow its internal procedures (i.e., the Bulletins), to which PGW adhered, as described above.

To the extent that BI&E seeks to address 49 C.F.R. § 192.703(a), this provision simply states that: “No person may operate a segment of pipeline, unless it is maintained in accordance with this subpart.” There is no reference in the Complaint or testimony alleging PGW did not maintain its facilities appropriately.

Otherwise, 49 C.F.R. § 192.755 provides: “*when an operator has knowledge that the support for a segment of a buried cast-iron pipeline is disturbed,*” that segment of the pipeline must be protected, as necessary. The BI&E witness conceded on the stand that there was no evidence of lack of underlying support for the main in question. PGW’s witness explained that, when excavated, the distribution main was undisturbed and supported.¹²⁴

Count Four of the Complaint must fail as unsubstantiated in the record.

¹²³ **Count Four.** Respondent failed to maintain its pipeline in accordance with Subpart M, 49 C.F.R. §§ 192.701–192.756, by failing to protect as necessary or take immediate steps to protect a segment of its buried cast iron pipeline *when it had knowledge that support for that segment is disturbed*. If proven, this is a violation of 49 C.F.R. § 192.703(a) (Maintenance - General). (Emphasis added).

¹²⁴ PGW St. 1-R at 28; PGW St. 2-R at 11; NT at 33, 132.

b. Count Five¹²⁵

This count is a general reference to 49 C.F.R. § 192.703(b), which provides that “[e]ach segment of pipeline that becomes unsafe must be replaced, repaired, or removed from service.” The BI&E testimony fails to include a single reference to this PHMSA rule, let alone an explanation of facts supporting the allegation of Count Five.

Obviously, the parties agree that, once the crack was discovered in front of 815 Jackson Street, the entire section (the full block)¹²⁶ of the north side main was removed from service and replaced.

Thus, this Count is also factually unsupported in the record and should be dismissed.

c. Counts Six and Seven¹²⁷

As noted above in the discussion of Count Four, 49 C.F.R. § 192.755(a) is triggered only “*when an operator has knowledge that the support for a segment of a buried cast-iron pipeline is disturbed.*” Here, the record clearly demonstrates that the main was supported upon excavation following the incident.¹²⁸

Therefore, this Count also must fail as factually unsupported in the record.

¹²⁵ **Count Five.** Respondent failed to repair, replace, or remove from service the unsafe portion of the 4-inch cast-iron main and continued to operate this unsafe segment of the pipeline. If proven, this is a violation of 49 C.F.R. § 192.703(b) (Maintenance - General).

¹²⁶ PGW St. 1-R at 21.

¹²⁷ **Counts Six and Seven.** Respondent had knowledge that the support for the segment of the buried 4-inch cast iron pipeline at and near 815 Jackson Street was disturbed by sewer failures and excavation activity near the pipeline and Respondent failed to protect, as necessary, the cast iron main against damage and Respondent failed to take appropriate steps to provide permanent protection from any damage that might result from external loads. If proven, this is a violation of 49 C.F.R. § 192.755(a)&(b) (Protecting Cast-Iron Pipelines).

¹²⁸ PGW St. 1-R at 28; PGW St. 2-R at 11; NT at 33, 132.

5. BI&E Failed to Meet Its Burden Regarding Counts 9–10 - Alleged Violations of State Rules

a. Count Nine¹²⁹

52 Pa. Code § 59.33 is a general admonition that: “[e]ach public utility shall at all times use every reasonable effort to properly warn and protect the public from danger, and shall exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities.”

At no point in its testimony did BI&E explain how PGW failed to exercise “*reasonable*” care in protecting the public safety. Nor does the testimony explain how its proposal – which is tantamount to requiring PGW to become the “street sheriff” – is “*reasonable*.”

As explained previously in this Brief, there is no provision in any PUC regulation or law that requires PGW to monitor routine sewer service line maintenance of individual household sewer traps. Indeed, as explained in PGW’s testimony, such a requirement would be unreasonable and would impose excessive costs were it to be imposed.¹³⁰

Therefore, this Count also must fail as factually unsupported in the record.

b. Count Ten¹³¹

66 Pa. C.S. § 1501 directs that “every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as

¹²⁹ **Count Nine.** Respondent failed to use every reasonable effort to properly warn and protect the public from danger, or exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities. If proven, this is a violation of 52 Pa. Code § 59.33 (Gas Service - Safety).

¹³⁰ PGW St. 1-R at 44–46.

¹³¹ **Count Ten.** Respondent failed to furnish and maintain adequate, efficient, safe and reasonable service and facilities and make such repairs, changes, alterations, substitutions, extensions and improvements in or to it service and facilities necessary or proper for the accommodation and safety of its customers, employees and the public, thereby placing the safety of its customers, employees and the public in danger. If proven, this is a violation of 66 Pa. C.S. § 1501 (Character of Service and Facilities).

shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.”

Once again, the BI&E testimony fails to demonstrate that PGW did not reasonably maintain its facilities. In fact, other than reciting this legal standard, the BI&E testimony does not explain how this general statutory prescription was violated.

Therefore, this Count is not legally or factually unsupported in the record either.

C. BI&E’s Requested Relief and Application of Civil Penalties

As described above, the Complaint consists of allegations involving PGW’s Bulletins that, when read in their correct context, do not impose upon PGW any obligation to be on-site for routine repair of water or sewer individual customer service lines or otherwise conduct an on-going monitoring of third-party excavations unless PGW is aware of or receives actual notice of an issue.

Indeed, this principle was enshrined in the Commission’s approval of the settlement on January 8, 2025, between BI&E and PGW at Docket No. C-2022-3033834 and was recognized by BI&E’s witness.¹³² Absent evidence of UST or notice from an excavator or other third-party, once it marks its facilities, PGW is not required to be on-site during subsequent excavation related to water and sewer repairs simply because a One Call was received. Once the location of its low-pressure distribution main has been marked pursuant to a One Call request and the street investigation reveals no UST, PGW’s obligation has ended—absent subsequent notice of a hazard.

BI&E has conceded in discovery that there was no reason for PGW to have been aware of any UST or safety concerns and that nothing was brought to PGW’s attention regarding the gas

¹³² PGW St. 1-R at 7, 47–51; NT at 64–67, 69–70.

main in front of 815 Jackson Street.¹³³ PGW receives approximately 70,000 One Call requests per year. There was nothing unusual or conspicuous about these three One Call tickets (two excavations) requests that could have triggered any concern out of the ordinary by PGW. “The level of One Call activity in the area was routine.”¹³⁴

The tickets associated with the two excavations and three markouts did not indicate that any activity would occur within the tolerance zone of PGW’s gas main on Jackson Street.¹³⁵ There was no trace of loss of support for the gas mains or any other underground problems observed by the PGW Damage Protection Inspectors who marked the location. Indeed, when the main was excavated by PGW, it was fully supported by virgin soil.¹³⁶

In the absence of any evidence that PGW failed to protect its facilities from a known danger, BI&E’s legal position amounts to a claim that the very presence of a leak in a cast iron main is a finable offense.¹³⁷ This is clearly not the law. At minimum it is inconsistent with BI&E’s obligation to prove that PGW provided unsafe service or otherwise in violation of the Public Utility Code or a Commission order or regulation.

Moreover, imposing fines on PGW, a municipally owned “cash flow” utility, would directly penalize PGW’s ratepayers. The Commission has recognized that the sensitive nature of PGW’s cash flow ratemaking places PGW into a separate class from investor owed utilities (“IOUs”), where Chairman DeFrank and Commissioner Zerfuss stated:

We also note the absence of any civil penalty in this Settlement. This highlights the challenging nature of the Commission’s jurisdictional enforcement over its limited subset of municipally formed entities. If this proceeding involved jurisdiction over traditional investor-owned utilities (IOUs), we would likely be considering imposition

¹³³ PGW St. 1-R at 25–26.

¹³⁴ PGW St. 1-R at 26.

¹³⁵ NT at 44–45, 148–49; PGW St. 1-R at 34.

¹³⁶ NT at 132

¹³⁷ BI&E St. 1 at 3, 4–7.

of a civil penalty, and such civil penalty would be barred from recovery in the IOUs rates. Such enforcement measures carry significant weight and influence since the shareholders of IOUs ultimately bear this risk.

However, municipal entities such as PGW do not have shareholders, and any civil penalty assessed will likely be recouped from PGW's own customers. While this in and of itself does not eliminate consideration of civil penalties for utilities situated like PGW, it does require the Commission to be cognizant of such circumstances and to consider enforcement measures outside of traditional civil penalties.¹³⁸

Indeed, this is of great concern to PGW, and BI&E's requested civil penalty is not appropriate for this reason alone.¹³⁹

D. Strict Liability Is Not the Standard for BI&E's Burden of Proof of Alleged Violations

As noted above, reduced to its essence, BI&E's position would eviscerate its burden of proof as the complainant and replace it with a strict liability standard requiring that PGW be held responsible for any explosion regardless of cause. This, BI&E's theory continues, should apply even where PGW was unaware of the underlying underground conditions and had no reason to monitor the excavation. Or even more pointedly here, BI&E's position asks the Commission to ignore BI&E's burden of proof under a false syllogism – that because an explosion occurred there is no need to produce any evidence of a UST that compromised support for the cracked distribution line. In other words, BI&E would need no more than two or more One Call tickets¹⁴⁰ on a street over an undefined amount of time to show that a fine is appropriate. Under BI&E's theory liability would attach even where there is no evidence of a loss of support or an

¹³⁸ *Statement of Chairman DeFrank and Commissioner Zerfus*, Docket No. C-2022-3033834 (Jan. 8, 2025), <https://www.puc.pa.gov/pcdocs/1861606.pdf>.

¹³⁹ PGW St. 1-R at 51.

¹⁴⁰ As described previously, there were two excavations and three related One Call tickets, one of which was a second request to mark because the original ticket had lapsed. This, according to BI&E's embellishment, constitutes "multiple" One Call notices.

undermined PGW's main, as conceded by their witness.¹⁴¹ Apparently, the simple fact that PGW was not present at the site of excavation to "safeguard" its facilities becomes the fineable event, in BI&E's view.

Strict liability is a legal rule that holds a party responsible for damage or harm from an activity or product, even without proving fault, negligence, or intent, focusing instead on the inherently dangerous nature of the act or product itself, common in defective products, wild animals, and ultra-hazardous activities. The injured party only needs to show the injury that occurred and was caused by the defendant's action/product, not that the defendant was responsible in some way.¹⁴²

Strict liability is *not* the standard for utility regulation in Pennsylvania. Fines apply only where a utility company is found to "violate any of the provisions of this part, or shall do any matter or thing herein prohibited; or shall fail, omit, neglect, or refuse to perform any duty enjoined upon it by this part."¹⁴³ The obligation that BI&E seeks to impose on the mere receipt of One Call tickets is not a requirement of any regulation or law. Nor should the Commission endorse this position, as doing so would bring a sea of change contrary to existing law.

Moreover, applying a strict liability standard does not make sense when the issue is whether to fine a utility for certain conduct. Generally, the theory of fining a utility in these situations is to create an incentive for the utility to take all reasonable steps in the future to try to prevent the conduct that led to the adverse incident. Here, there is no new action that would be "incentivized" in the future if PGW is fined because there was no reasonable way for PGW to have known that there was some issue with its main. Moreover, as discussed below, PGW is

¹⁴¹ NT at 30–33.

¹⁴² *Tincher v. Omega Flex, Inc.*, 628 Pa. 296, 104 A.3d 328 (Pa. 2014); *see also Karle v. National Fuel Gas Distribution Corp.*, 448 F. Supp. 753 (W.D. Pa. 1978)

¹⁴³ 66 Pa. C.S. § 3301.

already taking additional steps to deal with excavations that were mandated by the 8th Street Settlement.

E. BI&E has Previously Conceded that PGW’s Obligation to Inspect UST is Not Triggered for Third-Party Excavations Absent an Observed or Noticed UST

BI&E’s prior prosecutorial conduct demonstrates its concession that PGW has no obligation to monitor third-party excavation in the absence of signs of UST.

This is the second instance where BI&E has sought a fine for an explosion where PGW was not at fault:

A natural gas explosion occurred at 1435 South 8th Street, Philadelphia, PA on December 19, 2019. Excavation on water and sewer facilities on the 1400 block of South 8th Street, Philadelphia occurred in September and October 2019. PGW was unaware of, and no information was shared with PGW, about any voids under the water and sewer facilities or of any underground conditions that might adversely affect its facilities. It was, as it is now, PGW’s consistent position that it cannot be held accountable when third-party excavators perform work unrelated to PGW’s utility infrastructure but fail to inform PGW of potentially hazardous situations they observe which may impact PGW’s facilities.¹⁴⁴

BI&E filed a complaint on July 15, 2022 at Docket No. C-2022-3033834 alleging similar violations of state and federal regulations as are presented here. BI&E’s theory of the case was the same as it is here—a strict liability standard requiring that PGW be held responsible for any explosion regardless of cause and even where PGW was unaware of underground conditions.

BI&E’s 8th Street complaint was resolved by settlement of the two parties. The Commission unanimously adopted the settlement without revision on January 8, 2025.¹⁴⁵ The agreed-to terms include a concise statement a collective understanding of PGW’s UST obligations at Section V:

¹⁴⁴ PGW St. 1-R at 47–48.

¹⁴⁵ Your Honor took judicial notice of the settlement as a public document. NT at 73.

1. Trigger points for requiring Underground Street Troubles (“UST”) investigations near Cast Iron structures will be *each of the following when observed by trained PGW field personnel*:

- a. An underground cavity, suggested by settlement or depressions;
- b. Unsafe excavation or backfill/compaction techniques, such as excavating with equipment within the tolerance zone, backfilling active water/sewer failures without adequate repairs being made, or lack of compaction;
- c. Unsuitable backfill material; and/or
- d. Washouts, floods, unstable soil, or landslides.

2. *When trained PGW field personnel* (i.e., Supervisor, Inspector, and Foreman) *observe any of foregoing*, they will be required to initiate the UST investigation process by notifying Distribution Dispatch. Distribution Dispatch will then create an UST investigation order and assign it.

3. Pursuant to 49 C.F.R. § 192.459, *when PGW has direct knowledge through notice or observation* that any portion of a buried pipeline is exposed, PGW shall examine the exposed pipeline facilities and determine if remedial action exists in the vicinity of the exposed portion. This examination and determination will include a record of but is not limited to documenting the following items:

- a. The material of the exposed facilities;
- b. The location of the exposed facilities;
- c. The condition of the exposed facilities, including an examination for evidence of external corrosion; and
- d. Determination of whether remedial action is necessary.

4. Nothing in this Section shall relieve PGW from its duty and obligation to ensure the integrity of its facilities and compliance with applicable Federal and State regulations.

5. *Nothing in this settlement shall impose on PGW any obligation, after marking, to be present during subsequent excavation, except as required under Section V(3) above.*

6. Nothing in this Section shall bar PGW from updating and improving its Street Trouble Processes, Procedures, and Training and related bulletins.¹⁴⁶

¹⁴⁶ A copy of the Commission Approved settlement can be found here: <https://www.puc.pa.gov/pcdocs/1796544.pdf>. See Settlement at 31–33 (Emphasis added).

Nowhere does the Settlement impose an obligation on PGW to attend, observe or monitor third-party excavations based upon the number or location of One Call marking requests.¹⁴⁷ Indeed, the Settlement (at Section V.4) *expressly excludes* any such obligation when PGW is *without direct knowledge* through notice or observation of any trouble, a fact ultimately conceded by BI&E’s witness.¹⁴⁸

A requirement to be on-site where there are two (or more) One Call tickets involving sewer or water service lines even in the absence of observable adverse conditions *was not* approved by the Commission or included in the settlement between BI&E and PGW. The expressly stated terms of the settlement recognize that no other obligations are imposed on PGW and no other obligations exist under existing Commission regulations or PGW’s Bulletins. BI&E’s position in this case is directly contrary to that which was resolved previously between PGW and BI&E.

As the presiding Administrative Law Judge in the 8th Street case succinctly described the underlying facts of that case:

Prior to the incident, the 1400-block of South 8th Street was the subject of multiple excavation activities. Eight locate requests related to water and/or sewer repair work were submitted to the Pennsylvania One Call System, Inc. (Pennsylvania One Call) between March 28, 2018 and October 23, 2019. PGW responded to each of these requests and properly marked its facilities. Six of these locate requests occurred between September 13, 2019 and October 23, 2019, five of which were submitted as “emergency requests” by the excavators on the 1400-block of South 8th Street. Pursuant to the Pennsylvania One Call law, an “emergency request” from an excavator signifies a request for other utility owners to mark “as soon as practicable.”¹⁴⁹

¹⁴⁷ The BI&E witness conceded that it does not argue that the 8th Street Settlement required PGW to be on-site during the excavation in front of 815 Jackson Street. NT at 69 (“I do not have an opinion.”).

¹⁴⁸ NT at 70, 75.

¹⁴⁹ *Bureau of Investigation and Enforcement v. Philadelphia Gas Works*, C-2022-3033834, Recommended Decision of Dennis J. Buckley, Administrative Law Judge dated June 7, 2024 at 23–24 (citing Proposed Findings of Fact 40–41) (8th Street Recommended Decision”).

These facts mirror those raised by BI&E here, except that the number of One Call notices was much more extensive in 8th Street, as was the knowledge of third-parties who failed to report to PGW.¹⁵⁰

The presiding ALJ then found that BI&E's attempt to impose a fine on PGW for its subsequent absence at these various excavation sites was inappropriate and rejected the same position BI&E espoused here. ALJ Dennis Buckley found that PGW violated no law or regulation when it did not attend and monitor the underlying third-party excavations:

Indeed, 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. Thus, whatever funds PGW is going to spend in the future to implement the terms of the Settlement, it is not equivalent with the imposition of a civil penalty.

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) 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[BI&E] did not establish that any violations occurred.¹⁵¹

It should be noted that the ALJ's finding was not endorsed by the Commission.¹⁵² However, given that there has been no change in the underlying law or rules with the exception of the 8th Street Settlement itself, PGW believes that, after reviewing the evidence in the completed record of this case, the finding of ALJ Buckley are correct and should be adopted here by Your Honor.

¹⁵⁰ See 8th Street Settlement, Para. 45.

¹⁵¹ 8th Street Recommended Decision at 27–29.

¹⁵² BI&E excepted to this ALJ finding of no culpability on three grounds, including the fact that weighing the evidence was unwarranted in a settled case and the record was not complete inasmuch as BI&E had not filed its surrebuttal testimony at the time of settlement *Bureau of Investigation and Enforcement v. Philadelphia Gas Works*, C-2022-3033834, Opinion and Order entered January 8, 2025 at 37- 41. In disposition the Commission agreed that there is “no determination as to culpability in this matter” and “we reject any analysis based upon the weight of the evidence,” Opinion and Order at 45.

PGW believed that the 8th Street Settlement defined PGW’s UST obligations and resolved BI&E’s concerns in this area. However, BI&E has ignored them here and offered “no opinion” on whether PGW followed them on Jackson Street.¹⁵³ In other words, in bringing its Complaint, BI&E simply ignored the triggers that it previously agreed were reasonable for PGW to follow. PGW submits that BI&E’s complaint should be dismissed on the independent ground that it has not proven that PGW violated any of the terms of the 8th Street Settlement. Rather, the record reflects that PGW actions were consistent with those rules, although not then in effect.

VI. CONCLUSION

PGW respectfully requests that Your Honor conclude that BI&E failed to meet its burden of proof to show that PGW violated laws or regulations in regard to the incident that occurred on November 30, 2021. Without proof that PGW violated any law or regulation in any action involving the One Call markings, post markup activity, the incident response, or post incident pipeline repairs, BI&E has failed to meet its burden of proof and no civil penalties are appropriate. Respectfully, PGW asks that the Complaint be dismissed.

Respectfully Submitted,

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Dated: January 13, 2026

Counsel for Philadelphia Gas Works

¹⁵³ NT at 69 (“Q. So based on this, if these terms had been in effect, do you have an opinion as to whether or not any of those terms would have obligated PGW to be present during the two excavations on Jackson Street in September of 2021 which you described in your testimony? A. I do not have an opinion.”).

APPENDIX A

PHILADELPHIA GAS WORKS' **PROPOSED FINDINGS OF FACT**

In accordance with Commission Regulations at 52 Pa. Code §§ 5.501–5.502, and Your Honor’s November 18, 2025 Briefing Order, Respondent Philadelphia Gas Works (“PGW”) respectfully submits the following proposed findings of fact.

I. Background

1. The Complainant in this case is the Commission’s Bureau of Investigation and Enforcement (“BI&E”). BI&E St. No. 1.
2. BI&E filed its complaint on November 24, 2024. BI&E St. No. 1.
3. The Respondent in this case is Philadelphia Gas Works (“PGW”), a municipally owned gas distribution company. PGW St. 1-R.
4. PGW is the nation’s largest municipally owned gas distribution company. PGW’s gas distribution system serves approximately 512,000 customers in the County and City of Philadelphia, operating approximately 3,049 miles of natural gas mains (“Mains”) and some 472,656 service lines (“Services”). PGW St. 1-R at 8.
5. This case involves a natural gas explosion which occurred at 815 Jackson Street in Philadelphia, PA on November 30, 2021. BI&E St. No. 1 at 7; PGW St. 1-R at 19; PGW St. 2-R at 9.

II. PGW’s Cast Iron Infrastructure

6. The presence and aging status of cast iron in PGW’s distribution system is well known and a shared concern of PGW and the Commission who have worked closely to create effective solutions, including implementation of PGW’s Distribution System Improvement Charge (“DSIC”) of 7.5% to further accelerate cast iron main replacement. PGW St. 1-R at 11.

APPENDIX A

7. In 2015, a multi-Bureau Commission Staff task force, including BI&E, was formed that produced an extensive report discussing ways to accelerate PGW's "at-risk" pipeline replacement."¹ PGW St. 1-R at 11.

8. That Staff Report explained:

Although pre-1971 unprotected steel pipe mains and services are at risk, cast iron is more risky. Cast iron has low beam strength and is subject to graphitization, which makes it more brittle and susceptible to complete and partial main breaks with large volumes of gas exiting the main, with little to no warning.²

PGW St. 1-R at 11.

9. At the end of calendar year 2024 PGW's mains were comprised of approximately 37% cast iron, 43% PE plastic and protected coated steel, and 19% unprotected coated steel and ductile iron. The Company's services are made up of 84% plastic and protected coated steel, 12% bare steel and 3% unprotected coated steel. PGW St. 1-R at 8.

10. Under a Commission approved Long-Term Infrastructure Improvement Plan ("LTIIP"), PGW is currently replacing cast iron pipe mains at a rate of 30 miles per year. PGW St. 1-R at 9.

11. In each of PGW's LTIIP filings, PGW has consistently reduced the projected date of complete cast iron main replacement in its service territory with current projected completion to occur in approximately 35 years. PGW St. 1-R at 9.

12. PGW is actively pursuing federal grant funding to accelerate cast iron main replacement further over the next five years. PGW St. 1-R at 9.

¹ Pennsylvania Public Utility Commission Staff Report: Inquiry into Philadelphia Gas Works' Pipeline Replacement Program, April 21, 2015 at 4 ("2015 Staff Report"). <https://www.puc.pa.gov/press-release/2015/puc-publishes-staff-report-on-pgw-pipeline-replacement-program>.

² 2015 Staff Report at 15.

APPENDIX A

13. The primary impediment for more rapid replacement of cast iron mains is financial limitations. PGW St. 1-R at 9.
14. PGW finances cast iron main replacement in four ways: (1) Funds made available from its current base rates; (2) Debt financing; (3) PGW's DSIC, currently set at 7.5% of PGW's distribution revenues; and (4) third-party grants. PGW St. 1-R at 9, 11–12.
15. PGW prioritizes the replacement of its cast iron mains using a risk ranking strategy in its Distribution Integrity Management Program ("DIMP"), consistent with the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration's ("PHMSA") standards. PGW St. 1-R at 12.
16. The DIMP establishes relative risk rankings and an updated benchmarking/prioritization study to identify the poorest performing main segments, so that these mains can be targeted to be replaced at the earliest feasible times. PGW St. 1-R at 12.
17. BI&E has reviewed PGW's DIMP every year since 2018. PGW St. 1-R at 12.
18. PGW's sophisticated predictive model, the Main Replacement Prioritization Model ("MRP"), is used to identify which "at risk" mains to replace to maximize safety. The process is consistent with federal regulations and has been reviewed by BI&E. PGW St. 1-R at 12.
19. PGW continues to make significant strides towards reducing the number of hazardous leaks, with a significant downward trend evidenced from 2014 through 2024. PGW St. 1-R at 12-14.
20. In total, PGW has replaced 373.59 miles of "at-risk" pipe over the past twelve (12) fiscal years. PGW St. 1-R at 14–17.

APPENDIX A

III. PGW Facilities Located on the 800 Block of Jackson Street

21. PGW's gas distribution system on Jackson Street consists of three mains: a north side, 4-inch low pressure cast iron main located in the footway 7.5 feet from the curb, a south side, 4-inch low pressure cast iron main located in the roadway; and a 16-inch steel high pressure main located in the roadway. BI&E St. No. 1 at 8; PGW St. 1-R at 20; **CONFIDENTIAL SECURITY INFORMATION Exhibit JH-3.**

22. PGW's north side main was the main involved in the November 30, 2021 incident. PGW St. 1-R at 27.

23. PGW's gas distribution system on the north side, is located approximately 7 feet from the foundation wall and 7.5 feet from the curb and connects to the gas service line for 815 Jackson Street. BI&E St. No. 1 at 8; PGW St. 1-R at 20. *See also* **CONFIDENTIAL SECURITY INFORMATION Exhibit JH-3.**

24. PGW undertakes an annual leak survey of its entire system of mains including those in the 800 block of Jackson Street. PGW St. 1-R at 20; **CONFIDENTIAL** Exhibit JH-2 at 11.

25. Every three years, PGW conducts a walking survey of all of its footway mains and services, including those in the 800 block of Jackson Street, as part of PGW's ongoing, leak survey program. PGW St. 1-R at 20.

26. PGW's north side main has experienced three (3) breaks since 2009: on January 2, 2009; January 4, 2010; and January 26, 2016. PGW St. 1-R at 27.

27. Three (3) breaks in the north side 4-inch cast iron main over a 12+ year period is not out of the ordinary and is not indicative of any unique safety problem on the 800 block of Jackson Street. PGW St. 1-R at 27.

APPENDIX A

28. PGW had no reason to believe that there was any unsafe condition in the 800 block of Jackson Street from this history of the facilities. PGW St. 1-R at 28.

IV. The Incident of November 30, 2021

29. A natural gas explosion occurred at 815 Jackson Street in Philadelphia, Pennsylvania on November 30, 2021. BI&E St. No. 1 at 7; PGW St. 1-R at 3; I&E Exhibit 10.

30. The explosion occurred after natural gas was released from a circumferential crack in PGW's 4-inch cast iron main located in front of 815 Jackson Street, Philadelphia, Pennsylvania. BI&E St. No. 1 at 14; PGW St. 1-R at 19; BI&E Exhibit 9.

31. BI&E admitted that the crack in the gas main was not caused by any affirmative action by PGW. NT at 52.

32. The explosion resulted in limited property damage with no injuries or loss of life. BI&E St. No. 1 at 4, 7–8; PGW St. 1-R at 19; PGW St. 2-R at 9.

33. The incident resulted in an estimated \$55,000 in damage to property (buildings and cars). PGW St. 1-R at 3, 22; **CONFIDENTIAL** Exhibit JH-2 at page 15; PGW St. 2-R at 9; BI&E St. No. 1 at 4, 7–8.

34. The incident was not a “reportable incident” under federal PHMSA rules due to the limited property damage and other factors. PGW St. 1-R at 22; Exhibit JH-1, BI&E Response to PGW Set II, No. 15; BI&E St. No. 1 at 3-4.

35. PGW's personnel appropriately responded to the incident, limited the potential for any further damage, and ensured the public safety in all regards following the incident. PGW St. 1-R at 20; PGW St. 2-R at 9–11.

36. PGW's response to the incident and investigation complied with the law and PGW's bulletins. BI&E St. No. 1 at 9; PGW St. 1-R at 20; PGW St. 2-R at 9–11.

APPENDIX A

37. After the incident, PGW undertook a post-incident investigation assessing events and its facilities, including:

- The day of the incident PGW completed a thorough leak investigation per PGW procedures and took the necessary steps to isolate the broken cast iron main;
- PGW removed a section of the cast iron main for evidence and testing;
- PGW sent the cast iron main to a third-party laboratory for metallurgical testing;³
- PGW utilized a third-party investigator to perform a root cause analysis; and
- PGW replaced the cast iron main on the 800 block of Jackson Street.

PGW St. 1-R at 21.

38. During PGW's investigation, photographs were taken of the excavated gas main.

PGW St. 2-R at 11; BI&E Exhibits 1–5.

39. The photographic evidence showed that PGW's main was not undermined, and there was soil surrounding the cracked main during the excavation. PGW St. 2-R at 11; NT at 33, 132; BI&E Exhibit 3.

40. I&E's Witness provided no evidence besides conjecture or theories to refute the photographic evidence that the PGW's main was supported by soil when excavated and no undermining was visible. PGW St. 1-R at 28; PGW St. 2-R at 11; NT at 33.

41. In contrast, PGW's witness testified, based on first-hand accounts, that:

The main that was excavated at that time was shown to have full soil support around it, appeared to be virgin soil that was supporting the gas main.

NT at 132.

³ PGW contracted with Affiliated Engineering Laboratories, Inc. to perform a metallurgical evaluation of the aforementioned pipe. A copy of this report was attached to BI&E's testimony, BI&E Exhibit 9. The evaluation concluded that a combination of the graphitic corrosion, the brittle nature of gray cast iron pipe, and an external bending force caused the circumferential cracking of the cast iron piping.

APPENDIX A

42. The age of the sidewalk above PGW's main shows it was not excavated during the sewer trap repairs in September 2021. PGW St. 2-R at 11; NT at 72:6–19.

43. BI&E presented no evidence of any sidewalk subsidence, damage, or otherwise directly above PGW's main. PGW St. 2-R at 11; NT at 72:16–19.

44. BI&E's Witness admitted on the witness stand that the evidence shows that PGW's cast iron main was surrounded by soil when excavated on November 30, 2021. NT at 33.

45. PGW's witness confirmed that there was no evidence to confirm BI&E's theory that water and/or sewer facilities leaked or otherwise impacted PGW's main at 815 Jackson Street at any time. NT at 132–33.

V. The PA One Call Tickets and Excavations by Third-Parties Months Prior to the Incident

46. Months prior to the incident, PGW was notified of three PA One Call tickets for work related to sewer lines at 815 Jackson Street and 813 Jackson Street. PGW St. 1-R at 5, 26; PGW St. 2-R at 11–13; BI&E St. No. 1 at 12; BI&E Exhibits 6–8.

47. On July 26, 2021, Clements Brothers and Sister, Inc. ("Clements") submitted a PA One Call ticket number 20212072616 indicating excavation at 815 Jackson Street at the sewer lateral curb trap. PGW St. 1-R at 26; BI&E St. No. 1 at 12; BI&E Exhibit No. 6.

48. The sewer lateral curb trap is located 7.5 Feet from PGW's main at the curb line. *See* **CONFIDENTIAL SECURITY INFORMATION Exhibit JH-3.**

49. PGW's witness Mr. Hawkinson explained the sewer facilities involved with the One Call tickets:

It was more specifically the sewer lateral. So the sewer lateral curb trap at the curb. So it was the - they have - according to their One Call, they were making a four by four excavation at the curb. Again, our facilities are seven and a half feet away, further into the curb sidewalk.... they were excavating out the curb. The vent traps for the sewer lateral curbs were - is right at the curb line.

APPENDIX A

NT at 134.

50. PGW's Mr. Hawkinson further testified about the sewer traps noted in the One

Call tickets:

So essentially, the - the - there's a trap at the - in the outside of your home for every - for sewer. It becomes like a sewer vent. It has a vent that comes up to the street so that any sewer gas in the system, and the sewer main will either be blocked by the trap itself. It's like a U-shaped trap, which usually maintains water in it so that the sewer gases hopefully don't get up to your property.

But the secondary protection is, it has - also has a vent box that sticks up at the curb line that then - if it gets past the sewer trap, it will go out to vent - the sewer vent.

Q. And what is a failure of that trap? Is it caused by clogging or -?

A. Potentially. There's a number of things. They're generally for - for a normal home at Philadelphia, it's normally a 4-inch or 6-inch pipe. But generally, a lot of the homes in Philadelphia are older so that piping could become over year - over the years, and wear and tear, they generally become clogged just due to deposits build up inside. It could be a failure of the pipe itself. But generally, what happens is if there's a failure of the pipe itself, that usually means that the homeowner is unable to use their - any water in their system, because everything that goes down the sewer backs up or you're going to see a leak. So that's why sometimes you'll see plumbers, you know, putting in emergency tickets or things like that, because they're trying to get the customers plumbing working again so that they can use their water and they can use their facilities.

NT at 135-36.

51. Ticket No. 20212072616 did not indicate any crossing, undermining, or excavation within the tolerance zone of PGW's Cast Iron main. PGW St. 1-R at 34; BI&E Exhibit No. 6.

52. Clements' Ticket No. 20212072616 did not indicate any immediate sewer failure or leaks in the facilities. PGW St. 1-R at 34; BI&E Exhibit No. 6; NT at 46.

APPENDIX A

53. On July 29, 2021, PGW responded to Ticket No 20212072616 and marked its facilities in the field. PGW St. 1-R at 35; PGW St. 2-R at 7; BI&E St. No. 1 at 12–13.

54. PGW's Damage Prevention Inspector looked for and did not find anything adverse when marking its facilities on July 29, 2021 involving any underground street troubles ("UST"). PGW St. 1-R at 35; PGW St. 2-R at 7; BI&E St. No. 1 at 12–13.

55. PGW's Damage Prevention Inspector complied with PGW's bulletins with regard to Ticket No. 20212072616. PGW St. 1-R at 35; PGW St. 2-R at 7; BI&E St. No. 1 at 12–13.

56. As PGW's Mr. Leva explained, once PGW receives a One Call ticket:

Yes. Well, if I could explain that – that's just the first step that – the first step triggers the trained Damage Prevention Inspector. Then the notice for the underground street trouble would then be the follow-up after the subject matter expert makes his visit and determined if it's needed or not. It's not generated off the One Call automatically. The One Call generates the visit, and then based on that expertise's professional opinion would determine if the follow-up is needed.

NT at 147.

57. BI&E is not aware of and failed to present any evidence that PGW's Damage Prevention Inspectors failed to comply with PGW's bulletins in response to Ticket No. 20212072616. BI&E St. No. 1 at 13; PGW St. 1-R at 35–36; PGW St. 2-R at 5–7; NT at 134

58. As PGW's Mr. Leva explained, no adverse conditions were known to PGW or existed visible during the One Call ticket responses:

Q. You were asked, is - is the first line of questioning, I believe it was, under what conditions the Damage Prevention Investigators should be present during an excavation.

Were those conditions in existence during the excavation at - in front of 8 - either 813 or 81[5] Jackson Street?

A. No, they were not.

Q. And why were they not? What test did they fail?

A. It was far outside of the excavation on the details, based on - one, it was outside of the tolerance zone. Two, there were no visible signs of any cavitation or water leakage.

APPENDIX A

NT at 148–49.

59. On September 1, 2021, Clements submitted a repeat PA One Call ticket (No. 20212440918) which was a request to re-mark the gas line due to Clements’ not beginning work within the legal start date involving the excavation at 815 Jackson Street at the sewer lateral curb trap. PGW St. 1-R at 26; BI&E St. No. 1 at 12; BI&E Exhibit No. 7.

60. Ticket No. 20212440918 did not indicate any crossing, undermining, or excavation within the tolerance zone of PGW’s Cast Iron main. PGW St. 1-R at 34; BI&E Exhibit No. 7.

61. Ticket No. 20212440918 did not indicate any immediate sewer failure or leaks in the facilities. PGW St. 1-R at 34; BI&E Exhibit No. 7; NT at 46.

62. On September 3, 2021, PGW responded to Ticket No 20212440918 and marked its facilities in the field. PGW St. 1-R at 35; PGW St. 2-R at 7; BI&E St. No. 1 at 12–13.

63. PGW’s Damage Prevention Inspector did not find anything adverse when remarking its facilities on September 3, 2021 involving any UST. PGW St. 1-R at 35; PGW St. 2-R at 7; BI&E St. No. 1 at 12–13.

64. PGW’s Damage Prevention Inspector complied with PGW’s bulletins with respect to Ticket No. 20212440918. PGW St. 1-R at 35; PGW St. 2-R at 7; BI&E St. No. 1 at 12–13.

65. BI&E is not aware of and presented no evidence that PGW’s Damage Prevention Inspector failed to comply with PGW’s bulletins in response to Ticket No. 20212440918. BI&E St. No. 1 at 13; PGW St. 1-R at 35–36; PGW St. 2-R at 5–7; NT at 134

66. On September 3, 2021, Lepore Plumbing (“Lepore”) submitted an “emergency” PA One Call ticket number 20212460409, indicating crews were on site for excavation at 813

APPENDIX A

Jackson Street at the sewer lateral curb trap. PGW St. 1-R at 26; BI&E St. No. 1 at 12; BI&E Exhibit No. 8.

67. Pennsylvania Act 287 as amended defines an “emergency” as “a sudden or unforeseen occurrence involving a clear and immediate danger to life property or the environment, including, but not limited to serious breaks or defects in the facility owner’s line.” PGW St. 2-R at 3.

68. An emergency ticket involving a water service line, for example, means that the water service line is affected and work needs to be undertaken promptly. PGW St. 2-R at 3.

69. Under Act 287 as amended, an emergency designation requires facilities owners, like PGW, to make contact with the excavator and mark the location of its facilities “as soon as practicable” and “the response by the facility owner shall be consistent with the nature of the emergency information received by the facility owner.” Without the emergency designation, marking is due within two days. PGW St. 2-R at 3.

70. Excavators often overuse the submission of “emergency” tickets to receive expedited facility marking when there is in-fact no emergency. PGW St. 2-R at 3.

71. The designation of “emergency” is defined by the excavator and automatically accepted and entered by the Pennsylvania One Call system. PGW St. 2-R at 3.

72. An “emergency” designation by an excavator that does not meet the criteria of an emergency can be utilized to expedite the utility response for the convenience of the excavator. PGW St. 2-R at 3.

73. The issue of overuse has been raised before the One Call Board, but curbing abuse is difficult to administer. Approximately twenty-five percent of the tickets processed by

APPENDIX A

PGW (approximately 17,000 per year) are excavator-designated “emergencies.” PGW St. 2-R at 3.

74. An emergency could and frequently does mean that a home or business is without water or sewer service (or other utilities) but not necessarily that the condition of the subject facility poses a physical danger to anyone or anyone else’s facilities. PGW St. 1-R at 37; PGW St. 2-R at 4.

75. Ticket No. 20212460409 did not indicate any crossing, undermining, or excavation within the tolerance zone of PGW’s Cast Iron main. PGW St. 1-R at 34; BI&E Exhibit No. 8; NT at 46.

76. Ticket No. 20212460409 did not indicate any immediate sewer failure or leaks in the sewer facilities. PGW St. 1-R at 34; BI&E Exhibit No. 8; NT at 46.

77. On September 3, 2021, PGW responded to Ticket No 20212460409 and marked its facilities in the field. PGW St. 1-R at 35; PGW St. 2-R at 7; BI&E St. No. 1 at 12–13.

78. PGW’s Damage Prevention Inspector looked for and did not find anything adverse when marking the gas main facilities on September 3, 2021 involving any UST. PGW St. 1-R at 35; PGW St. 2-R at 7; BI&E St. No. 1 at 12–13.

79. PGW’s Damage Prevention Inspector complied with PGW’s bulletins with respect to Ticket No. 20212460409. PGW St. 1-R at 35; PGW St. 2-R at 7; BI&E St. No. 1 at 12–13.

80. BI&E is not aware of and failed to present any evidence that PGW’s Damage Prevention Inspector failed to comply with PGW’s bulletins in response to Ticket No. 20212460409. BI&E St. No. 1 at 13; PGW St. 1-R at 35–36; PGW St. 2-R at 5–7; NT at 134

81. PGW’s Damage Inspectors responding to the One Call tickets did not observe any evidence of water or sewer system failures. NT at 134.

APPENDIX A

82. For each of the excavations in September 2021, BI&E admits there is no evidence that any undermining or disturbance at PGW's main actually occurred. NT at 33; BI&E Exhibit 3.

83. All three PA One Call tickets by third party plumbers involved sewer facilities (sewer traps on customer-owned service lines at the curb) located over seven feet from PGW's main, with the closest distance of possible excavation by the plumbers to occur over three feet from PGW's main. PGW St. 1-R at 34; BI&E St. No. 1 at 12; BI&E Exhibits 6–8; NT at 45, 134; **CONFIDENTIAL SECURITY INFORMATION Exhibit JH-3.**

84. Clements' excavation in front of 815 Jackson Street occurred on September 7, 2021. BI&E Exhibit 10; NT at 50.

85. BI&E's witness agreed that the Clements excavation over three and a half feet from PGW's gas main at 815 Jackson street did not expose the gas main because the photographic evidence proved that the sidewalk above PGW's main was not replaced during said excavations. NT at 71–72.

86. BI&E did not present any evidence to show that, in excavations in September 2021, PGW's main was excavated or exposed to the surface. NT at 51–52.

87. The explosion occurred 11 weeks, or almost three months after Clements completed the excavation on September 7, 2021. NT at 50.

88. The excavations were all outside of the 18-inch tolerance zone from the outside wall of PGW's main. NT at 44.

89. PGW's witness Mr. Hawkinson confirmed that a One Call ticket is not evidence of a water or sewer system failure:

No, it is not a specific evidence of a failure. PGW treats all 70,000 One Call tickets that we respond to, approximately 70,000 per year,

APPENDIX A

as a potential for risk to any of our infrastructure. And that's why we have thoroughly experienced, and dedicated and qualified Damage Prevention Inspectors that perform all that work so that they can both not just do the markout like other utilities may have, where they just look at a map and then they put a paint on the ground. They do a full assessment of the site conditions, they evaluate where our infrastructure is in relation to that, the excavation that is projected to happen and then they - you know, they report out accordingly.

NT at 133.

90. BI&E's witness "had no opinion" as to whether any excavators involved violated the Pennsylvania One Call Law and could not tie any excavator activities to any "cause and effect" relationship to the incident. NT at 56-58.

91. BI&E's witness is aware of the excavator's Pennsylvania One Call Law obligations at 73 P.S. § 180.6, that BI&E has the statutory authority to prosecute excavators for violations of the law, and that such violations are subject to civil penalties. NT at 59-61.

92. BI&E did not undertake even preliminary investigations of the excavators involved with work at 815 Jackson Street and failed to hold the excavators accountable for potential violations of the Pennsylvania One Call Law. NT at 61.

93. BI&E did not investigate, interview, or otherwise review any of the activities at 815 Jackson Street by either Clements or Lepore plumbing, either for PA One Call requirements or in support of their investigation. PGW St. 1-R at 32.

94. BI&E did not take any action, formal or informal, against Clements or Lepore. PGW St. 1-R at 32.

95. Rather, BI&E's investigative report concluded:

Although the failure of nearby municipal and privately owned infrastructure could have contributed to this incident, PGW is the only involved utility jurisdictional to the PUC. This investigation report focuses primarily on PGW's actions and inactions that contributed to the incident.

APPENDIX A

PGW St. 1-R at 7; **CONFIDENTIAL** Exhibit JH-2 at 2; NT at 63 (making quote PUBLIC).

96. If PGW were required to institute ongoing surveillance of all third-party excavations in the City of Philadelphia for their duration as BI&E suggests, PGW's existing employee compliment would not be sufficient to undertake such expansive requirements. PGW St 1-R at 44.

97. Based on conservative estimates, PGW would need to hire an additional 208 employees to conduct ongoing monitoring of excavations for the duration of such excavations in the City. PGW St 1-R at 45.

98. While most costs are unknown, PGW conservatively estimated that implementing BI&E's request would cost PGW ratepayers no less than \$17.7 million per year. New software or programs would also have to be created by PGW. PGW St 1-R at 45.

99. It would be hard, if not impossible, to implement the tracking of excavations, as excavators have no obligation to inform utilities when exactly excavations will take place. PGW St. 1-R at 46.

VI. PGW's Safety Initiative

A. Leak Detection.

100. PGW undertakes a leak survey of its entire distribution system and has done so annually in the 800 block of Jackson Street. PGW St. 1-R at 20; **CONFIDENTIAL** Exhibit JH-2 at 11.

101. PGW conducts a walking survey of all gas distribution mains and services located in the footway every three years, including in the 800 block of Jackson Street, as part of PGW's ongoing, leak survey program. PGW St. 1-R at 20–21.

APPENDIX A

102. BI&E did not find any deficiency or error in PGW's leak detection prior to the incident. **CONFIDENTIAL** Exhibit JH-2.

B. Training of PGW's Damage Prevention Inspectors.

103. The job title for PGW's personnel who mark the location of PGW's facilities when PGW receives a One Call ticket is "Damage Prevention Inspector." PGW St. 2-R at 4; Exhibit JCL-1.

104. While the majority of other natural gas distribution companies hire external locator contractors to mark their facilities, PGW utilizes in-house, union represented and trained Damage Prevention Inspectors to not only locate and mark-out PGW structures but also to ensure the safety of PGW's underground facilities from external disturbances during their line marking duties. PGW St. 2-R at 4.

105. Damage Prevention Inspectors responsibilities include making direct contact with excavators before, during, and after work is completed on larger, complex projects where PGW may have moved structures that need to be put back once the excavator is finished, contacting other facility owners when failures of their system affect PGW's facilities, and being subject matter experts in One Call practices. PGW St. 2-R at 4.

106. The three (3) One Call tickets at issue in this proceeding were not part of a large, complex project. PGW St. 2-R at 4 n.2.

107. PGW's Mr. Hawkinson further explained:

PGW's Damage Prevention Inspectors are trained to look for potential underground street troubles and implement an underground street trouble investigation when one is identified. Our Damage Prevention Inspectors are the ones that respond to all of our - all of the One Call to mark out the structure. They also do analysis for any kind of risk associated with our infrastructure when they're out there.

NT at 119.

APPENDIX A

108. PGW believes that the use of in-house Damage Prevention Inspectors best promotes public safety and PGW's interest. PGW St. 2-R at 4.

109. PGW's Damage Prevention Inspectors follow PGW's internal procedures including, *inter alia*, PGW's Bulletin No. 312, 313, and 54. PGW St. 2-R at 5.

110. Damage Prevention Inspectors receive annual training and review PGW's Bulletins at the Distribution Annual School for Foreman and Damage Prevention Inspectors held each September. PGW St. 2-R at 7.

111. BI&E regularly reviews all of PGW's procedures for compliance purposes. PGW St. 2-R at 7.

112. PGW submitted its bulletins for review on January 31, 2019, including Bulletins Nos. 54, 312 and 313, as part of an O&M Inspection that occurred February 28, 2019 and March 5, 2019. No deficiencies were noted by BI&E. PGW St. 2-R at 7.

113. PGW's current bulletins were reviewed by BI&E on July 31, 2025, and BI&E found no deficiencies. PGW St. 2-R at 7.

C. PGW's Training of Excavator Community.

114. PGW has extensive excavator education and training initiatives for those excavating within the City of Philadelphia. PGW St. 2-R at 7-9.

115. PGW meets with Philadelphia Water Department ("PWD") and the excavators working on water and wastewater systems regularly. PGW St. 2-R at 7-9

116. Since February 14, 2020, PGW began disseminating brochures to the excavators encouraging them to be cautious when excavating around PGW facilities, particularly cast-iron mains. PGW St. 2-R at 7-9.

APPENDIX A

117. These brochures outline the safety concerns and protocols to take when excavating around cast iron mains. PGW St. 2-R at 7–9

118. PGW distributes these brochures at meetings with City agencies, facilities owners and excavators, as more fully described below. PGW St. 2-R at 7–9.

119. PGW provides copies to the City of Philadelphia’s Department of License and Inspection (“L&I”), who issue the street opening permits and ask them to distribute them to all permit applicants. PGW St. 2-R at 7-9; **Exhibit JCL-2**.

120. PGW meets monthly with front line supervisors from Philadelphia Water Department and L&I during the City’s monthly “DITCH” meetings. The purpose of these meetings is to discuss problematic and high-profile excavation locations. During those discussions, excavation safety is usually a routine topic. PGW St. 2-R at 7–9.

121. In addition, the PGW maintenance team attends a City-sponsored semi-annual meeting at which all relevant City departments attend, alongside a liaison from PA One Call, at which presentations on various topics about City operations are conducted. Excavation safety is a key topic at these meetings. The meetings are also open to all contractors and excavators working on water and sewer facilities within the City of Philadelphia. PGW St. 2-R at 7–9.

122. PGW has a robust public/customer communication program to better explain PGW’s investment in its infrastructure, expand communication of pipeline improvement efforts, improve public perception, build stronger, more collaborative external relationships, and help increase customer satisfaction. PGW St. 2-R at 9.

123. PGW implemented many safety enhancements approved by the Commission at Docket No. C-2022-3033834, including Coordination Efforts with the Excavator Community,

APPENDIX A

Cast Iron Main Replacement Commitments, a first of its kind Residential Methane Detector Pilot program, and “trigger points” for its UST processes. PGW St. 1-R at 49.

124. These safety enhancements address all of the “corrective actions” BI&E sought in the Complaint, with the exception of a new “Smart Methane Detector Pilot.” PGW St. 1-R at 50.

VII. BI&E’s Investigation was Incomplete and Cannot Support the Relief Requested.

125. BI&E presented no witness with any on-site knowledge at 815 Jackson Street or who actually collected evidence regarding the November 30, 2021 incident. NT at 23.

126. The BI&E Investigators during the investigation with firsthand, on-site knowledge were Scott Orr and Vladimir Shteyn. Exhibit JH-1; NT at 24, 75–76.

127. BI&E’s Ms. Cooper-Smith was never on site at 815 Jackson Street as part of the BI&E investigation and did not observe any conditions present. NT at 25; Exhibit JH-1. Her role was as a supervisor of Mr. Orr and Mr. Shteyn.

128. While the BI&E witness alleged that, generally, water and sewer leaks can cause soil instability below gas pipelines, BI&E presented no evidence of any water or sewer leak actually occurred. PGW St. 1-R at 29.

129. BI&E’s witness admitted to having no knowledge of soil types, softness, compaction or other characteristics present at 815 Jackson St or their conditions either at the time of the incident or before. NT at 85–86.

130. BI&E was “unaware” of the condition of the site in September 2021 or at anytime prior to the explosion. NT at 27.

131. While BI&E’s witness alleged that the “sidewalk was sunken” above PGW’s main at 815 Jackson Street (BI&E St. No. 1 at 10), BI&E’s witness admitted that this information was from the night of the incident and would not have been observable when PGW responded to the One Call and marked its facilities. NT at 25–27.

APPENDIX A

132. While BI&E's witness alleged PGW's personnel should have observed "newer sidewalk and pavement sections [and] signs of fresh pavement on the street in front of 815 Jackson Street" (BI&E St. 1 at 11), BI&E's position failed to prove any causal connection between surface repaving and PGW's UST bulletins since repaving occurred as part of the excavations after the One Call markings were made. PGW St. 1-R at 30; NT at 25–27.

133. BI&E's witness could not identify or speculate on when the cavity found below the sidewalk at 815 Jackson Street actually formed. NT at 28.

134. BI&E's witness admitted that the cavity just below the sidewalk did not expose PGW's main and was found to a depth of 17 inches below the street surface at some distance above PGW's buried main found at 24 inches or deeper at 815 Jackson Street. NT at 28–30.

135. Despite photographic evidence to the contrary, BI&E's witness "can't answer" whether PGW's main was completely surrounded and supported by soil when excavated on November 30, 2021. NT at 30–31.

136. BI&E's witness misinterpreted the photographs of post-excavation to form her belief that the sidewalk "had sunken in and had hit the main" NT at 31–32.

137. When pressed further, BI&E could not point to any physical evidence, either photographs or otherwise, to support BI&E's conclusion that PGW's main was not supported or surrounded by soil prior to the excavation on November 30, 2021. NT at 32–33.

138. BI&E's witness stated "[i]'m unable to answer that" regarding the fact that PGW's main, when excavated, was completely supported and surrounded by soil on November 30, 2021. NT at 33.

139. BI&E's witness contradicted her prior testimony:

APPENDIX A

Q. So you're not aware of any evidence of a span or unsupported segment of the main that was discovered on November 30th, 202[1]?

A. I'm not.

NT at 33.

140. While BI&E's witness jumped to the conclusion that the main at 815 Jackson Street broke due to "failures on third-party sewer systems" and related excavations by third parties (BI&E St. No. 1 at 25), on cross examination BI&E's witness could not produce any evidence to support her conclusions. NT at 38.

141. BI&E's witness admitted that the Forensic Consultants of North America ("FCNA") report (BI&E Exhibit 10) did not find that the break was caused by "failures on third-party sewer systems." NT at 38–41.

142. BI&E's witness admitted that the Affiliated Engineering Laboratories ("AEL") report (BI&E Exhibit 9) did not find that the break was caused by "failures on third-party sewer systems." NT at 41.

143. BI&E's witness testified that FCNA or AEL's conclusions were not "definitive conclusions" to support her opinion that the break was caused by "failures on third-party sewer systems." NT at 42.

144. BI&E's witness could not identify which, if either, of the plumbers involved (Clements or Lepore) caused undermining, if any, to PGW's main. NT at 42–43.

145. BI&E's witness could not identify how close the excavations by Clements or Lepore actually occurred to PGW's main besides being in the "immediate vicinity." NT at 43.

146. BI&E's witness provided no evidence that either Clements or Lepore exceeded the excavation areas stated in their One Call tickets. NT at 43–44.

APPENDIX A

147. BI&E's witness admitted that all of the excavation at 815 Jackson Street occurred outside the statutory 18-inch tolerance zone from the outside wall of PGW's facilities. NT at 44–45.

148. BI&E's witness testified that the repairs of sewer curb trap identified in the One Call tickets at Exhibits 6–8 do not indicate total sewer failure or sewer leaks:

Q. But just to be clear, repairing a sewer curb trap that does not indicate a total sewer failure or does not even indicate any leaks. Does it?

A. It does not. The One Call ticket does not specifically have to state whether it was a repair or -.

Q. But the general - the repair of a sewer curb trap, -

A. Uh-huh (yes).

NT at 45–47.

149. BI&E's witness stated she “wouldn't be able to answer” whether repairing a sewer curb trap seven feet away from PGW's main indicates any cause and effect for any undermining of PGW's facilities. NT at 47.

150. BI&E elected not to interview any of the plumbers (Clements or Lepore) regarding any of their backfilling techniques, observations, or anything related to what may have been observed by them and not reported to PGW or any other party. NT at 47.

151. BI&E's position regarding completing its investigation into the plumber's observations or activities was that such investigation was not necessary because “[BI&E does] not have jurisdiction over plumbers” and that BI&E was “not required to” investigate any impact of municipal and privately owned infrastructure. NT at 47–48.

152. BI&E elected not to attend the FCNA site visit on January 12, 2022 following the incident, which included PGW, FCNA, and Clements plumbing. NT at 48.

APPENDIX A

153. BI&E's witness "could not speculate" whether the January 12, 2022 site visit with FCNA, PGW, and the plumbers would have aided BI&E's investigation and provided a factual basis for their complaint. NT at 48–49.

154. BI&E's witness did not know whether PGW's cast iron main was ever exposed during the excavations in September 2021 and did not present any evidence to support the speculation that PGW's main was ever exposed. NT at 51.

155. BI&E did not undertake a complete investigation to determine any other possibilities involved that could have caused the crack in PGW's gas main. NT at 52.

156. BI&E's prosecutorial theory rests on the belief that PGW employees did not continuously observe contractor activities during excavation and did not generate a UST order. NT at 52–54.

157. BI&E's prosecutorial theory rests on 49 C.F.R. § 192.605 and the direction for PGW to follow its procedures. NT at 54.

158. BI&E's witness admitted that 49 C.F.R. § 192.605 does not contain any prescriptive requirements for PGW to "observe, inspect or monitor excavators." NT at 55.

159. BI&E's witness admitted that the only prosecutorial support for the case cited is BI&E's interpretation of PGW's bulletins and procedures, not that PGW violated any written law, regulation, or Commission order. NT at 56:17–19.

160. BI&E knew that nearby municipal and privately owned infrastructure could have been a contributing cause of the incident, but elected not to interview, probe, or investigate the facts involved with those infrastructures or excavations thereon. NT at 64.

161. BI&E's witness was familiar with the 8th Street Settlement approved by the Commission at Docket No. C-2022-3033834. NT at 64–66; *see also* PGW St. 1-R at 7, 47–51.

APPENDIX A

162. BI&E's witness was specifically aware of the amendments to PGW's street trouble processes in Section 5 of the 8th Street Settlement, including the "trigger points" to institute enhanced UST investigations. NT at 67.

163. Based on the "trigger points" implemented at Docket No. C-2022-3033834, BI&E's witness could not state whether, hypothetically, those trigger points would have even obligated PGW to be present during the two excavations on Jackson Street in September 2021. NT at 69.

164. BI&E's witness agreed that "nothing in [the 8th Street] settlement shall impose on PGW any obligation after marking to be present during subsequent excavation, except as required under Section 5.3." NT at 70.

165. BI&E's witness agreed that PGW is obligated to act under 49 C.F.R. § 192.459 when it has direct knowledge of the exposure of pipeline facilities, but agreed that there was no evidence that PGW's mains were exposed in this case. NT at 70–71.

166. BI&E's witness agreed that the 8th Street Settlement does not require PGW to be present at any excavations for the duration of third-party work. NT at 74.

167. BI&E's witness agreed that the 8th Street Settlement is not inconsistent with PGW's bulletins. NT at 74.

168. BI&E's witness, therefore, admitted under oath that PGW did not violate any of its bulletins or procedures regarding the excavations that occurred in September 2021 at 815 Jackson Street. NT at 74.

169. The BI&E testimony does not recognize the obviously different time frames here – that these third-party activities were undertaken after PGW personnel marked the PGW facilities and so could not have been observed by them. PGW St. 1-R at 30.

APPENDIX A

170. BI&E's position that newer sidewalk and pavement sections at the time of the explosion have no causal relationship to PGW's One Call marking obligations and adherence to its bulletins. PGW St. 1-R at 30.

APPENDIX B

PHILADELPHIA GAS WORKS' **PROPOSED CONCLUSIONS OF LAW**

In accordance with Commission Regulations at 52 Pa. Code §§ 5.501–5.502, and Your Honor’s November 18, 2025 Briefing Order, Respondent Philadelphia Gas Works (“PGW”) respectfully submits the following proposed conclusions of law.

1. As the proponent of a rule or order, BI&E has the burden under Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a), to prove the elements of their claims by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Commw. Ct. 1990), *app. denied*, 602 A.2d 863 (Pa. 1992).

2. To establish a fact or claim by a preponderance of the evidence means to offer the greater weight of the evidence, or evidence that outweighs, or is more convincing than, the probative value of the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

3. To satisfy their burden of proof, BI&E must show that PGW is responsible or accountable for the problems alleged in the complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. P.U.C. 196 (1990). “The offense must be a violation of the Public Utility Code (Code), a Commission Regulation or Order or a violation of a Commission-approved tariff.” *Baker v. SPLP*, Docket No. C-2018-3004294, Opinion and Order at 6 (Order entered Sept. 23, 2020) (citing 66 Pa. C.S. § 701) (“*Baker*”).

4. The Commission’s adjudications must be supported by “substantial evidence” in the record. 2 Pa. C.S. § 704; *Lansberry*, 578 A.2d at 602. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Consolidated Edison Co. of New York v. NLRB*, 305 U.S. 197, 229 (1938).

5. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980);

APPENDIX B

Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa. Super. Ct. 1961); *Murphy v. Comm. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Commw. Ct. 1984).

6. A legal decision must be based on real and credible evidence found in the record of the proceeding. *Pocono Water Co. v. Pa. PUC*, 630 A.2d 971, 973–74 (Pa. Commw. Ct. 1993); *Duquesne Light Co. v. Pa. PUC*, 507 A.2d 433, 437 (Pa. Commw. Ct. 1986).

7. Upon presentation of evidence sufficient to initially establish a *prima facie* case, the burden to rebut BI&E’s evidence shifts to the respondent. If the evidence that the respondent presented is of co-equal weight, then BI&E has not satisfied its burden of proof. BI&E now must provide some additional evidence to rebut that of the respondent. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Commw. Ct. 1982), *aff’d*, 461 A.2d 1234 (Pa. 1983).

8. While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts—the burden of proof always remains on complainant as the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Commw. Ct. 2001).

9. The Commission’s regulation at 52 Pa. Code § 59.33, promulgated pursuant to 66 Pa. C.S. § 1501, requires that natural gas public utilities meet minimum safety standards consistent with the federal pipeline safety laws at 49 U.S.C. §§ 60101–60503 and federal regulations at 49 C.F.R. § 192.

10. Under Section 1501 of the Code, “[e]very public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities.” 66 Pa. C.S. § 1501.

11. To find that PGW’s actions were unsafe requires proof that it violated existing regulatory pipeline safety standards at 49 C.F.R. § 192. *See, e.g., Smalls, Sr. v. UGI Penn Natural*

APPENDIX B

Gas, Inc., Docket No. C-20142421019, 2014 WL 6807073 (Initial Decision entered Oct. 24, 2014) (Ember S. Jandebeur, J.) (Final by Act 294, Dec. 30, 2014) (reasoning because there are safety regulations that apply to gas pipelines, but there was no federal or state regulation that prohibited the specific action of placing a gas line within close proximity to a home, there cannot be a violation since there was not a set standard finding a safety violation where complainant failed to show violation of relevant portion of 49 C.F.R.); *Bennett v. UGI Central Penn Gas, Inc.*, Docket No. F-20132396611, 2014 WL 1747713 (Initial Decision entered Apr. 10, 2014) (David A. Salapa, J.) (Final by Act 294, May 29, 2014) (“In the absence of any evidence that [UGI] failed to comply with these regulations [49 CFR 191-93, 195, 199], I cannot conclude that [UGI] acted unreasonably or violated any Commission regulation in failing to prevent the leaks that occurred at the Complainant’s property.”).

12. Here, to find that PGW’s actions were unsafe, BI&E must prove by a preponderance of the evidence that PGW violated any applicable regulatory standard in 49 C.F.R. § 192.

13. “Complainant’s assertions, regardless of how honest or strong, cannot form the basis of a finding . . . since assertions, personal opinions or perceptions do not constitute factual evidence.” *Herring v. Metropolitan Edison*, Docket No. F-2016-2540875, 2017 WL 3872590 at 3 (Order entered Aug. 31, 2017) (citing *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)).

14. The Commonwealth Documents Law and the Independent Regulatory Review Act require that regulatory changes occur through notice and comment procedures with accompanying governmental review, not as the result of administrative adjudications. *Baker* at 26.

APPENDIX B

15. Pennsylvania Rule of Evidence 702 establishes the standard for the admission of expert testimony, as follows:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge is beyond that possessed by the average layperson;
- (b) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; and
- (c) the expert's methodology is generally accepted in the relevant field.

Pa. R.E. 702.

16. The Pennsylvania Rules of Evidence, including Rule 702, are applied by the Commission in its administrative hearings and proceedings. *See Randall v. PECO Energy Co.*, No. C-2016-2537666, 2019 WL 2250792, at *43 (Order entered May 9, 2019) (citing *Gibson v. WCAB*, 861 A.2d 938, 947 (Pa. 2004) (holding, in part, that notwithstanding 2 Pa. C.S. § 505, which mandates a relaxation of the strict rules of evidence in agency hearings and proceedings, the “evidentiary Rules 602, 701, and 702 are applicable to agency proceedings in general”).

17. An expert opinion exhibiting equivocation and speculation based on mere possibilities is not competent evidence. *Vertis Group, Inc. v. Duquesne Light Co.*, 2003 WL 1605744, Docket No. C-00003643 (Order entered Feb. 24, 2003), *aff'd*, 840 A.2d 390 (Pa. Commw. Ct. 2003), *app. denied*, 859 A.2d 770 (Pa. 2004); *see also Povacz v. PECO Energy Co.*, Docket No. C-2015-2475023, Opinion and Order at 61–62 (Opinion and Order entered Mar. 28, 2019), *aff'd in relevant part*, Dkt. No. 492 C.D. 2019, 241 A.3d 481, 2020 WL 5949866 (Pa. Commw. Ct. Oct. 8, 2020).

18. If a party is relying upon circumstantial evidence to reasonably infer a factual conclusion, “the evidence must be adequate to establish the conclusion sought and must so

APPENDIX B

preponderate in favor of that conclusion so as to outweigh . . . any other evidence and reasonable inferences therefrom which are inconsistent therewith.” *Monaci v. State Horse Racing Com'n*, 717 A.2d 612, 618 (Pa. Commw. Ct. 1998), 717 A.2d at 618 (quoting *Flagiello v. Crilly*, 187 A.2d 289, 290 (Pa. 1963)).

19. BI&E has not met its burden to prove that either PGW’s Bulletins 54, 312, and 314 or any action by PGW prior to, on or after November 30, 2021, violated any law, regulation, or Commission order and, thus, cannot obtain any relief. *W. Penn Power Co. v. Pa. PUC*, 478 A.2d 947, 949 (Pa. Commw. Ct. 1984) (“We hold that in order for the PUC to sustain a complaint brought under this section [66 Pa. C.S. § 1501], the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require any action by the utility.”).

20. BI&E has failed to identify any provision under any federal or state law, including regulations, or any PGW Bulletin that requires PGW to be present at to monitor routine sewer service line maintenance of individual household sewer traps absent notice or observed UST.

21. BI&E has failed to demonstrate that the One Call tickets for the repair of sewer traps at 813 and 815 Jackson Street provided notice of a UST in PGW’s gas distribution system in the 800 block of Jackson Street, particularly where the One Call tickets did not indicate that there would be any excavation activity in the vicinity of the PGW lines or crossing/undermining PGW’s main, given the more than seven feet of separation involved.

22. BI&E has failed to demonstrate that the One Call tickets for the repair of a sewer lateral provided notice of a “sewer system failure” under PGW’s Bulletins. The One Call tickets were routine One Call events and repair of a sewer trap fails to rise to the level of a sewer “system failure.”

APPENDIX B

23. BI&E has failed to demonstrate that three prior breaks over twelve years in the northside main serving 815 Jackson Street (in 2009, 2010 and 2016) provided notice to PGW of UST or required PGW to be present and observe sewer service line excavations on Jackson Street particularly where the One Call tickets did not indicate that there would be any excavation activity in the vicinity of the PGW lines or crossing/undermining PGW's main, given the more than seven feet of separation involved.

24. PHMSA regulations at 49 CFR § 192.605(a) requires that: "Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response." PGW's Bulletins constitute the manuals of written procedures under 49 CFR § 192.605(a) and are in compliance with PHMSA and Commission regulations.

25. BI&E has not demonstrated that PGW "failed to follow" Bulletin 312.

26. PGW employees fulfilled the purpose of the mission statement of Bulletin 312 by accurately marking the location of the gas main while reviewing the site for evidence of UST, thereby rendering "assistance to safeguard PGW facilities."

27. Bulletin No. 312 specifies that: "Upon receipt of notice of water or sewer system failures, or surface conditions, such as cavities or cave-ins which may be caused by such failures, the location of gas pipeline facilities shall be determined. Where pipeline facilities may be affected, appropriate personnel shall be dispatched promptly to determine the effect of the failure on pipeline facilities."

28. Given that there was no notice or information regarding a sewer system failure or any other adverse underground conditions, BI&E has not demonstrated that PGW was not in compliance with and followed Bulletin 312.

APPENDIX B

29. BI&E has not demonstrated that PGW “failed to follow” Bulletin 313.

30. The operative directive of Bulletin 313 requires that: “When performing a pipeline patrol, the inspector should be looking for any activity or changes in the environment that could affect the safety of the pipeline.”

31. PGW complied with Bulletin 313 because the Damage Prevention Inspectors were alert for adverse conditions and observed no “damage to a pipeline, loss of support due to settlement or shifting of soil around a pipeline, undermining or damage to a pipeline support, or loss of cover or excess fill.

32. BI&E has not demonstrated that PGW “failed to follow” Bulletin 54.

33. Bulletin 54 states that before any action is directed on PGW’s part, including a UST investigation, the trouble must be noticed by PGW personnel or brought to PGW’s attention.

34. PGW complied with Bulletin 54 because no trouble was noticed by PGW personnel or brought to PGW’s attention. The Damage Prevention Inspectors were alert for adverse conditions that might affect the main and observed no UST. Nor was any adverse condition reported by the excavators.

35. BI&E has not demonstrated that PGW “failed to follow” Bulletins 312, 313 and 54 inasmuch as no adverse condition was ever discovered at 815 Jackson Street, including during the post incident investigation when the main was observed to be fully supported.

36. Given that PGW complied with Bulletins 312, 313 and 54, BI&E has not demonstrated that PGW violated PHMSA regulations at 49 CFR § 192.605(a).

APPENDIX B

37. BI&E did not demonstrate that PGW violated 49 C.F.R. § 192.703(b). Once the crack was discovered in front of 815 Jackson Street, the entire section (the full 800 block) of the north side main was removed from service and replaced.

38. BI&E did not demonstrate that PGW violated PHMSA regulations in any way.

39. BI&E did not demonstrate that PGW failed to exercise reasonable care in protecting the public safety and, therefore, was not in compliance with 52 Pa. Code § 59.33.

40. BI&E has failed to demonstrate that PGW violated 66 Pa.C.S. § 1501.

41. BI&E agreed to and signed the Commission-approved Settlement from *BI&E v. PGW*, Docket No. C-2022-3033834 as approved on January 8, 2025. (the “8th Street Settlement”).

42. A requirement to be on-site where there are two (or more) One Call tickets involving sewer or water service lines in the absence of observable adverse conditions was not approved by the Commission or included in the 8th Street settlement between BI&E and PGW.

43. In the 8th Street Settlement, BI&E agreed, and the Commission affirmed that:

Nothing in this settlement shall impose on PGW any obligation, after marking, to be present during subsequent excavation, except as required under Section V(3) above.

8th Street Settlement at 31–33.

44. Fines apply under 66 Pa. C.S. § 3301 only where a utility company is found to “violate any of the provisions of this part, or shall do any matter or thing herein prohibited; or shall fail, omit, neglect, or refuse to perform any duty enjoined upon it by this part.”

45. Strict liability is not the standard for utility regulation in Pennsylvania when imposing fines under 66 Pa. C.S. § 3301.

46. BI&E has failed to demonstrate that PGW violated the Public Utility Code, any Commission regulation or any Commission order.

APPENDIX B

47. The decision of whether to levy a civil penalty against PGW must heavily consider the fact that PGW is a municipally owned, cash-flow utility with no shareholders, and that any civil penalty would be recouped from PGW's own customers.

48. While this in and of itself does not eliminate consideration of civil penalties for PGW, the Commission is cognizant of PGW's unique circumstances and ultimate impact a civil penalty has on ratepayers. *See Statement of Chairman DeFrank and Commissioner Zerfuss*, Docket No. C-2022-3033834 (Jan. 8, 2025).

49. BI&E has failed to meet its burden of proof to show that a civil penalty is appropriate under the circumstances of this case.

APPENDIX C

PHILADELPHIA GAS WORKS' **PROPOSED ORDERING PARAGRAPHS**

In accordance with Commission Regulations at 52 Pa. Code §§ 5.501–5.502, and Your Honor’s November 18, 2025 Briefing Order, Respondent Philadelphia Gas Works (“PGW”) respectfully submits the following proposed Ordering Paragraphs:

IT IS ORDERED:

1. That the Complaint of the Bureau of Investigation and Enforcement at Docket No. C-2024-3052277 against Philadelphia Gas Works is dismissed with prejudice.
2. That Docket No. C-2024-3052277 be marked closed.