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February 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") Reply Brief with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Bryce R. Beard

BRB/jls
Enclosure

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 Reply 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: February 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’
REPLY BRIEF**

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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 Reply Brief on the merits of the above-captioned Complaint filed by the Commission’s Bureau of Investigation and Enforcement (“BI&E”) in response to the Main Brief submitted by BI&E on January 13, 2026.

II. SUMMARY OF REPLY ARGUMENT

As was stated in PGW’s Main Brief, this complaint should never have been filed, as there is no cause of action. In the final analysis, BI&E can posit no law or facts that would even remotely justify that a civil penalty of \$300,000.00 be imposed upon PGW and its ratepayers. Doing so would constitute reversible error on appeal, lacking in any supporting evidence and based upon a total misinterpretation of law.

As the record shows, the case presented by BI&E has been a series of incomplete explorations. The initial BI&E investigation concluded that the third-party excavation of a sewer trap caused a loss of support under PGW’s main that lead to a crack in PGW’s cast-iron, but BI&E *never* interviewed the excavator. Instead, BI&E filed a complaint against PGW for not having its employees oversee the excavation. The case was then presented by a witness with no firsthand knowledge, relying instead on secondary sources to claim PGW’s main had lost underlying support. Yet, on the record, BI&E’s witness conceded that there was no evidence of a loss of support under the gas main and acknowledged PGW’s presentation of firsthand, photographic evidence that the main was in-fact “fully supported” when excavated.

Further, BI&E’s Main Brief fails to address the evidentiary record in any meaningful way. Despite bearing the burden of proof, BI&E neither acknowledges nor rebuts the substantial record evidence contradicting its case-in-chief. Instead, BI&E advances its arguments as though

the evidentiary record developed by PGW *does not exist*. BI&E does not address contrary evidence and presents a one-sided narrative which directly violates the Commission’s procedural requirements for BI&E’s Main Brief. Under the Commission’s regulations, the party with the burden of proof must confront and address all issues raised by the evidence of record.¹ BI&E’s failure to address substantial portions of the record prejudices PGW, as BI&E appears to withhold arguments for its Reply Brief - where PGW will have no opportunity to respond.

BI&E’s Main Brief, while acknowledging that notice of Underground Street Trouble (“UST”) is required, contrives a factual scenario where PGW “should have known” that there was UST at 815 Jackson Street when, in actuality, *no UST ever existed*. Worse, BI&E’s “should have known” theory ignores controlling federal regulatory history, which *expressly rejected* a “should have known” basis for prosecutorial enforcement when these regulations were enacted - a fact BI&E has not disclosed to Your Honor or the Commission.

Building on its departure from binding regulatory history, BI&E seeks civil penalties based on a federally rejected “should have known” standard, effectively imposing strict liability for any cast-iron main explosion - regardless of fault, actual notice, or the existence of a UST – based on PGW’s Bulletins. Yet, the record shows that PGW’s Commission-reviewed Bulletins² comply with federal regulations and similarly contain no such “should have known” standards. Moreover, PGW’s employees complied with the bulletins, and BI&E failed to show otherwise. Ultimately, BI&E also acknowledges that PGW’s existing bulletins already satisfy the definitive

¹ 52 Pa. Code § 5.501(a)(3) (“The party with the burden of proof shall, in its main or initial brief, completely address, to the extent possible, every issue raised by the relief sought and the evidence adduced at hearing.”).

² The pertinent Bulletins include No. 54, 312, and 313.

criteria established in the Commission-approved 8th Street Settlement,³ and that no additional remedial measures are required. (i.e., the trigger points).⁴

As to substance, BI&E’s principal alleged basis for asserting PGW’s liability in this situation consists of a list of fifteen things that PGW allegedly “knew” and which, it argues, now *post-hoc* imposes an obligation on PGW to attend and monitor third party excavations, including the routine repair of sewer service line traps, even in the absence of any observed or reported UST. These fifteen observations designed as regulatory enforcement criteria were *never* pleaded in the Complaint, *never* offered through BI&E’s witness, and *never* developed in the evidentiary record. They do not appear as defined factors in any PUC regulation, Federal regulation, policy statement, or prior order. If accepted, BI&E’s new hindsight-driven prosecutorial framework would lead to the *post-hoc* imposition of a costly and ultimately unworkable obligation upon PGW to monitor *tens of thousands* of sewer, water, and other excavations in Philadelphia’s streets which it marks out each year under the One Call law. It would also presumably hold all other Pennsylvania natural gas distribution utilities to this same unworkable and unreasonable standard of care.

Nor is BI&E’s position consistent with the law. For example, the BI&E Main Brief expends many pages in a reaching attempt to define “knowledge,” as required in 49 C.F.R. § 192.755, to mean that only speculative, circumstantial information is necessary for a utility to have “knowledge” of a condition, based upon references to non-germane resources such as Black’s Law Dictionary. In attempting to rewrite the federal regulations, BI&E ignores the fact

³ *BI&E v. PGW*, Docket No. C-2022-3033834, Opinion and Order (Order entered Jan. 8, 2025) (“8th Street Settlement”)

⁴ BI&E’s witness conceded on the record that PGW’s conduct at Jackson Street was in compliance with the 8th Street trigger points. NT at 69. See also BI&E Main Brief at 47 (“... the 8th Street Settlement and ordered the implementation of corrective actions that were substantially similar to terms a-e above.”).

that this “should have known” theory of liability was *expressly rejected* by the U.S. Department of Transportation that drafted the rule *when the rule was written* because it is too vague, confusing, and offered no guidance as to the lengths that operators, such as PGW, would have had to go to learn of underground support disturbances. BI&E identifies no authority allowing it to contradict the federal agency’s interpretation of the rule it authored, 49 C.F.R. § 192.755.

Nor are PGW’s Bulletins susceptible to BI&E’s improper “should have known” *post-hoc* interpretation as discussed in PGW’s Main Brief.⁵ Clearly, under the plain reading of PGW’s Bulletins and Pennsylvania case law regarding “notice,” actual knowledge of the pipeline condition is required – and not simply constructive or speculative knowledge. BI&E’s artificial construct is an attempt to bootstrap its case to overcome the admitted fact that there was no actual notice of the need to take steps to prevent a line break – a fact which invalidates the entire prosecution.

As a result of these numerous failings, PGW urges Your Honor to find that:

1. BI&E failed to present legally competent, non-speculative expert testimony to demonstrate the causes and circumstances surrounding the cast iron main break at 815 Jackson Street and the evidence presented is inadequate to maintain BI&E’s burden of proof;
2. The federal agency, when promulgating the rules which BI&E seeks to enforce, expressly stated that *actual knowledge* of hazard was required before the obligation to cure was triggered;
3. The PGW Bulletin requirement of notice refers to *actual knowledge* and *notice*;
4. The failure of BI&E, as the party with the burden of proof, to address in its Main Brief any of the contrary evidence and issues raised by PGW in testimony and on the record, requires a ruling that BI&E may not address them in Reply Brief and such arguments have been waived by BI&E;
5. The fifteen-factor listing created in BI&E’s Main Brief is not of record and should be disregarded and, if considered, should be rejected;
6. BI&E has failed to articulate any basis upon which a \$300,000.00 civil penalty should be imposed on PGW and its ratepayer; and
7. BI&E’s complaint should be dismissed in its entirety.

⁵ PGW Main Brief at 31–36.

III. BURDEN OF PROOF

A. BI&E's Main Brief Fails to Meet its Burden of Proof, Violates Clear Commission Procedural Regulations, and Effectively Waives Any Right to Respond to PGW's Rebuttal Case in Reply Brief.

The arguments and evidence recited in BI&E's Main Brief and proposed Finding of Fact focus largely on the pleadings and its own main case and *completely ignores PGW's rebuttal evidence, the majority of the record adduced at hearing, and all of the issues raised by PGW in opposition*. In doing so, BI&E has waived its opportunity to respond to PGW's rebuttal case in its Reply Brief. If it addresses this evidence and issues in Reply Brief, its arguments should be disregarded.

While BI&E's Main Brief acknowledges that PGW filed two testimonies in rebuttal,⁶ it totally ignores the factual and legal disagreements contained therein. Its Main Brief only references the PGW testimony to support background facts, such as the number of customers served,⁷ or otherwise to support its case-in-chief.⁸ Even when citing to PGW testimony, BI&E's Main Brief avoids addressing any content that contradicts BI&E's main case.⁹

The following are examples of significant evidence of record presented by PGW that BI&E's Main Brief chooses not to address:

- The undisputed testimony by PGW that the cracked main in front of 815 Jackson Street was fully supported when excavated after the incident, including the BI&E witnesses'

⁶ BI&E Main Brief at 1, 3.

⁷ BI&E Main Brief at 4.

⁸ PGW's cast iron replacement schedule. BI&E Main Brief at 6. Or the fact that a third-party performed a sewer trap repair. BI&E Main Brief at 9. Or to reference quotations from the Bulletins. BI&E Main Brief at 14. Or to support the general notions contained in the fifteen factors that cast iron can become brittle or "sewer system" failure can cause scouring. BI&E Main Brief at 10-11, 27-28, 35-36.

⁹ When citing PGW testimony regarding the cost of the explosion, the BI&E Main Brief selectively disregards the correction to BI&E's direct case that "property damage" was not \$104,269.62, instead of the \$55,000 specified in PGW's rebuttal. BI&E Main Brief at 17 (citing PGW St. 1-R at 22 which states: "A total "cost" of \$104,269.92 is accurate but the breakdown is not. Damage to property (buildings and cars) was estimated to be \$55,000 with the remaining costs being incurred by PGW for site restoration and lab testing.").

concession on cross examination that there was no evidence to prove the claim that underlying support had been lost.¹⁰

- The alternative causes of the break suggested by PGW and the BI&E witnesses concession that there was no evidence that the sewer facilities were leaking in front of 815 Jackson Street.¹¹ Rather, the BI&E Main Brief simply restates that the break was caused due to the lack of support during the sewer line excavation performed by Clements Brothers to whom BI&E never spoke.¹²
- The millions of dollars in costs and the operational difficulties of being forced to become the “street sheriff” for third-party excavation on tens of thousands of One Call tickets across thousands of miles of gas mains.¹³
- The fact that these were routine One Call tickets and there was no observation of UST by the highly trained Damage Prevention Inspectors.¹⁴

These critical disagreements are key to resolving the dispute among the parties, yet there are no Findings of Fact proposed by BI&E that would rebut those facts offered in PGW’s testimony as set forth in PGW’s proposed Findings of Fact. In other words, BI&E’s Main Brief implies that its case is *unchallenged*, devoid of any conflicting evidence adduced by PGW.

This failure to engage the full record constitutes a failure of BI&E to meet its burden of proof, is prejudicial to PGW, and is contrary to the Commission’s regulations. BI&E’s burden as the complainant includes addressing and rebutting contrary evidence *in its Main Brief*. The burden of going forward shifted back to BI&E when PGW offered its testimony.¹⁵ As the party bearing the overall burden of proof, BI&E was required to address and rebut PGW’s evidence – including the testimony offered at hearing and the cross examination of witnesses. BI&E’s failure to engage with this evidence violates its continuing burden of proof and undermines PGW’s due process rights. By (likely) reserving discussion on any contrary evidence or its failed

¹⁰ See, for example, PGW Main Brief at 25 and 41; Proposed FOF 58 and 134–49.

¹¹ See, for example, PGW Main Brief at 23, 24–25 and 33; Proposed FOF 58 and 134–49.

¹² BI&E Main Brief at 21–22 (citing to BI&E St. 1 at 25; BI&E Exhs. 9, 10) (“The cast iron main cracked due to downward bending forces applied to the cast iron main and loss of support because of soil instability and undermining below and around the cast iron main caused by sewer system failures, and the resulting excavations to repair the sewer system failures, immediately adjacent to the cast iron main.”)

¹³ PGW Main Brief at 18; PGW Proposed FOF 96–99.

¹⁴ PGW Main Brief, *Passim*; PGW Main Brief at 40–41; PGW Proposed FOF 22.

¹⁵ PGW Main Brief at 12.

burden until its reply brief, BI&E has effectively denied PGW any opportunity to respond to BI&E's position on substantial portions of the evidentiary record that were developed only after BI&E presented its direct case.

BI&E's failure to forthrightly review all evidence presented and arguments made is unequivocally contrary to 52 Pa Code §5.501(a)(3), which expressly requires that:

The party with the burden of proof shall, in its main or initial brief, *completely address, to the extent possible, every issue raised by the relief sought and the evidence adduced at hearing.*¹⁶

This regulation was promulgated in 1984 as part of the introduction of specific procedural rules applicable to the Commission's practice, rather than the Commonwealth's more generic Administrative Code.¹⁷ It has been the rule ever since. PGW has located cases where a minor breach of this rule has occurred on specific issues in a case,¹⁸ but extended research discloses *no instance where all contrary issues and all contrary evidence was so thoroughly ignored so as to encompass the complete rebuttal case adverse to BI&E's position as done here.*

If BI&E waits until the Reply Brief to address PGW's testimony and responsive case, that *denies* PGW its due process opportunity to respond to BI&E's legal position on a large portion of evidence and argument that was developed on the record after BI&E's original testimony was filed. In doing so, BI&E will have unfairly reserved any discussion of contrary

¹⁶ 52 Pa Code § 5.501(a)(3) (emphasis added).

¹⁷ 14 Pa. B. 3819, available at <https://digitalcollections.statelibrary.pa.gov/documents/mirador/125261>.

¹⁸ *Pa. PUC Office of Consumer Advocate v. City of Lancaster – Sewer Fund*, Docket No. R-00049862 (Opinion and Order entered Aug. 26, 2025) (“The ALJ recommended that the OCA methodology for separating stormwater from sanitary sewer flows be accepted as reasonable for this proceeding. The ALJ concluded that since the City did not include its criticisms of the OCA methodology in its briefs, these contentions are waived. 52 Pa Code § 5.501(a)(3); *Jackson v. Kassab, supra.* (R.D. at 22).”); *Application of Interstate Energy Co.*, Docket No. A-00140200 (Initial Decision Aug. 11, 1994), at 6–7 (reasoning that Section 5.501(a)(3) “requires that parties address to the extent possible every issue raised by the relief sought and the evidence adduced at the hearing”) (emphasis in original); *Core Commc'ns, Inc. v. Verizon Pa., LLC*, Docket No. C-2014-2406550 (Initial Decision Apr. 3, 2015), at 34–35 (“Although 52 Pa. Code § 5.501(a)(3) requires that the party with the burden of proof ‘completely address’ the evidence, Core’s brief completely ignores these issues, even though both parties discussed Mr. Mingo’s misleading e-mails in their written testimony and Mr. Mingo addressed the matter at length on cross-examination. . . . Core’s entrance facility and TELRIC transport charges are denied.”).

argument to itself for reply brief. This practice also denies Your Honor and the Commission a full and complete review of the record and arguments in the case.

Under these circumstances, Your Honor should find that BI&E has not met its burden of persuasion, that arguments contrary to those set forth by PGW in testimony are waived, and BI&E's complaint is properly dismissed. In the alternative, little or no weight should be given to such arguments, as BI&E has unfairly denied PGW the opportunity to respond.

IV. REPLY ARGUMENT

A. BI&E’s Legal Position That PGW Should Be Held Liable for the Incident at 815 Jackson Street Because PGW “Should Have Known” That an Excavation Could Potentially Result in a Loss of Main Support is Contrary to the Governing Federal Rules, Pennsylvania Law, and the Plain Language of PGW’s Bulletins.

Neither the original two-part test testified to by the BI&E witness nor the fifteen-factor test now presented in BI&E’s Main Brief show that PGW possessed actual knowledge of any UST at 815 Jackson Street. As discussed below, BI&E’s Main Brief proposes a list of extra-record fifteen generic observations which stand for a “should have known” rationalization that would compel PGW’s attendance and monitoring at *tens of thousands of excavations* across *thousands of miles* of distribution mains each year at a cost of tens of millions to counter the mere possibility that a UST could be discovered, when there was none noted by PGW’s trained personnel initially in the field at any time.

As discussed in PGW’s Main Brief, this proposition is factually unsupportable because there *was no UST at 815 Jackson Street and there was no loss of support for that main.*¹⁹ In Main Brief, BI&E nevertheless states that the main cracked due to the loss of underlying support – ignoring unrebutted facts of record disproving this allegation and showing it to be based purely on speculation. This is a critical failing in BI&E’s argument, but the contradiction is simply unaddressed, disregarded, and ignored.

BI&E’s legal analysis is even more flawed than its factual recitation. The degree of “knowledge” and “notice” required before PGW acts to monitor third-party excavation is the gravamen of BI&E’s case. Yet, the BI&E Main Brief confuses the terms and appears to argue that constructive knowledge is actual knowledge *when it is not under the law.*

¹⁹ PGW Main Brief at 22–25.

The record is clear about the specific terms used in various documents:

- 49 C.F.R. § 192.755: “[W]hen an operator *has knowledge* that the support for a segment of a buried cast-iron pipeline is disturbed.”
- Bulletin 312: “Upon *receipt of notice*.”
- Bulletin 54: “[N]oticed by PGW personnel or brought to PGW’s attention.”

In Main Brief, BI&E recognizes that notice of UST is required but then continues on to impute notice from what it concedes are mere circumstantial and germane facts. Indeed, the fifteen factors are so vague as to not even constitute “constructive notice” of a UST under the law.

BI&E cites no precedent supporting its interpretation of the federal rule’s “knowledge” requirement and instead advances a result-oriented definition of its own creation. Although BI&E concedes the federal regulations do not define “knowledge,” it goes on to cite no legal precedent, but rather basic sources which, even then, underscores that actual notice or observation is required to prosecute PGW.

On the legal meaning of the term “notice,” as used in PGW’s Bulletins, BI&E singularly focuses on a 2018 tariff rate dispute before the Commission²⁰ involving 66 Pa. C.S. § 1303. This singular case is irrelevant to the instant matter, and BI&E’s argument that “such notice as a party is presumed to have received personally because facts within its knowledge were sufficient to place upon the party the duty to inquire about the fact or condition in question”²¹ is inapposite to the standards of BI&E’s complaint. Even if this case were applicable (it is not), the bar set by BI&E for “sufficient knowledge” is so low as to require PGW to attend an extraordinary number of excavations in a year, at significant ratepayer expense. BI&E’s interpretations do not represent genuine obligations required by law and must be rejected.

²⁰ *KA at Fairless Hills, LP v. PECO Energy Co.*, Docket No. C-2017-2592335, at 22. In this tariff rate dispute, the Commission held that Section 1303 requires actual, not constructive, notice of service conditions before a utility must bill a customer under the most advantageous rate.

²¹ BI&E Main Brief at 32–33.

1. The U.S. Department of Transportation Expressly Rejected BI&E’s proposed “Should Have Known” Standard When Promulgating 49 C.F.R. § 192.755 in 1976, and BI&E cannot Prosecute PGW Based Exclusively on Circumstantial Evidence of Constructive Knowledge and Speculated Lack of Pipeline Support.

BI&E advances a federal-rule theory of liability that requires no actual knowledge yet cites no precedent and offers no meaningful analysis of 49 C.F.R. § 192.755. Instead, it substitutes a results-driven, novel interpretation of the rule’s “knowledge” requirement without any legal support. BI&E’s reading disregards the text of the regulation and replaces the actual-knowledge standard with a vague, hindsight-based theory that the federal agency that promulgated the rule expressly rejected.

For its part, BI&E candidly concedes that “[t]he federal regulations do not define “knowledge” and whether “knowledge” should be interpreted as “actual knowledge” or “constructive knowledge.”²² Instead, BI&E looks to the most basic and preliminary of legal research tools – Black’s Law Dictionary.²³ But even this rudimentary legal source notes that actual notice or observation is required.²⁴

BI&E’s attempted interpretation is totally at odds with the meaning ascribed by the rule’s creator. The opening clause of 49 C.F.R. § 192.755 sets forth the standard for enforcement, requiring a two-part analysis:

- 1) When an operator *has knowledge; and*
- 2) that the support for a segment of a buried cast-iron pipeline *is disturbed.*

²² BI&E Main Brief at 32.

²³ BI&E Main Brief at 32.

²⁴ The definition of “actual knowledge” provided by Black’s Law Diction cannot be met here because, from BI&E’s own words, PGW did not have “direct and clear knowledge” that a UST could be present at 815 Jackson St., or even that there was record evidence of “knowledge of information that would lead a reasonable person to inquire further.” The same goes for the definition of “constructive knowledge” which cannot be the standard here where a “should have known” standard is regulatorily inadequate.

On its face, this regulation *requires actual notice*.²⁵

Most concerning is that BI&E’s “should have known” theory of responsibility was *expressly rejected* by federal regulators when enacting Rule 192.755. In 1976, the U.S. Department of Transportation’s Materials Transportation Bureau (“MTB”) *intentionally removed* the proposed phrase “knows or should know” from the originally proposed regulatory language precisely because it created uncertainty about the extent of an operator’s duty to investigate the mere potential of circumstances that might affect a utility’s facilities.

MTB replaced the “should have known” analysis with the appropriately narrower requirement that an operator “has knowledge” that pipeline support *is* disturbed, rejecting the idea that operators must act (or later be prosecuted) based on what they *could* or *should* have inferred regarding the support of a cast-iron main.

As the MTB explained when promulgating 49 C.F.R. § 192.755:

The proposed rule [49 C.F.R. § 192.755] *would have required* that an operator take protective action when it “*knows or should know*” that support for a buried cast-iron pipeline is disturbed. A large majority of the commenters requested the deletion of the words “or should know” from the final rule. They stated that the *inclusion of the words “or should know” is confusing because it is uncertain to what lengths an operator must go to learn of support disturbance. MTB has deleted the words “know or should know” and has replaced them with the words “has knowledge. . . .”*²⁶

While clearly BI&E’s legal position demonstrates that it was unaware of the regulation’s history prior to bringing an enforcement action to the contrary, this has been PGW position all

²⁵ As also noted below, the standard for finding that a utility has provided unsafe service also requires conclusive proof that its actions caused a service violation -- not that that they “could have” caused it.

²⁶ 41 Fed. Reg. 13588 (Emphasis added). (available at: <https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/docs/standards-rulemaking/rulemakings/archived-rulemakings/61226/41-fr-13588.pdf>).

along: a “should have known” theory of liability is vague and confusing and offers no guidance as to the lengths that PGW must go to learn of support disturbances.²⁷

Because 49 C.F.R. § 192.755 does not authorize enforcement based on speculation, constructive knowledge, or *post-hoc* rationalizations, BI&E’s incorrect interpretation cannot support a violation or civil penalty. Accepting BI&E’s theory would retroactively rewrite the regulation, resurrecting language that MTB expressly rejected, and impose obligations contrary to law.

2. The Applicable Standards for Determining Whether a Utility Has Provided Safe and Adequate Service Also Requires that the Utility be Found to Have Taken Actions that Cause Harm (Not “Could Have” Caused Harm).

In order to find a violation of Section 1501 of the Public Utility Code, BI&E was required to show, to a reasonable degree of certainty, that an action by PGW had a “conclusive causal connection” between a facility known to be unsafe or inadequate action, and the allegedly unsafe service or facility. As foundation, Section 1501 provides:

*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 shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.*²⁸

The “conclusive causal connection” standard between a utility action or facility and what is unsafe or unreasonable, was recently restated by the Commonwealth Court:

“Conclusive causal connection” means that the proffered evidence must support the conclusion that a causal connection existed between a service or facility and the alleged harm. *It is not possible for evidence that is inconclusive to be sufficient to meet the*

²⁷ Notwithstanding, and consistent with this regulation, PGW relies upon the trained observations of its Damage Prevention Inspectors, annual leak surveys, and tri-annual walking inspections, as well as educational information provided by the public.

²⁸ 66 Pa. C.S. § 1501 (emphasis added).

preponderance of the evidence standard. Inconclusive means that the evidence does not lead to a conclusion of a definite result one way or the other. While the preponderance of the evidence standard is not stringent, it does require that the plaintiff's evidence ever so slightly (like, with the weight of a feather) supports the plaintiff's contention. Evidence that does not support a conclusion (or is inconclusive) cannot meet that minimal burden. . . . *Thus, where scientific evidence is required to establish the safety of a service or facility, use of the evidentiary standard of "conclusive causal connection" to assess the evidence is correct.*²⁹

Here, BI&E failed to prove with reasonable certainty that any specific PGW action or inaction has a "conclusive causal connection" to the cast-iron break or resulting explosion.

Cast-iron failures will continue to occur - regardless of PGW's vigilance - until all cast iron pipe is removed from service. The occurrence alone of a cracked main does not establish a "conclusive causal connection" to inadequate service. As detailed in PGW's Main Brief, BI&E's expert testimony was equivocal, incomplete, and based on an insufficient investigation.³⁰ Taken together, the record shows BI&E did not meet its burden to establish a Section 1501 violation.

While the above-cited cases are the most recent statement of the requirements for a Section 1501 violation, the Commission has long held that a utility cannot be held to have provided inadequate or unreasonable service because it *failed to anticipate unforeseen or unusual circumstances* or occurrences.³¹ Furthermore, the Commission does not grant relief and order civil penalties based on purely *post-hoc*, hindsight determinations of what could or should

²⁹ *Kline v. Pa. Pub. Util. Comm'n*, 918 C.D. 2024, 2026 WL 178299, at *5 (Pa. Commw. Ct. Jan. 22, 2026) (citing *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975, 1006–07 (Pa. 2022)) (emphasis added). See also *Accord Ethan Habrial v. Metro[.] Edison Co[.]*, No. C-2018-3005907, 2020 WL 3840469, at *3 (Pa. Pub. Util. Comm'n] June 29, 2020).

³⁰ PGW Main Brief at 22–26.

³¹ *Bennett v. UGI Central Penn Gas, Inc.*, Docket No. F-2013-2396611 (Final Order entered April 10, 2014), 2014 WL 1747713 (alleged violation of section 1501 and gas leaks on customer-side); *Robert L. Buskirk v. Metro. Edison Co.*, Docket No. C-2013-2354782 (Final Order (Act 294) entered Oct. 16, 2013) (adopting the Initial Decision dated September 10, 2013, 2013 WL 5232608) (dismissing alleged violation of section 1501 on the basis that hindsight cannot be used to judge management action in the aftermath of Hurricane Sandy.).

have been considered by the utility.³² This is true and would be a reasonable outcome here to dismiss BI&E’s fifteen factor “should have known” analysis, especially considering the practical real-world challenge of invisible risks to PGW’s cast iron mains as historically recognized by this Commission.³³

3. Pennsylvania Law and Commission Cases Do Not Support BI&E’s “Should Have Known” Theory of Liability Under 49 C.F.R. § 192.755 or PGW’s Bulletins.

There are clear definitions in Pennsylvania precedent which BI&E did not acknowledge which directly undermine its “should have known” theory.

First, our appellate courts define “actual notice” to mean “such notice as is positively proved to have been given to a party directly and personally, or such as he is presumed to have received personally because the evidence within his knowledge was sufficient to put him upon inquiry.”³⁴ It is clear from the record that PGW did not have “actual notice” of any UST at 815 Jackson Street. BI&E offered no evidence whatsoever demonstrating that PGW had notice “directly” of a UST, or that PGW was “presumed to have received” based on what PGW knew three months prior to the incident explosion. BI&E conceded this fact in discovery and again on the record.³⁵ There never was any UST found at 815 Jackson Street – neither before nor after the incident. Under that circumstance alone, actual knowledge, as defined by the Courts, has not been met.

³² *W. Penn Power Co. v. Pa. Pub. Util. Comm’n*, 615 A.2d 951 (Pa. Commw. Ct 1992), *reargument denied* (Nov. 10, 1992), *appeals denied* at Nos. 663 and 672 W.D. Docket 1992 (Commonwealth Court held that a **hindsight determination** of a change in capacity need **was not to be considered** when recalculating avoided cost as of the date the legally enforceable obligation was incurred.)

³³ 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 entered Jan. 8, 2025), at 47.

³⁴ *In re Proceedings by Redevelopment Auth. of City of Erie*, 285 A.3d 986, 992 n.7 (Pa. Commw. Ct. 2022) (citing *In re Consolidated Reports and Return by Tax Claims Bureau of Northumberland Cty. of Properties*, 132 A.3d 637, 647 (Pa. Commw. Ct. 2016).

³⁵ PGW Main Brief at 44–48.

Second, our appellate courts define “constructive notice” in the context of conditions or hazards to mean that a condition is “apparent upon reasonable inspection.”³⁶ PGW’s Damage Prevention Inspectors accurately marked its facilities at 815 Jackson Street on two occasions and then at 813 Jackson Street, each time fulfilling their duties to be on patrol for UST and otherwise ensure the safety of PGW’s facilities. There was exactly zero evidence that any of PGW’s One Call markings were done incorrectly or failed in any way to meet industry standards. The evidence of record is that the Damage Prevention Inspectors “did their job” in all respects.³⁷ Therefore, it is clear that even if a hazardous condition did exist in the July–September 2021 timeframe, or months later in November 2021, the threshold for even constructive notice was not met.

Finally, Pennsylvania appellate courts define “knowledge” to include not only what an individual actually knows, but also what they have reasonable cause to know.³⁸ Other definitions blend “knowledge” with “notice,” including with respect to “constructive notice.”³⁹ As discussed above, no person – either PGW employee, excavator, or otherwise – had any reasonable cause to know that a hazard / UST (which did not exist) could impact PGW’s main at 815 Jackson Street.

The Commission has applied these standards previously, finding that:

“Actual notice” includes such notice as is affirmatively proved to have been given to a party directly, and also such notice as a party is presumed to have received personally because facts within its

³⁶ *Carletti v. Commw. Dep’t of Transp.*, 190 A.3d 766, 777 (Pa. Commw. Ct. 2018) (citing *Good v. City of Phila.*, 6 A.2d 101 (Pa. 1939); *Dep’t of Transp. v. Patton*, 686 A.2d 1302 (Pa. 1997)).

³⁷ PGW St. 2-R at 12–13 (“The Damage Prevention Inspectors who performed marking of the three One Call tickets referenced by the BI&E witness did their job in full compliance with the published procedures of PGW in Bulletin Nos. 54, 312 and 313. In this instance, they looked for indications of [UST] when they marked the location of PGW facilities and they found none. These are substantial duties, and PGW personnel take them very seriously.”).

³⁸ *Wermeling v. Shattuck*, 76 A.2d 406, 309 (Pa. 1950).

³⁹ *See, e.g., Reed v. Duquesne Light Co.*, 47 A.2d 136, 139 (Pa. 1946) (citing *Mirnek v. W. Penn Power Co.*, 123 A. 769, 770 (Pa. 1924)) (“[W]here, as here, that which had been safe, became harmful only by reason of the action of a third party, which defendant was not required to anticipate, and a sufficient time had not elapsed [or the situation was not reasonably apparent] to charge it with constructive notice of this particular kind of dangerous condition, actual notice is required, for a defendant is not obliged to seek for defects of this character, or to assume they may arise.”).

knowledge were sufficient to place upon the party the duty to inquire about the fact or condition in question. The former is to express actual notice - e.g., written or oral notice - and the latter is implied actual notice.⁴⁰

Here, BI&E's claim that PGW "should have known" does not satisfy the Courts or the Commission's actual notice standard, or even the implied notice standard.⁴¹ BI&E neither offered evidence nor rebutted PGW's testimony to show that PGW had any direct knowledge that support for the main was compromised. Nor did BI&E offer any evidence to refute PGW's evidence that the main was in fact, supported, and support was, in fact, *never compromised* to meet even an "implied" standard. The unrebutted record shows that PGW's personnel, including its Damage Prevention Inspectors who performed the One Call mark-outs, observed no signs of a UST or any condition warranting further investigation.

In closing, BI&E fails to meet the requirements of Pennsylvania Law and the Commission's application of "actual notice," "constructive notice," or "knowledge" to warrant a novel, regulatory enforcement on such principles alone.

B. BI&E's Overstated, Speculative Fifteen-Factor Theory Relies on Generic System-Wide Conditions and Routine One Call Activity, and Fails to Establish Any Reasonable Basis That PGW Had Knowledge of a UST at 815 Jackson Street.

To support its insistence that PGW had a basis for "knowing" that the excavations noticed in the One-Call tickets were going to, apparently, conclusively lead to a main break

⁴⁰ *Edward Ferguson v. PECO Energy Co.*, Docket No. C-2013-2360708 (Initial Decision Jan. 8, 2014), at *10 (citing *Victory Condominium Association v. PECO Energy Co.*, Opinion and Order, Docket No. C- 2011-2268126, entered September 27, 2012; *Springfield Twp. v. Pa. Pub. Util. Comm'n*, 676 A.2d 304 (Pa. Commw. Ct. 1996); *Mauro v. Duquesne Light Co.*, 69 Pa. PUC 105 (1989); *City of Pittsburgh v. Duquesne Light Co.*, 54 Pa. PUC 460 (1980)).

⁴¹ In contrast, this Commission has held that "'Constructive notice' is a legal term meaning that a person is presumed (or has a duty) to acquire knowledge of something by making normal and reasonable inquires." *Alan Lincoln v. Peoples Nat. Gas Co. LLC – Equitable Div.*, Docket No. C-2014-2426802 (Initial Decision Oct. 9, 2014), at *5 n.2, *aff'd by Act 294 Final Order* (Dec. 12, 2014). However, 49 C.F.R. § 192.755 does not permit "constructive notice," as such a standard was directly rejected by the MTB in 1976. BI&E, while claiming PGW had "actual notice," more correctly argues that PGW had constructive notice based on the fifteen (15) circumstantial items articulated.

months later, BI&E presented for the first time in Main Brief, a fifteen factor prosecutorial framework allegedly listing the factors that should have lead PGW to “know” that there was going to be a main break at 815 Jackson Street many months after the excavation. There are multiple fatal flaws with the BI&E argument.

First, this prosecutorial framework was not pleaded in the Complaint, was not offered in testimony, and was not set forth on the evidentiary record. In testimony, BI&E offered only a single, vague reference to a “risk-based approach” that considered general categories listed as “One Call ticket type, pipe material, age, and leak history.”⁴² The testimony focused on two factors to impute advanced knowledge of underground street conditions to PGW, namely the existence of two sewer traps excavations on Jackson Street and the repair history on distribution mains in the vicinity, to assert that PGW “should have known” that the new excavations were going to lead to undermining of PGW’s facility which, in turn, would cause a main break.⁴³ PGW expended considerable portions of its Main Brief to describe the proposal set forth in BI&E’s testimony as unreasonable, after-the-fact speculation.⁴⁴

These new, never previously stated enforcement factors *which are not of record* should be rejected on that basis alone. As a matter of black letter law, burden-of-proof principles and basic tenets of administrative due process, arguments or factual constructs raised for the first time in briefing cannot substitute for record evidence and cannot be used to satisfy BI&E’s

⁴² BI&E St. 1-R at 5. (“[a] risk-based approach that considers excavation tickets, excavation types, gas pipe type, age and leak history”).

⁴³ These were thoroughly addressed in PGW’s Main Brief. *See* PGW Main Brief at 9–10.

⁴⁴ PGW Main Brief at 9, 27–28 (“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.’ 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.”)

burden of proof.⁴⁵ Accepting a non-record set of enforcement criteria deprives PGW of its due process right to challenge *what should have been contained in expert testimony divulged on the record and not withheld until legal briefing after the close of the record*. This withholding also denies Your Honor and the Commission the facts necessary to fully evaluate BI&E's prosecutorial theory through competent evidence of record. BI&E's newly proposed fifteen-factor analysis, therefore, must be disregarded.

Even if the Your Honor elects to consider this new prosecutorial framework, the substance of the fifteen factors are seriously flawed. The factors are overstated; many involve generic, system-wide conditions that exist across PGW's entire service footprint and could not in any way lead to the conclusion that there was UST at 815 Jackson Street, or, for that matter, *any* specific circumstances requiring PGW to attend and monitor a sewer-trap excavation at that location.

For example, several of the "factors" (e.g. Nos. 1, 2, 8, 11, 12, 13, 14, and 15) observe the simple fact that PGW continues to have cast iron main in its system. Elevating these universal conditions into actual "notice" of a UST improperly converts the mere presence of cast iron into an enforcement standard and would, in effect, require PGW to be present at tens of thousands of routine sewer trap repairs every year. None of the fifteen factors constitute actual notice of a specific UST; only the possibility (factually non-existent at 815 Jackson Street) that UST *might* occur. The factors constitute circumstantial evidence that there are systemic risks

⁴⁵ See, e.g., *Wilmer Baker v. Sunoco Pipeline L.P.*, Docket No. C-2018-3004294 (Initial Decision Dec. 18, 2019) ("It is well-established that parties cannot present new evidence at the briefing stage."); *Pa. Pub. Util. Comm'n v. Nat'l Fuel Gas Distric. Corp.*, 1993 Pa. PUC LEXIS 95, at *7–10 (Order entered July 30, 1993); *Petition of PECO Energy Co.*, Docket No. M-2009-2093215 (Initial Decision Oct. 15, 2009), at 11 ("The inclusion of extra-record evidence in a Brief violates the principle of fundamental fairness and violates the due process rights of other parties who have no opportunity to cross examine a witness in a separate hearing"); *Joint Application of Verizon Communications, Inc. et al*, Docket No. A-310580f0009, (Order entered August 17, 2005).

with older cast iron mains. There is no fact among the fifteen that directly points to a UST at 815 Jackson Street.

Factors 1, 2, 11, 12, and 13 merely restate the obvious – that PGW operates a legacy network of cast-iron mains, an unremarkable and well-known characteristic of PGW’s system.

As noted in PGW’s Main Brief, the presence of cast iron in PGW’s distribution system:

is well known to the Commission and has been of historic concern to both PGW and the Commission. 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.⁴⁶

For this reason, PGW is aggressively replacing cast iron in its system.⁴⁷ BI&E’s inclusion of these factors indicts PGW for the simple existence of cast-iron in its distribution system - not any action or inaction by PGW.

PGW’s Main Brief recited PGW’s longstanding aggressive measures to replace cast iron in its system, its enhanced employee training efforts, as well as extensive public education programs including those directed at excavators.⁴⁸ PGW operates annual leak surveys and triannual walking inspections, trains its Damage Prevention Inspectors and other field personnel in identifying UST, maintains a rapid response program where UST is identified, and educates the public on leak detection and safety to protect cast iron mains, while at the same time replacing cast iron at an aggressive and increasingly accelerated pace.⁴⁹

⁴⁶ PGW Main Brief at 15.

⁴⁷ PGW St. 1-R at 10 (“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].”)

⁴⁸ PGW Main Brief at 15–20.

⁴⁹ See PGW Main Brief at 15–20.

The fact is that there remains a considerable amount of cast iron to replace, as noted in the BI&E investigative report of the Jackson Street incident⁵⁰ and in PGW's Main Brief. Simply stated, by relying on the mere presence of cast iron, BI&E is asserting that PGW has a duty to *monitor every excavation in 67% of its distribution network, across thousands of miles*. This is regardless of location, context, or the absence of on-the-ground observations of UST. BI&E's logic would impose a fine based simply on legacy presence of cast iron.

Factors 3, 4, 5, 6, and 7 deal with the occurrence, composition, and potential effects on the gas distribution system of sewer and water breaks in Philadelphia. These assertions are speculative, exaggerated, and unsupported by the record. Factors 3–7 concern the condition, composition, and *potential* effects of sewer and water systems in Philadelphia, but none establishes notice of a UST at 815 Jackson Street.

Factor 3 is an exaggeration and overstates the circumstances based on the record facts. There was no “sewer failure” at either 813 or 815 Jackson Street.⁵¹ The One Call tickets described the occasion as “sewer trap repairs,” the type of work performed numerous times daily in the City and that are routine among the 70,000 tickets that PGW receives each year.⁵² PGW has no control over, and only limited information regarding, third-party sewer and water facilities.

⁵⁰ PGW Exhibit JH-2 (BI&E Attachment 2) at 7 (“As of December 31, 2019, approximately *1,910 miles of PGW's 3,041 miles of main, or 63 percent*, is comprised of cast iron and unprotected steel. PGW has approximately 1,300 miles of cast iron remaining in their distribution system. This is approximately half of the cast iron remaining in the Commonwealth of Pennsylvania.” (emphasis added)).

⁵¹ NT at 46:8–23; PGW St. 1-R at 26, 35–36, BI&E Exhibits 6–8.

⁵² PGW St. 1-R at 34–35; NT at 45, 134.

As to Factor 4, the composition of the sewer laterals at 815 Jackson Street are not contained in the record,⁵³ but even if it were addressed, the sewer and water systems utilized by the residents of Philadelphia and City itself are not PGW's facilities.

Factor 5 speculates that sewer system failures "can result" in leakage, but there was no evidence of any leakage at Jackson Street.⁵⁴ When PGW excavated the main after the incident, the pipe was *fully supported* with no signs of soil disturbance or water or sewerage intrusion present.

Factor 6 likewise asserts only a general possibility that sewer or water leaks can cause soil instability, but nothing in the record indicates that soil instability existed at 815 Jackson Street at any time. PGW observed none, and, beyond unsupported speculation that is contrary to the testimony of its witness at hearing, BI&E points to none.

Similarly, Factor 7 repeats the abstract proposition that water or sewer leaks may pose risks, but again offers no facts tying that concept to the conditions at 815 Jackson Street where there were no such adverse conditions.

BI&E exaggerates the scope of the sewer lateral excavation on Jackson Street. Factors 8, 9, and 10 concern the two sewer-trap excavations, claiming they were "extensive," "immediately adjacent" to PGW's main, and "significantly deeper."⁵⁵ The record shows otherwise. As detailed in PGW's Main Brief, these were routine sewer-trap repairs, and the excavations were approximately seven-and-a-half feet distant from PGW's main—well outside the tolerance

⁵³ The BI&E witness only speculated:

Q. Do you know what [sewer laterals composition] generally it is in that area?

A. It could be a mix of cast iron or terracotta.

Q. Cast iron, terracotta, are those brittle and fragile materials?

A. Potentially.

NT at 139.

⁵⁴ NT at 38–42.

⁵⁵ BI&E Main Brief at 9, 10, 28.

zone.⁵⁶ Were the notion of proximity of One Call tickets to become a basis to require PGW to attend excavations this encompasses an unreasonably large number of excavations. Mr. Hawkinson explained that “on average, approximately 50% of the tickets filed with PA One Call occur on the same block in the same year.”⁵⁷ Moreover, there is no conclusive causal connection tying these excavations to the explosion almost three months later.⁵⁸

Further, the work at 813 Jackson Street is irrelevant, as there is no evidence that Lepore Plumbing caused any disturbance affecting the main next door at 815 Jackson Street. BI&E’s own witness identified only the Clements Brothers’ work at 815 Jackson Street as potentially impacting the main in front of 815 Jackson Street.⁵⁹ Finally, BI&E’s assertion that “excavations around and beneath gas facilities cause soil instability” is speculative and unsupported. No evidence shows any soil instability at any time, and BI&E did not even interview the excavators involved.⁶⁰

As to Factor 14, there is no dispute that cast iron requires careful handling. But nothing in the record suggests PGW failed to treat its cast-iron facilities with appropriate care. This factor is merely a generalized observation and adds nothing to BI&E’s claim that PGW “should have known” a crack would occur in the main at 815 Jackson Street. Moreover, it is inconsistent with the record evidence that shows that PGW applies rigorous internal standards when working near cast iron and also conducts longstanding public education efforts to ensure excavators and the public respect the hazards associated with cast iron facilities and the safety measures required to avoid them.⁶¹

⁵⁶ PGW Main Brief at 22–25, 34. 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.

⁵⁷ PGW St. 1-R at 5.

⁵⁸ NT at 50.

⁵⁹ PGW St. 1-R at 26; BI&E St. No. 1 at 12; BI&E Exhibit No. 6.

⁶⁰ NT at 47.

⁶¹ PGW Main Brief at 17–20.

The final factor (15) is misleading. BI&E claims there were five cast iron main breaks on the 800 block of Jackson Street in the twelve years preceding the incident, but the record shows only three breaks since 2009 on the main serving 815 Jackson Street, and the most recent occurred in 2016. As Mr. Hawkinson testified, three breaks over more than a decade is neither unusual nor indicative of any unique problem on the block; rather, it reflects the normal performance characteristics of PGW's legacy cast iron pipe, which PGW continues to replace at an accelerated pace.⁶² All three breaks were promptly repaired and fully addressed.⁶³

While BI&E's fifteen-factor theory is an interesting, albeit speculative, exercise as to when main undermining might occur, it is *not really germane* as to whether PGW protected against an unsafe condition on its distribution main at 815 Jackson Street, *because facts show there was no loss of underlying main support*. BI&E was unable to present any evidence that the gas main was not supported and PGW's unrefuted first-person evidence described the main as fully supported when uncovered after the explosion. So, even if PGW attended and monitored the two excavation events on Jackson Street, there were no USTs to discover and no protective action to undertake.

Thus, even if there were some knowledge of *potential* conditions imparted to PGW pursuant to the fifteen factors (which there was not), PGW would have found nothing wrong. No disturbance. No hazard. *The crack would still have occurred three months later,⁶⁴ even if PGW watched the excavators dig at a significant distance beyond the legal tolerance zone of PGW's main.*

⁶² PGW St. 1-R at 27–28.

⁶³ PGW St. 1-R at 27–28.

⁶⁴ NT at 50.

Despite BI&E's persistent speculation (unsupported by any evidence) that the contractor responsible for the excavation disturbed the Jackson Street main in September 2021, which caused the explosion almost three months later, PGW's witness Mr. Hawkinson credibly explained the reality of the situation.⁶⁵ The only competent, evidence-based, and credible explanation is that the cast-iron main failed simply due to the material's inherent brittleness and the tendency to crack. The fact that there was no evidence of undermining, despite BI&E's insistence that PGW knew or should have known that the excavations at issue were going to lead to an undermining, is a fatal flaw in its theory of liability.

1. A Void Immediately Below the Sidewalk but Well Above the Underlying Gas Main Has No Causal Connection to Whether There Was Support Below the Main.

On other points, BI&E's Main Brief raises other circumstances that it believes are germane to this matter but are without merit. For example, the fact that there was a cavity under *the sidewalk* but well above the buried level of the gas distribution main is simply not relevant. First, the cavity under the sidewalk was not observable from the surface by the Damage Prevention Inspectors.⁶⁶ It was discovered only upon excavation of the gas main post-incident on November 30, 2021, and not in the location where the sewer line excavation occurred.⁶⁷ But more importantly, the void underneath *the sidewalk* measured 17-inches deep from the surface.⁶⁸ *The gas main was located 24-inches or deeper below the sidewalk and buried below any subsurface, sidewalk cavity.*⁶⁹ BI&E's claim, albeit discredited, is that a void was the condition

⁶⁵ PGW St. 1-R at 29 ("Most Philadelphia streets, including the street in front of 815 Jackson Street, are older and have been dug up many times by various entities. Clearly, there are alternative causes of underground failure (water or sewer) after the plumbers completed their excavation work, including the age and graphitization of the cast iron pipe. Cast iron can also break without warning and without any apparent cause.")

⁶⁶ PGW St. 1-R at 35; PGW St. 2-R at 7; BI&E St. No. 1 at 12–13.

⁶⁷ NT at 71–72.

⁶⁸ BI&E Main Brief at 17. See also N.T. 28–30.

⁶⁹ NT at 28–30.

under the gas main (not immediately below the sidewalk) that caused the break. Arguing about support for the sidewalk above the main is a diversion and not germane to the condition of the gas main itself.⁷⁰

Second, PGW received only *two* “separate notices of sewer service line” excavation.⁷¹ While there were three tickets involving only two sewer repairs, one was a reissue, and there were only two excavations.⁷² Moreover, the ticket did not involve “sewer system failures” – only repairs to customer-owned sewer traps, as the BI&E witness conceded.⁷³ There were no “failures” of the City owned “sewer system” involved.

C. Assuming, *Arguendo*, PGW Did Have Knowledge of A UST, BI&E Did Not Establish the Main’s Support “Is [or Was] Disturbed.”

As previously established, federal regulations⁷⁴ require actual knowledge that “the support for a segment of a buried cast-iron pipeline *is disturbed*.” This is mirrored in PGW’s Bulletins, as discussed in PGW’s Main Brief.⁷⁵ Analysis of “knowledge” aside, this second clause independently defeats BI&E’s complaint. The record contains *no evidence whatsoever* that the September 2021 sewer excavations exposed, undermined, or disturbed the support of PGW’s cast iron main on Jackson Street.⁷⁶ To the contrary, the only direct evidence in the record shows that - when excavated after the incident - the main remained fully supported and surrounded by virgin soil.⁷⁷ Without proof that any disturbance actually occurred at any time,

⁷⁰ PGW Main Brief at 3 (citing PGW St. 2-R at 11, 14 and NT at 29–30).

⁷¹ “PGW received three separate notices of sewer system failures . . . which means the excavation would be occurring directly at or immediately adjacent to the cast iron main.” BI&E Main Brief at 22.

⁷² PGW Main Brief, *passim*. See, e.g., PGW St. 1-R at 26.

⁷³ PGW Main Brief at 26–27; NT at 46–47, 133–34.

⁷⁴ 49 C.F.R. § 192.755

⁷⁵ PGW Main Brief at 31–36.

⁷⁶ PGW St. 2-R at 11; NT at 33, 132; BI&E Exhibit 3.

⁷⁷ NT at 132.

BI&E cannot satisfy the plain language requirement that pipeline support “*is [or was] disturbed,*” and therefore cannot establish a violation under 49 C.F.R. § 192.755.

The facts of record show:

- The explosion occurred over 11 weeks, or almost three months, *after* the start of the excavation activities.⁷⁸
- Nothing was observed before, during, or after the construction activity indicating that the support for the cast-iron pipeline in Jackson Street was disturbed.⁷⁹

Similar to BI&E’s “should have known” argument, 49 C.F.R. § 192.755 does *not* impose a duty based on whether a cast-iron main *could* or *might* be disturbed. As the MTB made clear when adopting the rule, the regulation is triggered only when an operator has actual knowledge that support *is* disturbed—not when one could speculate about potential conditions.⁸⁰ Here, PGW’s records from when it’s Damage Prevention Inspectors marked its facilities in July and September shows no evidence or indication that the main or subsurface was disturbed.

As should be clear, a disturbance of the support to a main must *actually* occur - not merely be possible in the future or theorized in hindsight - before any duty to protect is triggered under 49 C.F.R. § 192.755. Because the record contains no evidence that the main at 815 Jackson Street was ever disturbed, BI&E’s allegation necessarily fails. PGW’s un rebutted evidence shows the main remained fully supported when excavated after the incident,⁸¹ and BI&E offered no testimony or documentation demonstrating otherwise. Without proof of any actual disturbance, the regulatory prerequisite for enforcement is wholly absent.

⁷⁸ NT at 50.

⁷⁹ *E.g.* NT at 132.

⁸⁰ As the MTB explained when the rule was promulgated: “An operator may know of impending construction activity that will disturb the support of cast-iron pipe *but as a practical matter the operator is only able to provide protection simultaneously with or immediately after the disturbance occurs.*” See 41 Fed. Reg. 13588.

⁸¹ NT at 132.

D. BI&E's Requested Relief and Application of Civil Penalties

In its Main Brief, BI&E concedes that no remedial action, such as changes in PGW's existing UST practices, is required of PGW going forward, because the 8th Street Settlement addressed these points. It also concedes that PGW's actions in this case were consistent with those required under the terms of the 8th Street Settlement.⁸² Yet, BI&E still demands a \$300,000.00 civil penalty. That request is unsupported and inappropriate. BI&E's witness never presented testimony on the calculation of a fine. The Main Brief fails to explain—let alone justify—how the \$300,000.00 figure was derived or how that fine complies with 66 Pa. C.S. § 3301. It is simply an arbitrary number with no basis in the record. BI&E's failure to even try to explain how it calculated the proposed civil penalty, either on a count-by-count or other methodology, violates due process requirements, which mandate that parties receive reasonable notice of any potential penalty and an explanation of the basis on which it is determined.⁸³

Nor did BI&E identify how such a penalty would alter PGW's conduct under existing law, regulations, or PGW's established procedures. Indeed, with no rationale or basis for a civil penalty, it is hard for PGW to even determine how to change any of its conduct to avoid further BI&E-initiated complaints on these same topics. Instead, BI&E asserts that PGW made no "expenditures to advance public safety," an argument that improperly attempts to require PGW (and other utilities) into acquiescing to BI&E's demands *regardless of evidentiary or legal merit*. Imposing a civil penalty under these circumstances where BI&E failed to conduct a complete investigation, develop the evidentiary record, or meet its burden of proof would constitute

⁸² PGW Main Brief at 44–48; *see also* 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.”).

⁸³ *See, e.g. HIKO Energy, LLC v. Pa. Pub. Util. Comm'n*, 163 A.3d 1079 (Pa. Commw. Ct. 2017), *aff'd*, 209 A.3d 246 (2019).

reversible error and would unjustly burden PGW’s ratepayers.⁸⁴ Further, with no explanation for how it arrived at a \$300,000.00 penalty under 66 Pa. C.S. § 3301, BI&E cannot simply assert an arbitrary figure in its Complaint and hope it “sticks” without any evidentiary basis.

1. The Law Does Not Support a Civil Penalty Under the Circumstances and Imposing One Where BI&E Is Arguing for A New “Should Have Known” Standard Violates Due Process.

In Pennsylvania, an agency may not impose a civil penalty absent proof of a violation of a law or regulation; such proof must appear in the record for a penalty to be appropriate.⁸⁵ In the specific context of proceedings before the Commission, the offense must be a violation of the Public Utility Code, a Commission regulation or order, or a violation of a Commission-approved tariff.⁸⁶

The principles of due process⁸⁷ apply to complaints brought by BI&E for alleged violations of the Public Utility Code and any of its novel prosecutorial positions thereunder, as in the instant case. In Pennsylvania, principles of due process and fundamental fairness dictate that the Commission may not announce a “new” interpretation of legal authority while simultaneously imposing a monetary sanction against a party for adherence to the prior interpretation.⁸⁸

⁸⁴ See as discussed in PGW’s Main Brief at 41-42.

⁸⁵ See, e.g., *Comm’n Test Design v. Workers’ Comp. Appeal Bd.*, 229 A.3d 994, 998 (Pa. Commw. Ct. 2020).

⁸⁶ *Smith v. PPL Elec. Utils. Corp.*, Docket No. C-2024-3046013, 2025 WL 2674795 (Opinion and Order entered Sept. 11, 2025); 66 Pa. C.S. § 701.

⁸⁷ “The constitutional guarantee of due process of law is equally applicable to administrative and judicial proceedings.” *Pocono Water Co. v. Pa. Pub. Util. Comm’n*, 630 A.2d 971, 973 (Pa. Commw. Ct. 1993) (citing *Begis v. Indus. Bd. of Dep’t of Labor & Industry*, 308 A.2d 643 (1973)). In matters before the Commission, due process “requires that a party be afforded reasonable notice of the nature of the allegations against it so that the party can prepare a suitable defense.” *Id.* (citing *Duquesne Light Co. v. Pa. Pub. Util. Comm’n*, 507 A.2d 433 (1986)).

⁸⁸ See *Phila. Gas Works v. Pa. Pub. Util. Comm’n.*, 276 A.3d 1219 (Pa. Commw. Ct. 2022) (table); see also *Snyder Bros. v. Pa. Pub. Util. Comm’n*, 2020 WL 587012 (Pa. Commw. Ct. 2020), at *8 (finding that an administrative penalty was improper where the utility “was not placed on fair notice” by the Commission’s prior behavior that the utility’s conduct could give rise to a monetary penalty); *HIKO Energy, LLC*, 163 A.3d 1079.

BI&E's request for a civil penalty violates this body of law. Indeed, BI&E cites no case law support for its novel and incorrect interpretation of federal law and PGW's Bulletins for which to impose a civil penalty. The Commission cannot, therefore, announce that BI&E's interpretation now is the law and simultaneously burden PGW's ratepayers with the impact of a civil penalty.

2. BI&E's Analysis of the Commission's Policy Statement is Wrong, and the Rosi Factors Show that No Civil Penalty is Warranted.

BI&E analyzes the Commission's "Rosi" standards which have been published as a policy statement at 52 Pa. Code § 69.1201. PGW disagrees with much of the analysis.

a. Nature of the Conduct

The conduct at issue concerns public safety, a matter PGW takes seriously. As shown in the record, PGW's procedures complied with all legal and regulatory requirements and were properly followed. PGW had no notice of any potential impacts to its facilities or underground conditions before the incident, nor were any alleged impacts discoverable. PGW also disagrees with BI&E's broad claim that this incident is "substantially similar" to the 8th Street matter, as the two events had very distinct factual backgrounds and differed significantly in scope of excavation and outcome. That said, as PGW's Mr. Hawkinson discussed,⁸⁹ the relief sought in the instant proceeding has been already addressed by the 8th Street Settlement, as admitted by BI&E. To the extent factual similarities exist between the two cases, they extend primarily to the fact that: 1) PGW had no notice of a UST from anyone prior to each incident; and 2) each involved PA One Call tickets near PGW's cast iron where excavators had their own duties and responsibilities to ensure safe excavation practices near PGW's facilities.

⁸⁹ See PGW St. No. 1-R at 47-51.

Further, BI&E’s contention that penalties should increase because the results “could have been much more severe” is speculative and not a fair application of this factor. Speculation about conduct or consequences that did not occur cannot support higher penalties. Further, BI&E has failed to identify any actions by PGW, its Inspectors, or its response team that violated federal regulations, PGW’s Bulletins, or Section 1501. This factor, therefore, supports no civil penalty, as BI&E failed to meet its burden regarding PGW’s conduct.

b. The Resulting Consequences

BI&E’s analysis of this factor relies on incorrect facts and ignores PGW’s rebuttal testimony. BI&E wrongly asserts that the incident “resulted in \$104,269.92 in damages,” a claim refuted by the testimony of PGW witness Joe Hawkinson.⁹⁰ In fact, the damage to property (buildings and cars) was estimated to be \$55,000.00.⁹¹ While PGW acknowledges that an explosion occurred, the record establishes that there was no significant property damage, no personal injuries, only minimal service interruption, and no conclusive evidence of the underlying cause of the crack in main.

As with Rosi Factor 1, BI&E’s attempt to increase the penalty based on the “potential for harm” is improper. Pennsylvania appellate courts have made clear that, for purposes of Section 1501, liability requires evidence that the utility’s conduct *will or did* cause harm—not that it *could have* caused harm.⁹² Because BI&E failed to meet this burden, this factor weighs against imposing any civil penalty.

⁹⁰ PGW St. No. 1-R at 21–22.

⁹¹ *Id.*

⁹² *Supra* Section A(2).

c. Unintentional Conduct

BI&E's analysis of this factor should be rejected. Even BI&E acknowledges there is *no evidence* that PGW acted intentionally. Its attempt to imply "more than negligence" by referencing unrelated or speculative circumstances falls outside the proper scope of this factor and is improper. Because BI&E offered no evidence of intentional conduct, this factor weighs against imposing any civil penalty.

d. Internal Practice and Procedures

BI&E's analysis is also misplaced. Whether PGW made changes following a settlement of the 8th Street matter has no bearing on this factor. As demonstrated above, BI&E lacks any legal, regulatory, or procedural basis for its complaint, and there was no action PGW could have taken at 815 Jackson Street to detect a UST that never existed. No procedure can enable PGW to see through an intact street surface or sidewalk to view sub-surface conditions, nor do industry standards require such capability. Accordingly, this factor weighs against imposing any civil penalty.

e. Impact on Customers

The fifth factor addresses the number of customers affected and the duration of the alleged violation. Here, PGW made the area safe, and only a small number of customers experienced a short term service interruption. BI&E's assertions regarding alleged damages and a "high potential" for broader impact lack support in the record, as no large number of customers were affected. This factor therefore weighs against imposing any civil penalty.

f. Compliance History of PGW

PGW complies with the Public Utility Code, Commission regulations, and Pipeline and Hazardous Materials Safety Administration ("PHMSA") requirements. It maintains an excellent safety record. BI&E presented no evidence that PGW violated any law, regulation, or

Commission approved procedure. Its reliance on a prior settlement as “compliance history” is improper and unsupported. A settlement does not constitute evidence of any prior non-compliance, and BI&E’s characterization of PGW as having “two major cases” must be rejected. That said, 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.⁹³ This factor therefore weighs against any civil penalty.

g. Cooperation by PGW

PGW fully cooperated with BI&E throughout the investigation, and its response to the incident was forthright and transparent. Nothing in the record suggests bad faith, concealment, or interference with BI&E’s review. PGW’s cooperation after the incident demonstrates that this factor does not support the imposition of any civil penalty.

h. Deterrence Of Future Violations by PGW

PGW has thoroughly demonstrated, through unrebutted testimony, that it violated no law, regulation, or Commission-approved procedure. As noted above, BI&E’s reliance on the prior 8th Street Settlement is improper; a voluntary settlement cannot be used as evidence of non-compliance or to support enhanced penalties in this case. BI&E has identified no conduct requiring deterrence, nor any change in practice mandated by law. Imposing a civil penalty based solely on BI&E’s speculative, hindsight driven “should have known” theory—unsupported by regulation or precedent—would unfairly burden PGW’s ratepayers.⁹⁴ Because no violation occurred and no deterrent purpose would be served, this factor weighs against any civil penalty.

⁹³ NT at 69.

⁹⁴ See as discussed in PGW’s Main Brief at 41-42.

i. Consistent With Commission Precedent

To PGW’s knowledge, the Commission has never issued any enforcement opinion or order on comparable facts which constitutes “precedent” in any regard. BI&E’s reliance on the voluntary 8th Street Settlement is entirely improper, as the Commission-approved settlement itself is clear that BI&E and PGW agreed that the matter, while settled, remained disputed, and that nothing about the settlement could be construed as an admission against either party.⁹⁵ For this factor, the 8th Street Settlement cannot be considered as “precedent.” Because no similar Commission precedent exists, this factor weighs against imposing any civil penalty.

j. Other Relevant Factors

If PGW is found liable and fined for its conduct here, it would raise the real potential that all natural gas distribution utilities in Pennsylvania would be required to send inspectors to observe excavations in or around at-risk pipe, including but not limited to cast-iron main. For PGW ratepayers alone, the cost would be tens of millions of dollars a year.⁹⁶ But there is also no reason why such a requirement would not extend to every other natural gas distribution utility in the Commonwealth. This enormous expenditure would not only be unnecessary and unreasonable but would come at a fraught time in which helping to keep utility rates affordable is at the forefront of policymakers. The Commission should not endorse this unreasonable and unnecessary expenditure of resources by imposing a fine on PGW in a situation in which it neither knew or should have known that a main break was going to occur at 815 Jackson Street.

⁹⁵ See 8th Street Settlement, ¶ 75.

⁹⁶ PGW St. No. 1-R at 44–46.

V. **CONCLUSION**

PGW respectfully requests that Your Honor conclude that BI&E failed to prove any violation of law or regulation related to the November 30, 2021 incident. With no proven violation concerning One Call markings, post-markup activities, incident response, or pipeline repairs, no civil penalties are appropriate, and the Complaint should be dismissed.

Respectfully Submitted,

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