

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement

v.

Philadelphia Gas Works

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C-2024-3052277

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

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I. INTRODUCTION

This Initial Decision denies the Formal Complaint filed by the Bureau of Investigation and Enforcement (I&E or Complainant) of the Pennsylvania Public Utility Commission (Commission) because I&E did not meet its burden of demonstrating that Philadelphia Gas Works failed to adhere to Federal regulations and its own Bulletins regarding pipeline safety, and because it did not meet its burden of demonstrating that Philadelphia Gas Works failed to provide adequate and reasonable service.

II. HISTORY OF THE PROCEEDING

On November 25, 2024, I&E filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Commission. In the Complaint, I&E alleged that PGW violated the Public Utility Code, the Pennsylvania Code, and the Code of Federal Regulations in connection with a natural gas explosion that occurred at 815 Jackson Street, Philadelphia, Pennsylvania, on November 30, 2021. In addition to a number of corrective actions, I&E requested a total civil penalty of \$300,000 for these violations.

On January 29, 2025, PGW filed an Answer denying the violations alleged in I&E's Complaint.

By Call-In Telephone Prehearing Conference Notice dated January 30, 2025, an Initial Call-In Telephonic Prehearing Conference was scheduled for February 20, 2025, and the matter was assigned to me.

The Prehearing Conference convened as scheduled on February 20, 2025. I&E and PGW participated in the Prehearing Conference.

On March 4, 2025, I issued Prehearing Order #1, establishing the litigation schedule and the procedures applicable to this proceeding.

By In-Person Evidentiary Hearing Notice dated March 14, 2025, In-Person Evidentiary Hearings were scheduled for October 16-17, 2025.

On July 18, 2025, I issued an Order granting PGW's Motion for Protective Order.

The parties submitted testimony pursuant to the litigation schedule memorialized in Prehearing Order #1.

On October 16, 2025, an in-person evidentiary hearing was held as scheduled in this matter. Both I&E and PGW participated. At the outset of the hearing, I&E withdrew Count 8 of its Formal Complaint, to which PGW did not object. N.T. at 17-18. I&E made witness Cooper-Smith available for cross-examination. PGW made witnesses Hawkinson and Leva available for cross-examination. Since the evidentiary hearing concluded on October 16, 2025, the hearing scheduled for October 17, 2025, was cancelled.

On November 6, 2026, the 145-page hearing transcript and hearing exhibits were filed with the Commission.

On November 18, 2025, I issued my Briefing Order. In accordance with the schedule proposed by the parties, my Briefing Order directed that Main Briefs be filed on or before January 13, 2026, and that Reply Briefs be filed on or before February 13, 2026.

The parties submitted their briefs in accordance with the briefing schedule. The record closed on February 13, 2026, the deadline established for Reply Briefs.

III. FINDINGS OF FACT

1. The Complainant in this case is the Commission's Bureau of Investigation and Enforcement.
2. The Respondent in this case is Philadelphia Gas Works.
3. PGW is the nation's largest municipally owned gas distribution company, serving 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.
4. Between 2022 and 2024, PGW experienced an average of 243 cast iron main breaks annually and in the first quarter of 2025, PGW experienced 257 cast iron main breaks. I&E St. 1 at 3.
5. In 2021, PGW had more cast iron mains remaining on its distribution system than all other Pennsylvania operators combined and, as of 2024, PGW had 1,142.61 miles of cast iron mains and 7.12 miles of reconditioned cast iron mains. I&E St. 1 at 5-6.
6. PGW projects that full replacement of all of its cast iron mains will take approximately 35 years. PGW St. 1-R at 9.
7. The area around 815 Jackson Street is a dense urban residential area, in which the residences are typical city row homes sharing a common wall with adjacent units. I&E St. 1 at 7.

8. 815 and 813 Jackson Street are row home neighbors and share a common wall. I&E St. 1 at 13; I&E Exh. 5.

9. In its Mission Statement located in PGW Bulletin #312, Summary of Distribution Department Damage Prevention Program, PGW instructs Distribution Department personnel “[t]o observe contractor activities when necessary and to offer assistance to safeguard PGW facilities during construction.” I&E Exh. 11.

10. Regarding failure of other than PGW underground facilities, PGW Bulletin 312 provides 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.

PGW St. 1-R at 39; I&E Exh. 11.

11. Underground Street Troubles (UST) are failures of underground structures that could reduce or eliminate support for PGW pipelines or otherwise compromise them. PGW St. 1-R at 18.

12. USTs are usually brought to PGW’s attention due to a condition observed on the street surface either by PGW or a third party. PGW St. 1-R at 18.

13. PGW Damage Prevention Inspectors and Foreman are thoroughly trained to look for paving depressions, cavities, cave-ins, paving faults such as surface

cracks, or settlement that are in proximity to PGW facilities and which would reduce or eliminate support of PGW pipes. PGW St. 1-R at 18.

14. When paving depressions, cavities, cave-ins, paving faults such as surface cracks, or settlement that are in proximity to PGW facilities are identified, a UST investigation is triggered. PGW St. 1-R at 18.

15. PGW has an obligation to investigate USTs. PGW St. 1-R at 18.

16. When a UST is identified by a PGW trained employee or an outside source, such as another utility, a City department, an excavator, a member of the public or other, a UST work order is created in PGW's work management system (AIMS) and assigned to a crew to investigate. PGW St. 1-R at 18.

17. If the location of the UST is not in proximity to PGW structures, bar holes will be drilled through the pavement to determine the solidity of the foundation under PGW structures. PGW St. 1-R at 18.

18. If the UST is in proximity to PGW structures, then the Foreman may make an exploratory opening. PGW St. 1-R at 18.

19. If PGW determines it necessary, the affected gas mains may be blocked up or beamed temporarily if PGW facilities require support. PGW St. 1-R at 18-19.

20. If PGW determines that the UST is extensive, the gas main may need to be cut out or temporarily abandoned until the underlying issues are repaired. PGW St. 1-R at 19.

21. Once PGW has knowledge of a UST, it promptly dispatches the appropriate personnel. PGW St. 1-R at 19.

22. Regarding “excavation, demolition and blasting,” PGW Bulletin #312 also provides that “[w]herever pipeline facilities are or may be endangered, the appropriate supervisor shall be promptly informed. The supervisor shall, after consulting with his/her superiors, institute necessary actions such as patrolling, supporting, replacing, relocating or removing from service the affected gas facilities.” I&E St. 1 at 17; I&E Exh. 11.

23. PGW Bulletin #313, Instructions For Distribution Department Damage Prevention Inspectors, provides that its purpose is “[t]o provide clear instructions for Distribution Department damage prevention inspectors regarding the various duties of their job.” I&E Exh. 12.

24. PGW Bulletin #313 provides that one of the main functions of PGW Damage Prevention Inspectors is “[t]o inspect third party construction activities for the main purpose of protecting PGW underground structures and facilities.” PGW St. 1-R at 40; I&E St. 1 at 22; I&E Exh. 12.

25. Regarding Pipeline Patrol Procedures, PGW Bulletin #313 provides as follows:

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.

I&E Exh. 12 (emphasis in original).

26. Regarding Pipeline Patrol Procedures, PGW Bulletin #313 provides that an inspector should always report or act upon “[a]ny 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.” PGW. St. 1-R at 40-41; I&E Exh. 12.

27. PGW Bulletin #54, Protection of PGW Facilities From Underground Street Troubles, provides that its purpose is “[d]ispatching and investigating failures of underground structures such as water and sewer mains that could reduce or eliminate support of PGW pipelines.” I&E Exh. 13.

28. Regarding PGW’s awareness of underground troubles, PGW Bulletin #54 provides that:

Underground troubles are usually brought to PGW’s attention due to a condition observed on the street surface; or as a result of a pre-existing 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.

PGW St. 1-R at 41; I&E St. 1 at 18-19; I&E Exh. 13.

29. On July 26, 2021, Clements Brothers and Sister, Inc. (Clements), a plumbing company, submitted PA One Call ticket number 20212072616 indicating excavation at 815 Jackson Street at the sewer lateral curb trap and that the excavation at the street would be 8-feet deep and 3-feet by 6-feet wide and at the sidewalk the excavation would be 8-feet deep and 4-feet by 4-feet wide. PGW St. 1-R at 26; I&E St. 1 at 11-12; I&E Exh. 6.

30. On July 29, 2021, PGW responded to PA One Call ticket number 20212072616 and field marked their cast iron facilities at 815 Jackson Street. PGW St. 1-R at 35; PGW St. 2-R at 7; I&E St. 1 at 11-12; I&E Exh. 6.

31. On September 1, 2021, Clements submitted PA One Call ticket number 20212440918, an update to the prior ticket, because the work had not been initiated, again informing PGW that Clements would be engaged in excavation at 815 Jackson Street to replace a sewer lateral curb trap and that the excavation at the street would be 8-feet deep and 3-feet by 6-feet wide and at the sidewalk the excavation would be 8-feet deep and 4-feet by 4-feet wide. PGW St. 1-R at 26; I&E St. 1 at 11-12; I&E Exh. 7.

32. On September 3, 2021, PGW responded to PA One Call ticket number 20212440918 and field marked their cast iron facilities at 815 Jackson Street. I&E St. 1 at 11-12; I&E Exh. 7.

33. Also on September 3, 2021, Lepore Plumbing (Lepore) submitted an emergency PA One Call ticket number 20212460409 informing PGW that Lepore had a crew on site to repair a sewer lateral curb trap at 813 Jackson Street and that the excavation would entail two digs that measured 3 feet by 6 feet. I&E St. 1 at 11-12; I&E Exh. 8.

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

35. Designation as an “emergency” does not always mean there is a threat to public safety involved, or an elevated risk. PGW St. 1-R at 37; PGW St. 2-R at 4.

36. Designation as an “emergency” could 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. 2-R at 4.

37. On September 3, 2021, PGW responded to PA One Call ticket number 20212460409 and field marked their cast iron facilities at 813 Jackson Street. I&E St. 1 at 11-12; I&E Exh. 8.

38. On September 7, 2021, Clements excavated and replaced the sidewalk, curb, asphalt street surface, and sewer lateral curb trap in front of 815 Jackson Street. PGW St. 1-R at 26; I&E Exh. 10; N.T. at 50.

39. The sewer lateral at 815 Jackson Street is located at a depth below PGW’s cast-iron main. I&E St. 1 at 13.

40. PGW’s Damage Prevention Inspectors who marked out the PA One Call notices had a copy of the PA One Call notices and knew the reason for the excavations were sewer system failures, how large the excavation would be, and where the excavation would be. I&E St. 1-SR at 11; N.T. at 145.

41. In the area near 813 and 815 Jackson Street, sewer laterals are typically made of either cast iron or terracotta, which have the potential to be brittle. N.T. 139.

42. Cast iron becomes brittle and is susceptible to breaking with little notice. PGW St. 1-R at 10, 29; N.T. at 107.

43. Old cast iron should be treated with significant care and respect. N.T. 113.

44. PGW ranks cast iron as the riskiest or second riskiest asset in its system and recognizes that small diameter is riskier than large diameter cast iron. N.T. at 102-103.

45. The 800-block of Jackson Street had a history of 5 cast iron main breaks in the preceding 12 years. I&E St. 1-SR at 1-2, 7.

46. If a sewer trap fails, it can result in underground leaks. N.T. at 141.

47. Water and sewer leaks pose risks to surrounding facilities by adversely affecting soil stability. N.T. 109.

48. On November 30, 2021, at approximately 7:09 p.m., a natural gas explosion occurred at 815 Jackson Street in Philadelphia. PGW St. 1-R at 19; I&E St. 1 at 7.

49. The incident/explosion occurred approximately 11 weeks, or nearly three months, after Clements completed the excavation on September 7, 2021. N.T. 50.

50. On November 30, 2021, at approximately 8:31 p.m., PGW notified I&E about the gas explosion that occurred at 815 Jackson Street. I&E St. 1 at 7.

51. The natural gas explosion resulted in property damage, including buildings and cars. PGW St. 1-R at 19, 22.

52. The natural gas explosion also resulted in the evacuation of 6 buildings and 10 residents. I&E St. 1 at 7.

53. Upon inspection, PGW determined that the explosion occurred after a natural gas leak was released from a circumferential crack on PGW's 4-inch cast-iron main located in front of 815 Jackson Street. PGW St. 1-R at 19.

54. The 4-inch low-pressure cast-iron main was located approximately 7 feet from the foundation wall and 7.5 feet from the curb, was installed in pre-1899, and connects to the service line for 815 Jackson Street. PGW St. 1-R at 20.

55. PGW undertakes a leak survey of its system and has done so annually in the 800 block of Jackson Street. PGW St. 1-R at 20.

56. PGW conducts a walking survey of the mains in the 800 block of Jackson Street as part of its leak survey program. PGW St. 1-R at 20-21.

57. Following the explosion, PGW completed a leak investigation according to PGW procedures and took steps to isolate the broken cast iron main. PGW St. 1-R at 21.

58. Following the explosion, PGW completed cast iron pipe replacement on the 800 block of Jackson Street by January 27, 2022, with 1,548 feet of pipe installed at an approximate cost of \$557,000. PGW St. 1-R at 21.

59. Following the incident on November 30, 2021, PGW performed regular leak surveys in the area to verify safety conditions. PGW St. 1-R at 21.

60. PGW continued performing regular leak surveys until all of the cast iron main in the area was replaced. PGW St. 1-R at 21.

IV. BURDEN OF PROOF/LEGAL STANDARD

The Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, Complainant, I&E, has the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a).

To establish a sufficient case and satisfy the burden of proof, Complainant must show that the Respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990), *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. 2 Pa.C.S. § 704; *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v.*

Unemployment Comp. Bd. of Rev., 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of persuasion 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. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

Regarding compliance with Commission regulations or orders, the Pennsylvania Public Utility Code provides that:

Every public utility, its officers, agents, and employees, and every other person or corporation subject to the provisions of this part, affected by or subject to any regulations or orders of the commission or of any court, made, issued, or entered under the provisions of this part, shall observe, obey, and comply with such regulations or orders, and the terms and conditions thereof.

66 Pa.C.S. § 501(c).

Regarding gas service and minimum safety standards, Commission regulations provide 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.” 52 Pa. Code § 59.33(a). Commission regulations further provide that “[t]he minimum safety standards for all natural gas public utilities in this Commonwealth shall be those issued under the pipeline safety laws found in 49 U.S.C. §§ 60101--60503 and as implemented at 49 CFR Parts 191--193 and 199, including all subsequent amendments thereto.” *Id.* § 59.33(b).

Regarding pipeline safety, the Code of Federal regulations provides that “[n]o person may operate a segment of pipeline, unless it is maintained in accordance with this subpart.” 49 C.F.R. § 192.703(a). This regulation further provides that “[e]ach segment of pipeline that becomes unsafe must be replaced, repaired, or removed from service.” *Id.* § 192.703(b).

Regarding external corrosion control, the Code of Federal Regulations provides the following:

Whenever an operator has knowledge that any portion of a buried pipeline is exposed, the exposed portion must be examined for evidence of external corrosion if the pipe is bare, or if the coating is deteriorated. If external corrosion requiring remedial action under §§ 192.483 through 192.489 is found, the operator shall investigate circumferentially and longitudinally beyond the exposed portion (by visual examination, indirect method, or both) to determine whether additional corrosion requiring remedial action exists in the vicinity of the exposed portion.

49 C.F.R. § 192.459.

Regarding procedural manuals for operations, maintenance, and emergencies, the Code of Federal Regulations provides 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. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted.

49 C.F.R. § 192.605(a).

Regarding the protection of cast-iron pipelines, the Code of Federal Regulations provides the following:

When an operator has knowledge that the support for a segment of a buried cast-iron pipeline is disturbed:

- (a) That segment of the pipeline must be protected, as necessary, against damage during the disturbance by:
 - (1) Vibrations from heavy construction equipment, trains, trucks, buses, or blasting;
 - (2) Impact forces by vehicles;
 - (3) Earth movement;
 - (4) Apparent future excavations near the pipeline; or
 - (5) Other foreseeable outside forces which may subject that segment of the pipeline to bending stress.

49 C.F.R. § 192.755(a).

Additionally, PGW is required by law to provide adequate and reasonable service. Section 1501 of the Public Utility Code provides, in relevant part:

§ 1501. Character of service and facilities

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. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501.

Interpreting this provision in *West Penn Power Co. v. Pennsylvania Public Utility Commission*, 478 A.2d 947 (Pa. Cmwlth. 1984), the Commonwealth Court stated:

We hold that in order for the PUC to sustain a complaint brought under this section, 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.

West Penn Power, 478 A.2d at 949 (footnote omitted).

The statutory definition of “service” is to be broadly construed.¹ *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm’n*, 654 A.2d 72 (Pa. Cmwlth.

¹ “‘**Service.**’ Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities ... in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them[.]” 66 Pa.C.S. § 102 (emphasis original).

1995). In applying the facts to the law, the issue becomes whether PGW's actions as described in the Complaint rise to the level of inadequate service that constitutes a violation of the Public Utility Code.

V. DISCUSSION

A. Count One

In the Complaint, I&E asserted that PGW failed to follow its procedures found at Bulletin #312 in that PGW: (1) failed to observe contractor activities and offer assistance to safeguard PGW facilities during construction; (2) failed to 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; and/or (3) failed to promptly dispatch personnel to determine the effect of water or sewer system failures or surface conditions, such as cavities or cave-ins, on PGW facilities. I&E averred that, if proven, this is a violation of 49 C.F.R. § 192.605(a). Complaint ¶ 97.

1. I&E's Position

I&E argues that natural gas public utilities, such as PGW, are required to meet the minimum safety standards found in 49 U.S.C. §§ 60101-60503 and as implemented at 49 C.F.R. Parts 191-193 and 199.² Section 192.605(a) requires that each natural gas distribution operator prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. I&E Main Brief at 34.

² 52 Pa. Code § 59.33(b).

I&E avers that PGW received three separate notices of sewer system failures, in the form of the PA One Call notices, that indicated excavation would be conducted to repair and replace sewer curb trap laterals. According to I&E, PGW's Bulletins clearly identify sewer system failures as an underground street trouble and require PGW to take affirmative action to address the threats posed by underground street troubles. I&E Main Brief at 35; I&E Reply Brief at 12.

Additionally, I&E argued that PGW was aware of 15 facts and circumstances surrounding the sewer system failures and excavations at 815 and 813 Jackson Street. Based on this knowledge, I&E believes that PGW understood the risks to its cast iron main facility at the location. In particular, I&E maintains that PGW knew that:

1. The main in front of 815 Jackson Street was a cast iron main;³
2. The cast iron main was in excess of 120 years old at the time of the excavation;⁴
3. Sewer failures occurred at 815 and 813 Jackson Street;⁵
4. The sewer lateral was made of either cast iron or terracotta, both potentially being brittle and fragile;⁶
5. Sewer curb trap and sewer system failures can result in the leakage of liquids from the system;⁷
6. Water and sewer leaks and failures cause soil instability due to water saturation and erosion and can remove support for other facilities;⁸
7. Sewer and water system failures represent a risk to its system;⁹

³ N.T. at 149.

⁴ I&E St. 1 at 8; PGW St. 1R at 20.

⁵ I&E Exhs. 6, 7, 8.

⁶ N.T. at 139.

⁷ N.T. at 136, 141.

⁸ I&E St. 1-SR at 13; PGW St. 1-R at 22; N.T. at 109-110.

⁹ N.T. at 110.

8. The extensive size of the excavation, that the excavation would occur at or immediately adjacent to its cast iron facility, and that the excavation would be significantly deeper than its facility;¹⁰
9. The sewer system failures and excavations were in close proximity, in that they were immediately next door to each other;¹¹
10. Excavations around and beneath gas facilities cause soil instability by removing compacted soil;¹²
11. Cast iron becomes brittle and is susceptible to breaking with little notice;¹³
12. PGW ranks cast iron as the riskiest or second riskiest asset in its system and recognizes that small diameter is riskier than large diameter cast iron;¹⁴
13. There is a nationally recognized risk with cast iron mains;¹⁵
14. Cast iron should be treated with significant care and respect;¹⁶ and
15. The 800-block of Jackson Street had a history of 5 cast iron main breaks in the preceding 12 years.¹⁷

I&E believes that, despite this knowledge, PGW failed to take any action to prevent damage to its cast iron facility, its employees failed to alert supervisors of an endangered facility, and it failed to institute necessary actions to protect its facilities. I&E Main Brief at 36.

Moreover, I&E maintains that PGW failed to uphold the purpose of Bulletin #312 in that it failed to “observe contractor activities when necessary and to offer assistance to safeguard PGW facilities during construction.” PGW employees

¹⁰ I&E St. 1-SR at 13.
¹¹ I&E St. 1-SR at 13.
¹² PGW St. 1-R at 22; N.T. at 109.
¹³ PGW St. 1-R at 10, 29; N.T. at 107.
¹⁴ N.T. at 102.
¹⁵ N.T. at 106.
¹⁶ N.T. at 113.
¹⁷ I&E St. 1-SR at 13.

failed to promptly inform a supervisor when “pipeline facilities are or may be endangered,” and consequently failed to “institute necessary actions such as patrolling, supporting, replacing, relocating or removing from service the affected gas facilities,” as required by Section III(A) of Bulletin #312. Lastly, PGW received three separate notices of sewer system failures at 815 and 813 Jackson Street, via the PA One Call notices, but when that pipeline facility “may be affected,” PGW failed to promptly dispatch appropriate personnel to determine the effect of the sewer system failures on the cast iron facility, as required by Section III(B) of Bulletin #312. I&E Main Brief at 36-37.

Regarding PGW’s argument that sewer laterals to residences are a feeder to the system and not the sewer system itself, I&E counters that PGW provides no support for this argument, as the record is devoid of the idea of a “feeder” system. Furthermore, PGW’s witness Hawkinson made it clear in his testimony that the sewer laterals are used to transport sewage comprised of liquids and solids.¹⁸ I&E Reply Brief at 13.

Regarding PGW’s argument that the excavation occurred seven and a half feet from its cast iron main, I&E counters that the excavation would have, at a minimum, come within three and half feet of the cast iron main and could have come closer. The cast iron main was located seven and half feet from the curb line and the Clements’ excavation in the sidewalk at 815 Jackson Street would be at least four feet wide.¹⁹ Seven and a half feet from the curb minus the four feet wide excavation equals three and a half feet. PGW did not produce any evidence showing that the excavation occurred directly at the curb line, if it began closer to the cast iron main, or extended beyond four feet. I&E maintains that PGW is unable to produce evidence of how close the excavation came to its cast iron main because it did not observe, inspect, or investigate the sewer system failure and excavation. I&E Reply Brief at 13.

¹⁸ N.T. at 140.

¹⁹ I&E Exhs. 6, 7; Confidential Security Information JH-3.

Regarding PGW's assertion that the excavation was outside the "tolerance zone," despite the "tolerance zone" not being applicable to PGW, I&E notes that the "tolerance zone" is a term that applies to excavators²⁰ under the PA One Call Law. The "tolerance zone" is defined as the "horizontal space within eighteen inches of the outside wall or edge of a line or facility" and when inside the "tolerance zone" an excavator is required to use prudent excavation techniques.²¹ PGW attempts to avail itself of this eighteen inch rule, despite a "tolerance zone" requirement for facilities owners not appearing in the Public Utility Code, Commission regulations, Code of Federal Regulations, PGW's applicable Bulletins,²² or the PA One Call Law.²³ Additionally, PGW has admitted that excavations around its facilities can cause soil instability by removing compacted soil, without any qualification about the non-applicable "tolerance zone."²⁴ I&E Reply Brief at 14.

For these reasons, I&E maintains that it has proven beyond a preponderance of evidence that PGW failed to follow Bulletin #312, in violation of 49 C.F.R. § 192.605(a).

²⁰ "Excavator" is defined as "any person who or which performs excavation or demolition work for himself or for another person." 73 P.S. § 176. "Excavation work" is defined as "the use of powered equipment or explosives in the movement of earth, rock or other material, and includes, but is not limited to, anchoring, augering, backfilling, blasting, boring, digging, ditching, drilling, driving-in, grading, plowing-in, pulling-in, ripping, scraping, trenching and tunneling." *Id.*

²¹ 73 P.S. §§ 176; 180(4).

²² The only mention of "Tolerance Zone" in PGW's three applicable Bulletins, is at Bulletin #313(III)(D)(11), which states that "any contractor using a Vermeer trenching machine must be strictly enforced to comply with the 18 inch tolerance zone from any PGW structures."

²³ 73 P.S. § 177, Duties of Facility Owners, only requires a facility owner "to mark, stake, locate or otherwise provide the position of the facility owner's underground lines at the work site within eighteen inches horizontally from the outside wall of such line in a manner so as to enable the excavator, where appropriate, to employ prudent techniques."

²⁴ PGW St. 1-R at 22; N.T. at 109.

2. PGW's Position

PGW maintains that I&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.²⁵ PGW maintains that 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 evidence of UST, thereby rendering "assistance to safeguard PGW facilities." No further action was indicated as "necessary."²⁶ PGW Main Brief at 32-33.

As noted by PGW, the 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.^[27]

²⁵ PGW St. 1-R at 39.

²⁶ *Id.*

²⁷ *Id.*

PGW Main Brief at 33.

PGW's position is that it 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 maintains that it 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. PGW notes that I&E claimed that two excavations of isolated customer service lines to replace household sewer traps were in and of themselves reports of "water or sewer system failures."²⁸ However, as admitted by I&E's witness on cross examination, simply digging up a sewer trap is not a sewer "system" failure.²⁹ Rather, it is routine maintenance of the type commonly occurring in a household sewer system,³⁰ which does not involve the City's sewer mains to which the customer service line connects. It is a feeder to the system and not the sewer "system" itself. As PGW witness Hawkinson testified, "repairs" of sewer feeder lines are not "sewer system failures as an [UST]."³¹ PGW Main Brief at 33-34.

PGW further asserts that there was no notice that "[gas] pipeline facilities may be affected."³² The PA One Call tickets did not indicate that there would be any activity within the "tolerance zone"³³ or even cross PGW's main, given the more than seven feet of separation involved. As such, PGW maintains that Count One of the Complaint must fail. PGW Main Brief at 34.

²⁸ I&E St. 1-SR at 6.

²⁹ NT at 46-47.

³⁰ 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. N.T. at 135.

³¹ N.T. at 117.

³² I&E St. 1-SR at 7.

³³ As I&E's witness testified, the "tolerance zone" set by the PA One Call Law is the zone within 18 inches from the outside wall of utility facilities. N.T. 44.

B. Count Two

In the Complaint, I&E asserted that PGW failed to follow its procedures found at Bulletin #313 in that PGW: (1) failed to inspect foreign construction activities for the main purpose of protecting PGW underground structures and facilities; (2) failed to visit the underground street trouble and report the same to Distribution Dispatching and supervisor; (3) failed to re-visit on-going jobs, in which PGW facilities will be undermined, in order to report and/or recommend replacement or protection; (4) failed to report an undermined gas main; (5) inspector failed to report or act upon an excavation or 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; and /or (6) during pipeline patrols failed to identify and report activity or changes in the environment that could affect the safety of the pipeline. I&E maintained that, if proven, this is a violation of 49 C.F.R. § 192.605(a). Complaint ¶ 98.

1. I&E's Position

I&E argues that PGW had the requisite knowledge to understand the risks to its cast iron facility. However, despite this knowledge, PGW failed to inspect the construction activities, visit the UST, re-visit an ongoing job where a cast iron facility was undermined, failed to report or act upon excavation or construction activity that could result in damage or loss of support, and failed to report activity or environment changes that could affect the safety of the pipeline. PGW's Damage Prevention Inspectors are trained to look for circumstances that indicate the presence of USTs and for the potential of damage to pipelines and knew, among other things, of the sewer system failure, knew the extent of the excavation, and the existence and location of the cast iron facility, but failed, as required by Sections III(A)&(D) of Bulletin #313, to: (1) inspect third party construction activities for the purpose of protecting PGW facilities; (2) re-visit an ongoing job without watchman, in which a PGW facility was undermined, in

order to report or recommend protection; (3) identify underground street trouble encountered and report it to a supervisor; and (4) immediately report an undermined gas main. I&E Main Brief at 37-38.

I&E further argues that PGW Damage Prevention Inspectors did not fulfill their responsibilities under Section III(E) of Bulletin #313 in that they failed to identify, report, and act upon “any activity or changes in the environment that could affect the safety of the pipeline,” including any excavation or 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,” land subsidence, soil erosion, and other natural causes that can create additional external loading, and any other abnormal or unusual operating conditions. I&E Main Brief at 38.

For these reasons, I&E maintains that it has proven beyond a preponderance of evidence that PGW failed to follow Bulletin #313, in violation of 49 C.F.R. § 192.605(a).

2. PGW’s Position

PGW avers that I&E is selectively misreading PGW’s Bulletin 313. I&E witness Cooper-Smith offered the following testimony:

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.^[34]

According to PGW, there is no such requirement under Bulletin 313. Instead, PGW maintains that the operative directive of Bulletin 313 is the following:

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.^[35]

As Mr. Hawkins explained of Bulletin 313:

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.^[36]

PGW Main Brief at 34-35.

PGW insists that the PA One Call locate requests were typical and there was no evidence presented by I&E to meet their burden of proof that PGW Damage

³⁴ I&E St. 1 at 22.

³⁵ 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.

³⁶ PGW St. 1-R at 41.

Prevention Inspectors 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.” The record evidence shows that PGW’s main was not exposed, as the sidewalk above the main was never removed until after the incident.³⁷ PGW Main Brief at 35.

PGW notes that I&E 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. PGW avers that this is pure speculation. The PA 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, PGW maintains that Count two of the Complaint must fail. PGW Main Brief at 35.

C. Count Three

In the Complaint, I&E asserted that PGW failed to follow PGW’s procedures found at Bulletin #54 in that PGW had notice of failures of underground structures such as water and sewer mains that could and did reduce or eliminate support for PGW facilities at and near 815 Jackson Street and failed to create an order or dispatch and investigate the failures of underground structures and resulting excavations. I&E further asserted that, if proven, this is a violation of 49 C.F.R. § 192.605(a). Complaint ¶ 99.

³⁷ N.T. at 51, 70–72.

1. I&E's Position

I&E argues that PGW had the requisite knowledge to understand the risks to its cast iron facility. Despite this knowledge, PGW failed to bring reports of the sewer system failures, a UST, to the attention of the Dispatcher, failed to generate a UST Order in AIMS, and failed to investigate the UST to determine PGW facility involvement and the impact it may have on PGW facilities. I&E Main Brief at 38.

I&E avers that Bulletin #54 specifically identifies sewer system failures as a UST and that notice of USTs can be received via the PA One Call System and from Damage Prevention Inspectors. PGW received three notices of sewer system failures and repairs at 815 and 813 Jackson Street, via the PA One Call tickets, but never generated a UST Order in AIMS or brought to the attention of a dispatcher, as required in Section IV of Bulletin #54. Additionally, a PGW Damage Prevention Inspector was on site at 815 and 813 Jackson Street, reviewed copies of the PA One Call tickets, and knew that sewer system failures occurred, but failed to generate a UST Order in AIMS, as required by Section IV of Bulletin #54. Ultimately, the failure to generate a UST Order led to PGW's failure, as required by Bulletin #54, to investigate the USTs and determine: (1) PGW involvement; (2) Distance of the problem to PGW structures; (3) Undermining; (4) Status of the UST repair; and (5) Leak associated with the problem. I&E Main Brief at 38-39.

For these reasons, I&E maintains that it has proven beyond a preponderance of evidence that PGW failed to follow Bulletin #54, in violation of 49 C.F.R. § 192.605(a).

2. PGW's Position

PGW avers that I&E's statement of Bulletin 54 is 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 provides as follows:

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.^[38]

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.” PGW Main Brief at 36.

PGW witness 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. PGW avers that I&E points to no pre-excavation indicating that a UST investigation by PGW was warranted. As noted by PGW witness Leva, the PGW employees “did their job.”³⁹ As such, PGW maintains that Count three of the Complaint must fail. PGW Main Brief at 36.

³⁸ PGW St. 1-R at 41 (citing Bulletin 54, Sec, III).

³⁹ *Id.* at 42.

D. Count Four

In the Complaint, I&E asserted that PGW 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. I&E maintained that, if proven, this is a violation of 49 C.F.R. § 192.703(a). Complaint ¶ 100.

1. I&E's Position

As I&E argued previously, PGW had knowledge of 15 facts and circumstances that PGW knew would lead to the support for the cast iron main at 815 Jackson Street being disturbed and failed to protect the cast iron main as necessary and failed to take permanent steps to protect the cast iron main. Section 192.755 directs that 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, against damage during the disturbance by: (1) Vibrations from heavy construction equipment, trains, trucks, buses, or blasting; (2) Impact forces by vehicles; (3) Earth movement; (4) Apparent future excavations near the pipeline; or (5) Other foreseeable outside forces which may subject that segment of the pipeline to bending stress. As soon as feasible, an Operator must take steps to provide permanent protection for the disturbed segment from damage that might result from external loads. I&E Main Brief at 39-40.

Additionally, PGW's Bulletin #54 identifies 49 C.F.R. § 192.755 as relevant code for that procedure, indicating that this bulletin goes towards PGW's obligation to have a written procedure in place addressing the requirements of Section 192.755. As discussed by I&E in Count Three, PGW failed to follow Bulletin #54. PGW's failure to follow Bulletin #54 is further indicative of its failure to maintain its pipeline in accordance with Subpart M. I&E Main Brief at 40.

I&E argues that PGW had extensive knowledge that the sewer system failures and excavations represented a serious risk of undermining support for the cast iron pipeline at 815 Jackson Street and took no action to protect and support its cast iron pipeline. After the failure to maintain its pipeline in accordance with Subpart M, specifically Section 192.755 and Bulletin #54, PGW continued to operate the 120-year old cast iron pipeline until it failed on November 30, 2021. I&E Main Brief at 40.

Additionally, I&E avers that it presented substantial and un rebutted evidence of significant soil support disturbances at PGW's cast iron main. First, there was uncontradicted testimony and evidence that the roadway over the sewer system failure excavation was also sunken downwards,⁴⁰ the sidewalk immediately adjacent to PGW's cast iron main was sunken downwards, indicating lack of soil support,⁴¹ and when excavation at PGW's cast iron main began the sidewalk buckled downwards and a void measuring approximately 50-inches wide by 16-inches deep, directly over PGW's main, was discovered.⁴² These facts are all evidence of significant disturbance and degradation to the soil support at 815 Jackson Street. I&E Reply Brief at 15.

Second, I&E avers that it presented testimony that the existence of soil beneath a main does not mean the main is fully supported, as soil conditions can affect the support it provides to a main.⁴³ PGW did not rebut or contradict this testimony. I&E Reply Brief at 16.

Lastly, I&E avers that PGW commissioned two root cause analyses, both of which concluded that the cast iron main failed due to a lack of support. The analyses

⁴⁰ I&E St. 1 at 15; I&E Exh. 10.

⁴¹ I&E St. 1 at 10; I&E Exh. 1.

⁴² I&E St. 1 at 10; I&E Exh. 3.

⁴³ N.T. at 77.

done by AEL and FCNA both concluded that the cast iron main failed due to a lack of soil support and did not find any other plausible reason for the cast iron main failure.⁴⁴ I&E Reply Brief at 16.

For these reasons, I&E maintains that that it has proven beyond a preponderance of evidence that PGW operated a segment of pipeline after failing to maintain its pipeline in accordance with Subpart M, in violation of 49 C.F.R. § 192.703(a).

2. PGW's Position

PGW argues that 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 already described by PGW. PGW Main Brief at 37.

Regarding 49 C.F.R. § 192.703(a), PGW maintains that this provision simply states that: “[n]o 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. PGW Main Brief at 37.

PGW further notes that 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. I&E witness Cooper-Smith conceded during the evidentiary hearing that there was no evidence of lack of underlying

⁴⁴ See I&E Exhs. 9, 10.

support for the main in question. PGW's witness explained that, when excavated, the distribution main was undisturbed and supported.⁴⁵ As such, PGW maintains that Count Four of the Complaint must fail as unsubstantiated in the record. PGW Main Brief at 37.

E. Count Five

In the Complaint, I&E asserted that PGW failed to repair, replace, or remove from service the unsafe portion of the 4-inch cast-iron main and continued to operate an unsafe segment of pipeline. I&E maintained that, if proven, this is a violation of 49 C.F.R. § 192.703(b). Complaint ¶ 101.

1. I&E's Position

As previously noted, I&E maintains that PGW had knowledge of 15 facts and circumstances surrounding the sewer system failures and excavations at 815 and 813 Jackson Street to understand that its cast iron main facility at that location would be at risk from undermining. Despite this knowledge, PGW did not inspect, investigate, evaluate, or take any tangible action in response to the sewer system failures and repairs and the resulting excavations, for the purpose of protecting its cast iron facility. As concluded by both the AEL metallurgical evaluation and FCNA root cause report, the sewer system failure and excavations removed soil support from below and around the cast iron pipe. This loss of soil support is further evidenced by the void that was discovered upon excavation of the main, as well as the pavement and sidewalk depressions found at the scene of the explosion. The loss of soil support created an unsafe condition for the cast iron pipeline, by which an external bending force was able to act upon the cast iron pipe causing a failure. I&E concludes that PGW failed to repair,

⁴⁵ PGW St. 1-R at 28; PGW St. 2-R at 11; N.T. at 33, 132.

replace, or remove from service this unsafe portion of cast iron and continued to operate it until the November 30, 2021, failure. I&E Main Brief at 41.

For these reasons, I&E avers that that it has proven beyond a preponderance of evidence that PGW failed to repair, replace, or remove from service the unsafe portion of cast iron pipeline, in violation of 49 C.F.R. § 192.703(b).

2. PGW's Position

PGW argues that Count Five 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.” I&E’s testimony fails to include a single reference to this PHMSA rule, let alone an explanation of facts supporting the allegation of Count Five. The parties agree that, once the crack was discovered in front of 815 Jackson Street, the entire section (the full block)⁴⁶ of the north side main was removed from service and replaced. PGW maintains that Count Five is factually unsupported in the record and should be dismissed. PGW Main Brief at 38.

F. Counts Six and Seven

In the Complaint, I&E asserted that PGW had knowledge that the support for the segment of 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. I&E further asserted that PGW failed to take appropriate steps to provide permanent protection from any damage that might result from external loads. I&E maintained that, if proven, this is a violation of 49 C.F.R. § 192.755(a), (b). Complaint ¶ 102.

⁴⁶ PGW St. 1-R at 21.

1. I&E's Position

I&E avers that Section 192.755(a) requires that 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, against damage from: (1) Vibrations from heavy construction equipment, trains, trucks, buses, or blasting; (2) Impact forces by vehicles; (3) Earth movement; (4) Apparent future excavations near the pipeline; or (5) Other foreseeable outside forces which may subject that segment of the pipeline to bending stress. Section 192.755(b) requires that when an operator has knowledge that the support for a segment of a buried cast-iron pipeline is disturbed, the operator should, as soon as possible, take appropriate steps to provide permanent protection to the cast iron pipeline. I&E Main Brief at 42.

I&E again notes that PGW had knowledge of 15 facts and circumstances that PGW knew would lead to the support for the cast iron main at 815 Jackson Street being disturbed, placing the cast iron main at risk of failure, and failed to protect the cast iron main as necessary or to take permanent steps to protect the cast iron main. I&E Main Brief at 42.

I&E believes that to maintain consistency with Parts 191 and 192, the “knowledge” element of Section 192.755 should be interpreted as “constructive knowledge.” Constructive knowledge is knowledge that one using reasonable care or diligence should have, and therefore that is attributed by law to a given person. Applying the constructive knowledge standard here, PGW was in possession of an overwhelming amount of knowledge regarding the risk to its cast iron pipeline due to undermining and if PGW had used reasonable care or diligence PGW would have known that the support for its cast iron main at 815 Jackson Street had been and would be disturbed. I&E Main Brief at 42-43.

I&E reasons that even if the Commission were to apply the definition of “actual knowledge” or “actual notice,” I&E has met those burdens with the evidence presented. As previously defined, “actual knowledge” is “knowledge of information that would lead a reasonable person to inquire further” and “actual notice” is “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.” In keeping with the regulatory framework for natural gas operators to use reasonable effort and exercise reasonable care to protect the public, I&E believes that the facts and circumstances in PGW’s possession would lead a reasonable utility to inquire further to ascertain to what extent its cast iron facility’s support has been disturbed by sewer system failures and excavations and what forms of protection would be necessary. I&E Main Brief at 43.

I&E believes that despite the overwhelming knowledge in its possession, PGW did not take any action to protect that segment of cast iron from vibrations, impact forces, earth movement, future excavations, or other foreseeable outside forces. Nor did PGW take appropriate steps to provide permanent protection to the cast iron pipeline. I&E Main Brief at 43.

For these reasons, I&E maintains that it has proven beyond a preponderance of evidence that PGW had knowledge that its cast iron pipeline’s support would be disturbed and failed to protect the pipeline as necessary or take appropriate steps to provide permanent protection, in violation of 49 C.F.R. § 192.755(a), (b).

2. PGW’s Position

PGW avers that 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.⁴⁷ Accordingly, PGW maintains that Counts Six and Seven must fail as factually unsupported in the record. PGW Main Brief at 38.

G. Count Nine

In the Complaint, I&E argued that PGW 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. I&E maintained that, if proven, this is a violation of 52 Pa. Code § 59.33. Complaint ¶ 104.

1. I&E's Position

I&E argues that PGW had knowledge of numerous facts and circumstances surrounding the sewer system failures and excavations at 815 and 813 Jackson Street to understand that its cast iron main facility at that location would have its support compromised and would be at risk of failure. PGW failed to act on this knowledge to protect its cast iron pipeline, failed to follow its gas safety procedures, and violated minimum Federal gas safety standards. Taken altogether, I&E avers that this demonstrates that PGW 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. I&E Main Brief at 44.

⁴⁷ PGW St. 1-R at 28; PGW St. 2-R at 11; N.T. at 33, 132.

Accordingly, I&E maintains that it has proven beyond a preponderance of evidence that PGW violated 52 Pa. Code § 59.33.

2. PGW's Position

PGW's position is that 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." PGW insists that at no point in its testimony did I&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." Moreover, 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. As explained in PGW's testimony, such a requirement would be unreasonable and would impose excessive costs were it to be imposed.⁴⁸ Accordingly, PGW avers that Count Nine must fail as factually unsupported in the record. PGW Main Brief at 39.

H. Count Ten

In the Complaint, I&E argued that PGW 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 its 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

⁴⁸ PGW St. 1-R at 44–46.

public in danger. I&E maintained that, if proven, this is a violation of 66 Pa.C.S. § 1501. Complaint ¶ 105.

1. I&E's Position

Regarding Count Ten, I&E argues that PGW failed to act on the knowledge in its possession to protect its cast iron pipeline, failed to follow its gas safety procedures, and violated minimum Federal gas safety standards. Taken together, this demonstrates that PGW 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 its 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. I&E Main Brief at 45.

2. PGW's Position

PGW responds that the I&E testimony fails to demonstrate that PGW did not reasonably maintain its facilities. In fact, other than reciting this legal standard, the I&E testimony does not explain how this general statutory prescription was violated. PGW Main Brief at 40.

I. Disposition

In Counts 1, 2, and 3 of its Complaint, I&E averred that PGW failed to follow its procedures found at Bulletins #312, #313, and #54 in violation of 49 C.F.R. § 192.605(a).

As previously noted, regarding Pipeline Safety, the Code of Federal Regulations provides, in pertinent part, that “[e]ach operator shall prepare and follow for

each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response.”⁴⁹ In accordance with this section, PGW must adhere to Bulletin #312, Summary of Distribution Department Damage Prevention Program, Bulletin #313, Instructions For Distribution Department Damage Prevention Inspectors, and Bulletin #54, Protection of PGW Facilities From Underground Street Troubles.

PGW Bulletin #312, as part of its Mission Statement, instructs Distribution Department personnel “[t]o observe contractor activities when necessary and to offer assistance to safeguard PGW facilities during construction.”⁵⁰

Regarding failure of other than PGW underground facilities, PGW Bulletin 312 Provides 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.^[51]

Regarding “excavation, demolition and blasting,” PGW Bulletin #312 also provides that “[w]herever pipeline facilities are or may be endangered, the appropriate supervisor shall be promptly informed. The supervisor shall, after consulting with his/her

⁴⁹ 49 C.F.R. § 192.605(a).

⁵⁰ I&E Exh. 11.

⁵¹ *Id.*

superiors, institute necessary actions such as patrolling, supporting, replacing, relocating or removing from service the affected gas facilities.”⁵²

Regarding instructions for Distribution Department Prevention Inspectors, PGW Bulletin #313 provides that that its purpose is “[t]o provide clear instructions for Distribution Department damage prevention inspectors regarding the various duties of their job.” Bulletin #313 further provides that one of the main functions of PGW Damage Prevention Inspectors is “[t]o inspect third party construction activities for the main purpose of protecting PGW underground structures and facilities.”⁵³

Regarding Pipeline Patrol Procedures, PGW Bulletin #313 provides 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. An activity or changes found **must** be reported to the Supervisor immediately and documented in the corresponding AIMS order.^[54]

PGW Bulletin #313 further provides that an inspector should always report or act upon “[a]ny 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.”⁵⁵

Lastly, PGW Bulletin #54, regarding protection of PGW facilities from Underground Street Troubles, provides that its purpose is “[d]ispatching and investigating

⁵² *Id.*

⁵³ I&E Exh. 12.

⁵⁴ *Id.*

⁵⁵ I&E Exh. 12.

failures of underground structures such as water and sewer mains that could reduce or eliminate support of PGW pipelines.”⁵⁶

In the present case, prior to the November 30, 2021, gas explosion, PGW received three separate PA One Call tickets to excavate and repair sewer laterals on Jackson Street. On July 26, 2021, PGW received a PA One Call ticket from Clements indicating excavation at 815 Jackson Street at the sewer lateral curb trap. The ticket advised that the excavation at the street would be 8-feet deep and 3-feet by 6-feet wide, and at the sidewalk the excavation would be 8-feet deep and 4-feet by 4-feet wide.⁵⁷ PGW responded to this ticket on July 29, 2021 and field marked their cast iron facilities at 815 Jackson Street.⁵⁸

PGW received a second PA One Call ticket from Clements on September 1, 2021. Clements submitted an updated ticket because the work at 815 Jackson Street had not been initiated. The PA One Call ticket provided the same specifications as the July 26, 2021, PA One Call ticket.⁵⁹ PGW responded to this second ticket on September 3, 2021, again field marking their cast iron facilities at 815 Jackson Street.⁶⁰

In addition to the PA One Call tickets for 815 Jackson Street, PGW received an emergency PA One Call ticket from Lepore, informing PGW that it had a crew on site to repair a sewer lateral curb trap at 813 Jackson Street and that the excavation would entail two digs that measured 3-feet by 6-feet.⁶¹ PGW responded to the

⁵⁶ I&E Exh. 13.

⁵⁷ PGW St. 1-R at 26; I&E St. No. 1 at 11-12; I&E Exh. 6.

⁵⁸ PGW St. 1-R at 35; PGW St. 2-R at 7; I&E St. 1 at 11-12; I&E Exh. 6.

⁵⁹ PGW St. 1-R at 26; I&E St.1 at 11-12; I&E Exh. 7.

⁶⁰ I&E St. 1 at 11-12; I&E Exh. 7.

⁶¹ I&E St. 1 at 11-12; I&E Exh. 8.

emergency PA One Call ticket for 813 Jackson Street on September 3, 2021 and field marked their cast iron main facilities at that address.⁶²

As noted by PGW witness Leva, Pennsylvania Act 287⁶³ defines “emergency” as “a sudden or unforeseen occurrence involving a clear and immediate danger to life, property and the environment, including, but not limited to serious breaks or defects in a facility owner’s lines.”⁶⁴ Mr. Leva further explained that the designation of “emergency” is defined by the excavator and automatically accepted and entered by the PA One Call System.⁶⁵ According to Mr. Leva, an “emergency” designation by an excavator which does not meet the criteria of an emergency can be utilized to expedite the utility response for the convenience of the excavator.⁶⁶ Mr. Leva further explained that designation as an “emergency” does not always mean there is a threat to public safety involved, or an elevated risk.⁶⁷ Designation as an “emergency” could also 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.⁶⁸

Separate from demonstrating that three separate PA One Call tickets for the 800 block of Jackson Street, I&E was not able to offer any evidence to demonstrate that an emergency existed when PGW responded to the PA One Call tickets and marked their facilities in front of 813 and 815 Jackson Street. I&E could have called representatives from Clements and Lepore Plumbing to offer evidence regarding the nature of the work performed and for Lepore, the extent of what it considered an “emergency” when it

⁶² I&E St. 1 at 11-12; I&E Exh. 8.

⁶³ 73 P.S. § 176.

⁶⁴ PGW St. 2-R at 3.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ PGW St. 1-R at 37; PGW St. 2-R at 4.

⁶⁸ PGW St. 2-R at 4.

submitted its PA One Call request. Instead, I&E offered only the testimony of I&E witness Cooper-Smith, who was not even on site for the investigation at 815 Jackson Street.

I&E also argued that, even if PGW did not have direct knowledge that its gas main support would be compromised, it had constructive knowledge based on the PA One Call tickets, the nature of the piping involved and the nature of the work involved. PGW witness Hawkinson offered testimony in response to I&E's argument that constructive knowledge is sufficient:

Q. Is this "should have known" and subsequent monitoring of the sewer excavation, a reasonable position to take?

A. No, BI&E's position suffers from several fundamental errors.

First, the position misreads the regulations and PGW's procedures. PGW's safety bulletins and federal rules regarding "safeguarding" against another party's excavation near our gas mains is triggered by *actual* knowledge on an unsafe conditions [sic] affecting PGW's facilities. In other words, there must be an Underground Street Trouble ("UST") noticed by PGW employees or a third-party report of a UST to trigger third party excavation monitoring. *Neither of those exist here.* Nevertheless, BI&E then asserts that actual knowledge is not required; rather that PGW *should* have known solely because of the One Call tickets themselves. PGW strongly disagrees with BI&E's version of the facts, interpretation of PGW's safety procedures, and the law.

Second, there was nothing unusual or conspicuous about the One Call marking requests by the sewer excavators on Jackson Street in 2021 that could have triggered any concern by PGW. Nothing in the One Call tickets discussed by BI&E indicate anything to deem it "necessary" for PGW to continue to be present at the site

after its facilities were appropriately marked and visually evaluated. The PGW Damage Prevention Inspectors that undertook the street marking are trained to recognize surface indications of underground street trouble. For example, depressions in the street surface may indicate underground voids. If observed, PGW employees follow procedures for reporting and follow up investigation. PGW was unaware of any UST in the 800 block of Jackson Street associated with the work by any third-party excavator in 2021.

Third, there was no concentration of PA One Call tickets on the 800 block of Jackson Street. The existence of two excavations on a city street in Philadelphia is a routine matter. PGW served approximately 31,600 city blocks in the City and receives approximately 70,000 One Calls each year. The notion that two excavations (three One Call tickets) is a concentrated number in a City of Philadelphia block is not empirically supported or rational. Further, for the year 2021 prior to the event, only four tickets (three excavations) in total were received in the area near 815 and 813 Jackson Street (i.e., 1 ticket unrelated to the sewer excavations raised by BI&E), which is not at all unusual in the City of Philadelphia. To provide clarity, on average, approximately 50% of the tickets filed with PA One Call occur on the same block in the same year.

Fourth, there were no third-party reports of underground subsidence in the 800 block of Jackson St. Neither of the two excavators working on the sewer reported adverse conditions (such as voids) during their work at or proximate to 815 Jackson St. to any entity (e.g., PGW, the City Water Department, or PA One Call). Indeed, “I&E is not aware of any individual or entity that knew of the void prior to November 30, 2021 [the date of the explosion’].” Exhibit JH-1, BI&E Response to PGW Set I, No. 8.c.^[69]

⁶⁹ PGW St. 1-R at 4-5.

Upon review of the record, the Federal regulations and PGW's Bulletins, I agree with Mr. Hawkinson that actual knowledge is required, either from PGW's own observations when making the PA One Call markings, or as reported by someone else, including a third-party excavator.

Of the witnesses who offered testimony in this proceeding, PGW witness Leva was actually on site at 815 Jackson Street on November 30, 2021, the day of the incident. Mr. Leva offered the following explanation regarding the condition of the soil surrounding the cracked main when it was excavated:

Many photographs show the condition of the soil surrounding the cracked main during the excavation, both in BI&E's testimony exhibits and PGW Exhibit JH-1. For the most part, during excavation a small cavity was found near PGW's 4-inch cast iron main. Given the age of the sidewalk above PGW's main (i.e., it was not disturbed by the prior plumber excavations in September 2021), there is no way of knowing when the voids may have formed and there was no indication from the surface of any underground street troubles near PGW's main. It is impossible to know what the surrounding condition was prior to the main breaking for certain.^[70]

Additionally, when asked during the October 16, 2025 evidentiary hearing when PGW should have Damage Prevention Inspectors present during an excavation, Mr. Leva answered as follows:

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 816 [sic] Jackson Street?

⁷⁰ PGW St. 2-R at 11.

A. No, they were not.

Q. Any 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.^[71]

During the evidentiary hearing I&E witness Cooper-Smith explained the tolerance zone as follows:

The tolerance zone is the area in which anybody doing work near an asset has to dig prudently, basically not use recognized equipment to protect the assets that are in the specific zone. Typically, it is – it depends on the size of the asset and how much area there is outside of that asset. But in that particular zone, you have to dig prudently.^[72]

Ms. Cooper-Smith acknowledged that the tolerance zone is 18-inches from the outside wall of the pipe, and also that the PA One Call ticket indicated that excavation would be taking place over three feet from PGW's gas main.⁷³

Under the circumstances, I agree with Mr. Leva that it is impossible to know for certain what the surrounding conditions were prior to the main breaking. Any conclusion I might draw would be speculative at best. Moreover, I&E was not able to rebut Mr. Leva's testimony and demonstrate for certain that there was any evidence of an emergency or an UST, or that PGW had knowledge of an emergency or UST, at the time when PGW's employees marked its facilities in response to the PA One Call tickets (i.e., prior to the excavations). For these reasons, I cannot conclude that PGW failed to follow

⁷¹ N.T. at 148-149.

⁷² N.T. at 44.

⁷³ N.T. at 43, 45.

Bulletins #312, #313, or #54 in the performance of its duties, or that it violated 49 C.F.R. § 192.605(a). Accordingly, Counts 1, 2, and 3 of the Complaint are denied.

In Count 4 of its Complaint, I&E averred that PGW 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. However, as previously noted regarding Counts 1, 2, and 3, I agree with Mr. Leva that it is impossible to know for certain what the surrounding condition was prior to the main breaking. Moreover, I&E did not demonstrate that there was evidence of an emergency or UST when PGW marked its facilities prior to the excavation work performed in September 2021. Without such a demonstration, I cannot conclude that PGW failed to protect its buried cast iron pipeline. As I cannot conclude that PGW had knowledge that support for that segment of pipe was disturbed, Count 4 of the Complaint is denied.

In Count 5 of its Complaint, I&E averred that PGW failed to repair, replace, or remove from service the unsafe portion of the 4-inch cast-iron main and continued to operate an unsafe segment of pipeline in violation of 49 C.F.R. § 192.703(b). However, as previously noted in regard to Counts 1 through 4 of the Complaint, I agree with Mr. Leva that it is impossible to know for certain what the surrounding condition was prior to the main breaking. Moreover, I&E did not demonstrate that there was evidence of an emergency or UST when PGW marked its facilities prior to the excavation work performed in September 2021. In light of this, and recognizing that a significant portion of PGW's cast iron facilities are considerably aged, it is impossible to know for certain if there was an unsafe portion of the 4-inch cast-iron main that should have been replaced prior to the incident. Without such a demonstration, I cannot conclude that PGW's actions constituted a violation of 49 C.F.R. § 192.703(b). Accordingly, Count 5 of the Complaint is denied.

In Counts 6 and 7 of its Complaint, I&E averred that PGW had knowledge that the support for the segment of buried 4-inch cast iron pipeline at and near 815 Jackson Street was disturbed by sewer failures and excavation activity near the pipeline, and that PGW failed to protect, as necessary, the cast iron main against damage. I&E further averred that PGW failed to take appropriate steps to provide permanent protection from any damage that might result from external loads in violation of 49 C.F.R. § 192.755(a), (b).

As previously noted, it is impossible to know for certain what the surrounding conditions were prior to the main breaking, and any conclusion I might draw would be speculative. There is nothing in the record to show that PGW had knowledge that the support for the 4-inch cast-iron pipeline in front of 815 Jackson Street was disturbed by sewer failures and the excavation activity near the pipeline. I&E could have offered testimony from Clements and Lepore regarding the status of the area of the excavation work they performed, which may have been helpful. Testimony from Lepore would have been particularly helpful in that they could have explained the nature of the “emergency” they indicated in the PA One Call ticket. However, no such testimony was offered. Based on the evidence of record, I cannot conclude that PGW had knowledge that its 4-inch main near 815 Jackson Street was disturbed by sewer failures and the excavation work performed nearby, that PGW failed to protect the cast iron main against damage, or that PGW failed to take appropriate steps to provide permanent protection from any damage that might result from external loads in violation of 49 C.F.R. § 192.755(a), (b). Accordingly, Counts 6 and 7 of the Complaint are denied.

In Count 9 of the Complaint, I&E avers that PGW 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. Again, I&E contends that PGW had knowledge of numerous facts and circumstances surrounding the sewer system

failures and excavations at 815 and 813 Jackson Street to understand that its cast iron main facility at that location would have its support compromised and would be at risk of failure, and that PGW failed to act on this knowledge to protect its cast iron pipeline, failed to follow its gas safety procedures, and violated minimum Federal gas safety standards.

As already noted, based on the record in this proceeding I cannot conclude that PGW had knowledge that its 4-inch main near 815 Jackson Street was disturbed by sewer failures and the excavation work performed nearby, that PGW failed to protect the cast iron main against damage. I also cannot conclude that PGW failed to exercise reasonable care to reduce hazards to which its employees, customers or others may be subjected. There is nothing in the record to suggest that PGW's Damage Prevention Inspectors were derelict in their duties when responding to the PA One Call tickets made regarding 813 and 815 Jackson Street. Moreover, there is nothing in the record to demonstrate that conditions existed at the time the inspectors made their markings that would lead to the conclusion that a UST or other hazard existed when the markings were made. Without such a showing, I cannot conclude that PGW's actions constituted a violation of 52 Pa. Code § 59.33. Accordingly, Count 9 of the Complaint is denied.

In Count 10 of the Complaint, I&E avers that PGW 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 its 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 in violation of 66 Pa.C.S. § 1501. Again, I&E contends that PGW failed to act on the knowledge in its possession to protect its cast iron pipeline, failed to follow its gas safety procedures, and violated minimum Federal gas safety standards.

As already noted, based on the record in this proceeding I cannot conclude that PGW had knowledge that its 4-inch main near 815 Jackson Street was disturbed by sewer failures and the excavation work performed nearby, or that PGW failed to protect the cast iron main against damage. I also cannot conclude that PGW failed to follow its gas safety procedures or that it violated minimum Federal gas safety standards. There is nothing in the record to suggest that PGW's Damage Prevention Inspectors were derelict in their duties when responding to the PA One Call tickets made regarding 813 and 815 Jackson Street. Moreover, there is nothing in the record to demonstrate that conditions existed at the time the inspectors made their markings that would lead to the conclusion that an UST or other hazard existed when the markings were made. Without such a showing, I cannot conclude that PGW's actions constituted a violation of 66 Pa.C.S. § 1501.

Accordingly, I&E's Complaint is denied in its entirety.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S. § 701.
2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is upon the Bureau of Investigation and Enforcement. 66 Pa.C.S. § 332(a).
3. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704.

4. Every public utility, its officers, agents, and employees, and every other person or corporation subject to the provisions of this part, affected by or subject to any regulations or orders of the commission or of any court, made, issued, or entered under the provisions of this part, shall observe, obey, and comply with such regulations or orders, and the terms and conditions thereof. 66 Pa.C.S. § 501(c).

5. Each 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. 52 Pa. Code § 59.33(a).

6. The minimum safety standards for all natural gas public utilities in this Commonwealth shall be those issued under the pipeline safety laws found in 49 U.S.C. §§ 60101--60503 and as implemented at 49 C.F.R. Parts 191--193 and 199, including all subsequent amendments thereto. 52 Pa. Code § 59.33 (b).

7. No person may operate a segment of pipeline, unless it is maintained in accordance with this subpart. 49 C.F.R. § 192.703(a).

8. Each segment of pipeline that becomes unsafe must be replaced, repaired, or removed from service. 49 C.F.R. § 192.703(b).

9. Whenever an operator has knowledge that any portion of a buried pipeline is exposed, the exposed portion must be examined for evidence of external corrosion if the pipe is bare, or if the coating is deteriorated. If external corrosion requiring remedial action under §§ 192.483 through 192.489 is found, the operator shall investigate circumferentially and longitudinally beyond the exposed portion (by visual examination, indirect method, or both) to determine whether additional corrosion

requiring remedial action exists in the vicinity of the exposed portion. 49 C.F.R. § 192.459.

10. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted. 49 C.F.R. § 192.605(a).

11. 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, against damage during the disturbance by: [v]ibrations from heavy construction equipment, trains, trucks, buses, or blasting; [i]mpact forces by vehicles; [e]arth movement; [a]pparent future excavations near the pipeline; or [o]ther foreseeable outside forces which may subject that segment of the pipeline to bending stress. 49 C.F.R. § 192.755(a)(1)-(5).

12. It is every public utility's duty to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities," and to "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." 66 Pa C.S. § 1501.

13. The statutory definition of "service" is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa. Cmwlth. 1995).

14. The Bureau of Investigation and Enforcement failed to meet its burden of demonstrating that Philadelphia Gas Works failed to adhere to Federal regulations regarding pipeline safety.

15. The Bureau of Investigation and Enforcement failed to meet its burden of demonstrating that Philadelphia Gas Works failed to provide adequate and reasonable service.

VII. ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of the Bureau of Investigation and Enforcement against Philadelphia Gas Works at C-2024-3052277 is denied.

2. That the Secretary shall mark this docket closed.

Date: May 8, 2026

/s/
Christopher P. Pell
Deputy Chief Administrative Law Judge