ECKERT SEAMANS
ATTORNEYS AT LAW

Eckert Seamans Cherin & Mellott, LLC
213 Market Street
8th Floor
Harrisburg, PA 17101

TEL: 717 237 6000
FAX: 717 237 6019

Bryce R. Beard
717.237.6041
bbeard@eckertseamans.com

June 8, 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 are the Reply Exceptions of the Philadelphia Gas Works ("PGW") in the above-referenced proceeding. Copies are being served in accordance with the attached Certificate of Service.

Sincerely,

Bryce R. Beard

BRB/dmc
Enclosure

cc: Office of Special Assistants (*via email*)
Honorable Christopher Pell (*via email*)
Certificate of Service

CERTIFICATE OF SERVICE

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

Via Email Only

Colby B. Widdowson, Esq.
Bureau of Investigation & Enforcement
PA Public Utility Commission
400 North Street
Harrisburg, PA 17120
cwiddowson@pa.gov

Dated: June 8, 2026

Bryce R. Beard, Esquire

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

PHILADELPHIA GAS WORKS'
REPLY EXCEPTIONS

Norman J. Kennard, Esq. (Attorney I.D. No. 29921)
Bryce R. Beard, Esq. (Attorney I.D. No. 325837)
Daniel Clearfield, Esq. (Attorney I.D. No. 26183)
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Floor
Harrisburg, PA 17101
717.237.6000, Fax 717.237.6019
nkennard@eckertseamans.com
bbeard@eckertseamans.com
dclearfield@eckertseamans.com

Counsel for Philadelphia Gas Works

Date: June 8, 2026

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

I. INTRODUCTION

Pursuant to the Pennsylvania Public Utility Commission's ("Commission" or "PUC") regulations,[1] Philadelphia Gas Works ("PGW") hereby submits these Reply Exceptions to the Exceptions filed by the Bureau of Investigation and Enforcement ("BI&E") asking the Commission to set aside the Initial Decision of Deputy Chief Administrative Law Judge Christopher Pell ("ALJ Pell").

II. SUMMARY OF REPLY EXCEPTIONS

PGW respects the work of BI&E and believes that it has established a productive working relationship with BI&E in undertaking numerous initiatives designed to promote public safety.

As ALJ Pell found, however, BI&E's formal complaint in this matter ("Complaint") should not have been filed. BI&E's theory is anomalous, contrary to law, and fails to state a viable cause of action against PGW — precisely as ALJ Pell concluded in dismissing the Complaint in its entirety. If BI&E's theory is adopted, it would make all natural gas distribution utilities strictly liable for every gas main incident when there is a Pennsylvania One Call ("One Call") ticket merely near its infrastructure, even where the utility (or anyone) had no knowledge of conditions that were reasonably likely to lead to an incident. This sort of strict liability standard is not only contrary to law but also violates due process and contravenes public policy. Utilities should only be penalized when they act or fail to act in a manner that violates the Commission's safety regulations, not merely because an incident occurred with no proximate cause linked to the utility whatsoever.

PGW takes its obligations to ensure public safety seriously. As a cash-flow utility with one of the largest cast iron inventories in the nation, PGW's efforts to replace its cast iron mains are well known to the Commission, and these efforts balance many factors in the interest of PGW's ratepayers.[2] It is undisputed that cast iron can become brittle and break with little or no warning.[3] This is why PGW

1 52 Pa. Code § 5.535(a).
2 PGW St. 1-R at 8.
3 *Id.* at 29 ("Cast iron can also break without warning and without any apparent cause.").

aggressively targets those facilities for replacement,[4] at a pace that can be maintained consistent with its obligations to charge just and reasonable rates supported by the Commission.[5] PGW's efforts, with the support of the Commission, have in fact reduced leaks.[6] To further promote safety, PGW also provides excavator/public education and has voluntarily agreed to a first of its kind in Pennsylvania audible methane-detector program.[7] In the field, PGW's efforts to improve safety include using in-house One Call mark-out personnel,[8] having a 24/7 maintenance and emergency response system, and conducting annual City-wide mobile leak surveys, which exceed regulatory requirements.[9] PGW's personnel are trained to identify conditions that may negatively impact its facilities, including pipe support, and trigger Underground Street Trouble ("UST") investigations when needed.[10]

BI&E's first exception should be denied because it does not identify any material error in the Initial Decision. This exception merely repackages BI&E's *post hoc* strict liability theory that no knowledge of adverse underground conditions is required for a fine to be imposed, which is a theory that ALJ Pell correctly found the record does not support. As a matter of fact, the routine One Call tickets for 813 and 815 Jackson Street did not provide PGW with actual notice of an UST, a disturbed cast iron main, or any threat to PGW's facilities. Indeed, ALJ Pell found that PGW timely and accurately marked its facilities with trained professionals, found no indication of UST, and as a matter of law had no legal duty to supervise third-party sewer trap repairs outside the tolerance zone.[11]

---

4 *Id.* at 8, 10.

5 PGW M.B. at 15–17. "Financial limitations are the primary impediment to more rapid replacement of cast iron mains. PGW finances replacement in four ways: 1) Funds made available from its current base rates; 2) Debt financing; 3) PGW's distribution system improvement charges ("DSIC"), currently set at 7.5% of PGW's distribution revenues; and 4) Third party grants." PGW St. 1-R at 9.

6 PGW St. 1-R at 12–14.

7 PGW M.B. at 18–19.

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

9 PGW St. 1-R at 17–18.

10 *Id.*

11 Initial Decision at 47.

Ultimately, ALJ Pell correctly found that BI&E's causation theory was speculative,[12] particularly where the post-incident excavation showed that the main was fully supported[13] and BI&E could not identify any actual physical evidence of undermining to support its speculative claim to the contrary. Accordingly, the Initial Decision's fact findings should be affirmed and BI&E's first exception denied.

Similarly, BI&E's second exception should be denied because it seeks to impose strict liability, or at least a constructive-knowledge standard, where the governing law requires proof that PGW had actual knowledge of a disturbed cast iron main, and that PGW failed to act on that knowledge. Despite BI&E's claim, ALJ Pell's logic did not require "irrefutable knowledge" of UST, but rather, ALJ Pell correctly required BI&E to meet its burden with evidence rather than speculation.[14] ALJ Pell correctly concluded BI&E offered no proof that PGW knew, observed, or was told of any adverse condition affecting the 815 Jackson Street main before the incident.[15] The Initial Decision's conclusions are aligned with the law, as BI&E's proposed "should have known" framework conflicts with the plain language and regulatory history of 49 C.F.R. § 192.755, which unequivocally requires that an operator "has knowledge" of disturbed support for a cast iron main. BI&E also failed to prove the conclusive causal connection between any action or inaction of PGW and the explosion almost three months later, which is required to establish a violation of Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501. Because the record does not show that any PGW act or omission caused unsafe service or violated any regulation or PGW bulletin, Exception 2 should be rejected.

Lastly, BI&E's third exception should be denied because ALJ Pell correctly found that an excavator's "emergency" designation on a One Call ticket is not proof of an actual emergency that

---

12 *Id*.
13 N.T. at 132.
14 Initial Decision at 47.
15 *Id.* at 42–43, 46–47, 49–51.

would indicate a safety threat to PGW's facilities, requiring additional action by PGW.[16] The Initial Decision properly credited PGW's evidence that an emergency One Call ticket reflects a sewer or water service issue, or is simply a scheduling designation by the excavator, not a *de facto* immediate public safety threat or UST on PGW's system.[17] Once PGW rebutted BI&E's theory that an "emergency" One Call ticket did not mean an emergency impact to PGW's main, BI&E was required to prove that an actual emergency existed and that PGW failed to respond appropriately, but it did not do so. BI&E did not call or interview the relevant plumbers to explain the basis for the designation as part of its investigation,[18] and the record instead shows that PGW responded to the tickets, marked its facilities, and found no UST or other emergency condition.[19] Exception 3 therefore provides no basis to overturn the Initial Decision.

Accordingly, BI&E's Exceptions should be denied in their entirety. Having presided over the evidence and weighed the testimony of all witnesses, ALJ Pell correctly concluded that BI&E failed to prove that: PGW had actual notice of any UST; failed to identify any violated statute, regulation, bulletin, or other enforceable standard; and failed to establish a non-speculative causal connection between PGW's conduct and the Jackson Street incident. BI&E's theories depend on hindsight, constructive knowledge, and *post hoc*, ever shifting enforcement standards, rather than record evidence. Because BI&E did not meet its burden of proof, the Initial Decision should be affirmed and BI&E's Complaint must be dismissed.

---

16 *Id.* at 49.

17 *Id*.

18 ALJ Pell correctly criticized BI&E's investigation for failing to even try to interview the excavators involved, as doing so "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." *Id*.

19 *See* Findings of Fact ("FOF") 30, 32, 37, 40.

III. REPLY EXCEPTIONS

A. Reply to BI&E's Exception 1 – BI&E's Claimed "Significant Facts" Do Not Undermine the Initial Decision or Satisfy BI&E's Burden of Proof.

While BI&E argues that the Initial Decision overlooked some of BI&E's positions, the basic, uncontroverted facts of the case — many of which BI&E's Exceptions completely ignored — are as follows and found by ALJ Pell, who closely reviewed all the evidence first-hand:

- PGW responds to approximately 70,000 One Call marking requests per year.[20]
- A sewer trap is located at the curb of every home in Philadelphia to vent sewer gas and these traps sometimes become clogged, requiring clearing and repair.[21]
- During July and September 2021, PGW received three One Call tickets requesting that PGW mark its facilities for two instances of underground work (one ticket was a resubmission by the excavator) related to the repair of sewer traps at 815 Jackson Street and 813 Jackson Street by third-party plumber/excavators hired by the homeowner.[22]
- PGW's main was not exposed by the excavations. The One Call tickets identified the location of excavation as being over seven (7) feet away from PGW's main, with the closest distance of excavation occurring over three (3) feet away.[23] The BI&E witness agreed that this is well outside the 18-inch "tolerance zone" of safety.[24]
- BI&E's witness agreed with PGW that the One Call tickets, in and of themselves, did not indicate any sewer failure or sewer leaks or other hazard to PGW's main.[25]
- There was nothing unusual or conspicuous about the One Call requests that would or could have triggered a safety concern by PGW. The type (sewer repair) and level of One Call activity in the area was "routine."[26] Approximately one half of the 70,000 One Call tickets directed at PGW's facilities occur on the same block in the same year.[27]
- There is no disagreement that PGW Damage Prevention Inspectors appropriately responded to each of these One Call tickets and that the location of its facilities were accurately marked.[28]
- PGW's Damage Prevention Inspectors who performed the markings followed PGW's safety protocols by proactively examining the site and did not find any indication of UST.[29]

---

20 N.T. at 133.
21 *Id.* at 135–36.
22 PGW St. 1-R at 5, 26; PGW St. 2-R at 11–13; BI&E St. 1 at 12; BI&E Exhs. 6–8.
23 PGW St. 1-R at 34; BI&E St. 1 at 12; BI&E Exhs. 6–8; N.T. at 134.
24 N.T. at 44–45 ("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 that specific zone.").
25 *Id.* at 45–47; PGW St. 1-R at 34–35.
26 PGW St. 1-R at 26.
27 *Id.* at 5, 26; N.T. 133
28 BI&E St. 1 at 13; PGW St. 1-R at 26, 38; PGW St. 2-R at 2–7; N.T. at 138.
29 PGW St. 1-R at 35; PGW St. 2-R at 7; BI&E St. 1 at 12–13.

- An explosion occurred at 815 Jackson Street on November 30, 2021,[30] which was eleven (11) weeks, or almost three months after the last September 7, 2021 sewer lateral excavation[31] when natural gas was released from a circumferential crack on PGW's 4-inch cast iron main located in front of 815 Jackson Street, Philadelphia, Pennsylvania and an explosion ensued.[32]
- The incident resulted in $55,000 in property damage (buildings and cars) with no personal injuries or loss of life.[33]
- BI&E agreed that there was no reason, prior to the explosion, for PGW to be aware of any UST that could reasonably have put PGW on notice of risk to its pipeline facilities.[34]
- Neither of the third-party plumbers that did the excavations reported to anyone, at any time, that there were adverse sub-surface conditions present that could impact PGW's main.[35] Excavators have a legal obligation to do so.[36]
- BI&E elected not to interview any of the plumbers (Clements or Lepore) and there is no evidence on the record regarding any of their backfilling techniques, observations, or anything related to what may have been observed by them and not reported to PGW or any other party.[37]
- BI&E elected not to attend the site visit on January 12, 2022 regarding root cause analysis following the incident, which included PGW, FCNA, and Clements Plumbing (the 815 Jackson Street excavator).[38]
- While a void was found just *below the sidewalk* surface on November 30, 2021 during post-incident excavation, the void was only to a depth of 17 inches and *did not impact the soil surrounding and supporting PGW's main*, which was buried at a further two-foot depth below the sidewalk at 815 Jackson Street.[39]
- BI&E's witness admitted at the hearing that there was no evidence that the main at 815 Jackson Street was undermined or not fully supported by soil.[40] PGW presented firsthand testimony and exhibits to support that PGW's cast iron main had "full soil support around it," when excavated on November 30, 2021.[41]
- There is no evidence to show that having PGW inspectors on site when the sewer repair excavations occurred would have revealed that a pipe break was likely. Nevertheless, implementing BI&E's demand that PGW attend all One Call excavations that it is

---

30 BI&E St. 1 at 7; PGW St. 1-R at 3; I&E Exh. 10.
31 N.T. at 50.
32 BI&E St. 1 at 14; PGW St. 1-R at 19; BI&E Exh. 9.
33 PGW St. 1-R at 3, 22; **CONFIDENTIAL** Exh. JH-2 at page 15; PGW St. 2-R at 9; BI&E St. 1 at 7–8.
34 N.T. at 38–42.
35 *Id.* at 60:15–23; PGW St. 1-R at 5–6, 32; PGW St. 2-R at 12.
36 BI&E's witness conceded that, under 73 P.S. § 180(6), excavators are charged with the enforceable obligations to report any adverse conditions to the utility facilities owner. N.T. at 60 (BI&E witness agreeing with Hawkinson testimony at PGW St. 1-R at 31).
37 N.T. at 47–48.
38 *Id.* at 48.
39 PGW St. 2-R at 11, 14; N.T. at 29–30.
40 N.T. at 33.
41 *Id.* at 132; BI&E Exh. 3.

asked to mark would cost PGW ratepayers more than $17.7 million per year, under PGW's conservative estimate (most costs are unknown).[42]

- It would be hard, if not impossible, to implement the tracking of third-party excavations, as excavators have no obligation to inform marking utilities of the date and time that actual excavations will take place.[43]

It is in this factual context that BI&E seeks to fault PGW and impose a fine.

BI&E's Exception No. 1 criticizes the Initial Decision for failing to render detailed findings of fact which agree with its position. The numerous findings contained within the Initial Decision recognize the evidence that PGW acted prudently at all times, in training and practice, to protect the public safety. This is echoed in the Initial Decision itself.[44]

ALJ Pell correctly criticized BI&E's conclusion about cause as speculative and not based upon firsthand knowledge,[45] whereas PGW presented firsthand witnesses who observed that the soil fully supported the main at 815 Jackson Street.[46]

> 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.[47]

The Initial Decision also fully disagrees with the BI&E position that PGW "should have known" that a UST existed:

> 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

---

42 PGW St. 1-R at 45–46.

43 *Id.* at 46.

44 Initial Decision at 50 ("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.").

45 *Id.* at 43–44 ("I&E could have called representatives from Clements and Lepore Plumbing to offer evidence regarding the nature of the work performed . . . when it 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.").

46 Of the witnesses who offered testimony in this proceeding, only 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: "[T]here is no way of knowing when the voids may have formed and there was no indication from the surface of any [UST] near PGW's main. It is impossible to know what the surrounding condition was prior to the main breaking for certain." PGW St. 2-R at 11.

47 Initial Decision at 47, 48.

from Clements and Lepore regarding the status of the area of the excavation work they performed, which may have been helpful.[48]

Based on the evidence, ALJ Pell's conclusion is correct and should be adopted.

1. BI&E's Five "Significant Facts" Overlook and Mischaracterize the Initial Decision and Record Evidence; Rather They Underscore BI&E's Failure to Meet Its Burden of Proof

BI&E, in Exception 1,[49] raises five "significant facts" which it claims are "uncontroverted and uncontested" but are not recognized in the Initial Decision. This characterization is incorrect. And, with the exception of one of them (the fact that PGW was not present during the two excavations on Jackson Street), these supposed facts were fully rebutted by PGW, addressed in briefs, and considered then dismissed by ALJ Pell.

The first is the blanket assertion that sewer lateral One Call Tickets in and of themselves constitute notice of a UST that requires investigation by PGW personnel.[50] BI&E is not correct. As discussed in PGW's Main Brief and Reply Brief,[51] the One Call tickets at 813 and 815 Jackson Street were "routine" and contained no indication of any trouble with the natural gas distribution system. The speculative and imprecise nature of such a claim is revealed in BI&E's equivocal statement of them.[52]

As ALJ Pell found,[53] the two unique One Call tickets issued in July and September 2021[54] concerned minor repairs located 7.5 feet from PGW's main to end-user-owned sewer service lines on customer-owned laterals connecting to the City of Philadelphia's sewer system. Nothing about the tickets was unusual; they were routine among the more than 70,000 One Call requests PGW receives annually. PGW timely marked its main, its personnel looked for signs of UST and found none, and

---

48 *Id.* at 49.
49 BI&E Exceptions at 2–7.
50 BI&E Exceptions at 2.
51 *See* PGW M.B. at 27, 35, 41; *see also* PGW R.B. at 17–26; FOF 29–40.
52 BI&E Exceptions at 2 ("PGW was put on notice by three PA One Call tickets that indicated the need for sewer repairs and failures of the sewer system in the 800 block of Jackson Street, which *can* result in leakage of water and sewage, which in turn *can* undermine support for nearby facilities." (emphasis added)).
53 *See* FOF 29–40.
54 There were three One Call tickets in total, but one was a repeat, reissued ticket because the excavator did not timely undertake the work and the ticket lapsed.

they "did their job."[55] The mere existence of a One Call ticket involving work on third-party utility water and sewer facilities has never been treated as notice of a gas-distribution UST, and the two Jackson Street tickets said nothing about the condition of PGW's mains, nor was any such information otherwise conveyed to PGW.[56]

Simply stated, One Call tickets at 813 and 815 Jackson Street only contained notice that two routine excavations of sewer laterals would occur at a safe distance outside the tolerance zone[57] of PGW's natural gas facilities. It is a vast overstatement and totally at odds with the facts to suggest that merely because two routine One Call tickets were received on a particular street PGW should have anticipated that its facilities were going to be affected — if they actually were — and result in an explosion almost three months after the excavation.[58] Moreover, it would be inefficient, unworkable and costly to treat each of the 70,000 One Call tickets that PGW receives in a year as a notice of UST, thereby obligating PGW to attend and investigate all underground utility construction in the city where PGW is requested to mark its facilities.[59]

The second supposedly "overlooked" fact by ALJ Pell involves "nine things" that PGW supposedly "knew" that obligated it to be present during the third-party excavations.[60] These 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. Adopting BI&E's proposed factors would force PGW to attend and monitor tens of thousands of excavations across thousands of miles of distribution mains each year, requiring hundreds of additional employees

---

55 PGW St. 1-R at 42.
56 *See* FOF 29–40.
57 N.T. at 44–45, 148–49; PGW St. 1-R at 34.
58 N.T. at 50.
59 PGW St. 1-R at 24–25.
60 BI&E Exceptions at 3. Fifteen observations were listed in the BI&E Main Brief. Somehow, these have been reduced to nine, but the same infirmities apply. *See* PGW R.B. at 17–24.

and millions in annual ratepayer expense, with no empirical evidence of any safety benefit or need to make PGW the City's "street sheriff" for all One Calls.[61] This is especially true where enforcement of One Call violations rests separately with the Commission's Damage Prevention Committee, and, ultimately, BI&E. This enforcement role cannot and should not be delegated to PGW and its ratepayers.

And BI&E's enforcement factors keep changing. In its Main Brief, BI&E initially presented fifteen items[62] that PGW allegedly "knew" and which made it appropriate for PGW to be found in violation of safety regulations and fined hundreds of thousands of dollars. Now, in its exceptions, these "factors" have been altered and reduced down to nine. If BI&E has no confidence in its "should have known" factors and treats them as a continuing work in progress, they cannot be relied upon as enforceable standards to impose fines or burden ratepayers with financial obligations that provide no proven benefit. These "should have known" factors: were belatedly created by BI&E for this case; have never been advanced previously in any other case of which PGW is aware; and are contained in no statute or regulation. This is a clear instance of retroactively creating a "build-your-own" enforcement action.

In summary, BI&E's factors constitute never previously stated enforcement criteria that are not of record and should be rejected on that basis alone. BI&E's new requirements are not regulations or even reasonable interpretations of the regulatory standards with which PGW is obligated to comply (and with which it did comply). It is illegal, unfair, and directly violates due process[63] to create a whole new regulatory compliance scheme in the context of a litigation and then attempt to retroactively impose liability based on a violation of this new set of standards.

---

61 PGW St. 1-R at 44–45.

62 *See* PGW's R.B. at 17–24.

63 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. *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 v. Pa. Pub. Util. Comm'n*, 163 A.3d 1079 (Pa. Commw. Ct. 2017).

However, even if the Commission elects to consider this new prosecutorial framework without the necessary prior regulatory rulemaking, the substance of these factors that PGW supposedly "knew" are not the equivalent of actual knowledge of a UST at any particular location. The significance of the factors is overstated by BI&E. They involve generic conditions that exist across PGW's entire service footprint and could not in any way lead to the conclusion that there was an UST or, for that matter, *any* specific circumstances requiring PGW to attend and monitor the two sewer-trap excavations at 813 and 815 Jackson Street.

Factors 1 and 8 merely state the obvious — that PGW operates a legacy network partially composed of cast iron mains that can become "brittle" — two facts that are well-known.[64] Elevating these universal conditions into actual "notice" of a UST at 813 and 815 Jackson Street converts the mere presence of cast iron (or, presumably, any "at risk" main such as unprotected bare steel) into the broad requirements of a supervisory event whenever cast iron mains are present. Factors 2, 3, and 4 concern the condition, composition, and *potential* effects of sewer and water system failures in Philadelphia, but none establishes actual notice of a gas main UST. Sewer system failures "can result" in leakage, but there was no evidence of any leakage occurring at Jackson Street.[65] To the contrary, when PGW excavated the main after the incident, the pipe was *fully supported* with no signs of soil disturbance or water or sewage intrusion present.[66] Factors 5, 7 and 9, which claim that the two excavations on Jackson Street were "immediately adjacent" and "beneath" PGW facilities, are not correct. They were neither, as admitted by the BI&E witness.[67]

In summary, nothing in the record suggests PGW failed to treat its cast iron facilities with appropriate care and in a manner consistent with regulatory requirements. BI&E's (now nine) factors are so vague as to not even constitute "constructive notice" of a gas main UST under basic legal

---

64 *See* FOF No. 42.
65 N.T. at 38–42.
66 *Id.* at 132–33.
67 *Id.* at 44, 51–52, 71–72.

standards. They are clearly no substitute for "actual notice." BI&E is equating knowledge of its generalized factors with actual knowledge of a UST at specific locations. Implementing this construct would compel PGW's attendance and monitoring at tens of thousands of excavations across thousands of miles of distribution mains each year at the cost of many millions taxpayer dollars to PGW ratepayers, without any evidence that such monitoring would actually prevent main breaks[68] The imposition of such an unnecessary cost on PGW ratepayers is completely ignored by BI&E.

The (allegedly) unrecognized third fact asserted by BI&E is "that PGW did not conduct any investigation or inspection of the sewer system failures or excavations at 813 and 815 Jackson Street."[69] BI&E does not explain what "investigation or inspection" PGW should have or was required by law to have undertaken. PGW agrees that it was not present at the time of the excavations in front of 813 or 815 Jackson Street because there was no reason to do so under the law, the safety regulations or PGW's bulletins.[70] PGW is responsible for investigating threats to its own facilities, not the facilities of others. Moreover, PGW disagrees with the proposition that repairing sewer traps constitutes a "sewer system failure." The record does not show <u>any</u> evidence that the tickets involved "sewer system failures" — only repairs to customer-owned sewer traps, <u>as the BI&E witness conceded</u>.[71] There were no failures of the City-owned "sewer system" involved.

Moreover, although BI&E blames the plumber/excavators for disturbing the soil under the PGW main, BI&E never investigated, or even interviewed, the supposedly offending excavators. BI&E was aware of the excavators' site reporting obligations[72] and agreed that BI&E has the statutory

---

68 PGW St 1-R at 44–45.
69 BI&E Exceptions at 3.
70 *See* PGW M.B. at 20, 31–36.
71 PGW M.B. at 26–27; N.T. at 46–47, 133–34.
72 *See* 73 P.S. § 180(6); *see also* PGW St. 1-R at 31("[I]f sewer excavation crews who excavated the street had encountered any voids or cavities under PGW's or damaged PGW's facilities, they were obligated to notify the proper authorities including PGW.").

authority to prosecute them.[73] Instead, it chose to exclusively focus on the fact that PGW was not in attendance for the duration of the excavations. As BI&E's investigative report states:

> Although the failure of nearby municipal and privately owned infrastructure could have contributed to this incident, PGW is the only involved utility jurisdictional to the PUC. This investigation report focuses primarily on PGW's actions and inactions that contributed to the incident.[74]

This position is misplaced. Rather than prosecute the supposed violator(s) of One Call protocols, BI&E seeks to establish PGW as the "street sheriff" or regulatory authority for the enforcement of underground excavation standards where PGW's only role is that it was asked to mark its facilities. There is no factual, or legal basis for such a role for PGW, and creating one on BI&E's exceptions would be reversible error.

BI&E's fourth criticism[75] is directed at a finding made in the Initial Decision that "'it is impossible to know for certain what the surrounding conditions were prior to the main breaking . . . despite significant, undisputed facts that directly point to the failure of the cast iron main being caused by the lack of soil support."[76] The record, in fact, fully supports the ALJ's determination, and no other.

BI&E presented *no evidence whatsoever* that the September 2021 sewer excavations exposed, undermined, or disturbed the support of PGW's cast iron main on Jackson Street, relying instead upon speculation and supposition of what might have happened.[77] The *only* firsthand evidence in the record shows that - when excavated after the incident - the main remained fully supported and surrounded by "virgin soil."[78] The explosion occurred over 11 weeks, or almost three months, *after* the excavation activities further rendering any conclusion regarding cause speculative.[79]

---

73 N.T. at 59–61.
74 PGW St. 1-R at 7; CONFIDENTIAL Exh. JH-2 at 2; N.T. at 63 (making quote PUBLIC).
75 *See* BI&E Exceptions at 4 ("Those undisputed facts include evidence of how undermining can occur, evidence that there was a lack of soil support around the cast iron main, and two separate independent investigations that determined the cause of the failure was loss of soil support.").
76 *Id.*
77 PGW St. 2-R at 11; N.T. at 33, 132; BI&E Exh. 3.
78 N.T. at 132.
79 *Id.* at 50.

BI&E's testimony contained only generalized and unsupported observations about the *potential* causes of cracks in cast iron mains[80] in reaching the conclusion that "[t]he cast iron main cracked due to the instability of the soil due to sewer failures and excavations to repair sewer laterals in the vicinity of the main."[81] On cross examination, however, Ms. Cooper Smith admitted there is *zero evidence* to support that conclusion.[82] In other words, the witness' testimony about condition and causation were not based on any actual evidence. ALJ Pell correctly found BI&E's conclusion regarding cause consists of mere speculation and devoid of any corroborating evidence necessary to support BI&E's burden of proof.

BI&E erroneously relies upon the metallurgical and root cause reports as support for its conclusion without recognizing that these documents only described possible causes of the break and did not present any formal conclusion. The Affiliated Engineering Laboratories metallurgical report lists *four potential* causes of the main break and offers no conclusion as to which was the actual cause.[83] The study undertaken by FCNA Partners, a forensic consulting group, also contains *no definitive conclusions* as to absolute causation.[84] On the witness stand, BI&E's witness recognized that no definitive causation is known, and admitted that neither the FCNA or AEL reports found that the break was caused by "failures on third party sewer systems."[85] BI&E's witness also agreed that the FCNA

---

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

81 BI&E St. 1 at 25.

82 N.T. at 32–34.

83 The metallurgical evaluation prepared by Affiliated Engineering Laboratories states: "[T]here was no evidence of a pre-existing leaking condition prior to the reported incident . . . . circumferential cracking is a common mode of failure for cast iron piping, when subjected to bending forces . . . . Such bending forces *can* occur as a result of frost upheaval during freeze/thaw cycles, poor bedding, loss of soil support or external force from soil disturbances near the buried pipe or undermining." BI&E Exh. 9 at 28–29; PGW St. 1-R at 33.

84 The root cause analysis prepared by FCNA Partners states that: "*The potential exists* that work performed by Clements Brothers Plumbing on September 7, 2021, while excavating underground soil for a lateral curb trap replacement, compromised the natural gas piping that was later found to be damaged.

***

Excavation, backfilling, replacement of soil and asphalt surfaces by Clements Brothers Plumbing, while completing a lateral curb trap, most *likely contributed* to the damage/cracking of the underground natural gas pipe and subsequent escape and migration of gas vapors that entered the subject residence of 815 Jackson Street." BI&E Exh. 10 at 4 (Emphasis added); PGW St. 1-R at 33–34.

85 N.T. at 38–41.

and AEL reports contain no "definitive conclusions" to support her opinion about the cause of the break in front of 815 Jackson Street.[86]

With deference to the witness, she testified in this proceeding without first-hand knowledge of any of the facts of the case.[87] She performed "no on-site visits either on November 30th, 2021, or at any time as a part of BI&E's investigation" and instead relied upon "documents, pictures, and other materials from the BI&E investigative report.[88] As ALJ Pell noted, the actual inspectors with actual knowledge were not called or interviewed by BI&E.[89]

The facts provided by firsthand observers entirely contradict BI&E's opinion regarding causation. PGW's witnesses testified that, when the main was excavated after the explosion, it was fully supported by "virgin soil" and showed no evidence of water or sewer leakage.[90] BI&E, by contrast, could not identify any physical evidence — photographic or otherwise — that the main was unsupported before the November 30, 2021 excavation.[91] On cross-examination, BI&E's witness conceded she could not support a conclusive opinion that the plumber/excavators caused any loss of support,[92] admitted she was "unable to answer" questions about the condition of the main and whether it was supported and surrounded by soil when excavated,[93] and ultimately acknowledged the central flaw in BI&E's theory:

> Q. So you aren't aware of any physical evidence, that being pictures or otherwise, that the main itself was not supported by or surrounded by soil on November 30th, 2021 . . . prior to the excavation?
> A. I'm unable to answer that.
> ***
> Q. So you're not aware of any evidence of a span or unsupported segment of the main that was discovered on November 30th, 202[1]?
> A. I'm not.[94]

---

86 *Id.* at 42.
87 *Id.* at 24, 75–76.
88 *Id.* at 23.
89 Initial Decision at 49.
90 N.T. at 132.
91 *Id.* at 33.
92 *Id.* at 32–33.
93 *Id.* at 33.
94 *Id.* at 33.

PGW's witnesses then confirmed that the photos show that the main was fully supported when excavated after the explosion.[95] This testimony — and BI&E's concessions — should end BI&E's insistent and unsupported claim that the main lacked support. BI&E's refusal to address this contradictory record evidence is a critical omission, particularly because BI&E bears the burden of proof.

The final attempt to claim that the main was not supported focuses on observations about the sidewalk above the main.[96] This is apropos of nothing. 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 to finding any violation. First, the cavity under the sidewalk obviously was not observable from the surface by PGW's Damage Prevention Inspectors.[97] It was discovered only upon excavation of the gas main post-incident on November 30, 2021 – almost three months after the sewer lateral excavation on Jackson Street - and not even co-located with where the sewer line excavation occurred 7.5 feet away.[98] But more importantly, the void underneath the sidewalk measured only 17-inches deep from the surface.[99] The gas main was located 24-inches or deeper below the sidewalk and buried and supported below any subsurface, sidewalk cavity.[100] BI&E's claim, now fully discredited, is that a void was the condition 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.[101] Nor does the presence of a newer section of concrete sidewalk have any causal relationship to PGW's One Call marking obligations and adherence to its bulletins.[102]

---

95 *Id.* at 132–33. *See* PGW St. 2-R at 11.
96 BI&E Exceptions at 5.
97 PGW St. 1-R at 35; PGW St. 2-R at 7; BI&E St. 1 at 12–13.
98 N.T. at 71–72.
99 BI&E M.B. at 17. *See* N.T. 28–30.
100 N.T. at 28–30.
101 PGW M.B. at 3 (citing PGW St. 2-R at 11, 14 and N.T. at 29–30).
102 PGW St. 1-R at 30.

Fifth, and finally, BI&E's Exception No. 1 complains that "the Initial Decision did not find that the home explosion at 815 Jackson Street was the second instance of similar conduct by PGW," criticizing PGW for failing to "make any material changes to Bulletins #312, 313, or 54 and . . . take other necessary action or make necessary changes to their policy and procedures to reduce risk."[103] BI&E appears to cite the incident at 8th Street as an event that required PGW to "take preventive actions"[104] presumably by adopting BI&E's broad and mistaken view of the Bulletins and regulations which would require it to attend all third party excavation where it has been requested to mark its facilities raised in that case as done here. There are several fallacies to this line of argument, and it cannot be accepted. First, it assumes that PGW somehow failed to follow its Bulletins or otherwise accepted on the record that it did something wrong. However, the settlement expressly recognized:

> The Parties recognize that this is a disputed matter, and nothing contained herein should be construed as an admission against either party as to the merits of the other party's claims or defenses.[105]

Second, as discussed below, ALJ Buckley's Recommended Decision found "no substantial evidence that PGW violated the Code or the regulations of the Commission."[106] The only similarity of conduct shown on the record of this case is that PGW takes safety risks seriously and faithfully follows the protocols established in regulations and its Bulletins. Indeed, the Commission expressly stated that there had been "no determination as to culpability" and that issue remained "unresolved," confirming that the Commission did not adopt BI&E's theories regarding PGW's Bulletins or the controlling regulations.[107]

---

103 BI&E Exceptions at 6.

104 BI&E Exceptions at 7 ("The fact of similar prior conduct is significant here because a natural gas distributor is required to have a Distribution Integrity Management Plan ("DIMP"), which requires operators to know their systems, take preventative actions, and learn from prior incidents on their system with the goal of reducing risk in its system.").

105 *See Bureau of Investigation and Enforcement v. PGW*, Docket No. C-2022-3033834 (Jt. Pet. for Approval of Settlement dated Aug. 18, 2023), at 20 (paragraph 75) [hereinafter *8th Street Settlement*].

106 *Bureau of Investigation and Enforcement v. PGW*, Docket No. C-2022-3033834 (Recommended Decision dated June 7, 2024), at 27–29 [hereinafter *8th Street Recommended Decision*].

107 *Bureau of Investigation and Enforcement v. PGW*, Docket No. C-2022-3033834 (Opinion and Order entered Jan. 8, 2025), at 45 ("We agree that there has been no determination as to culpability in this matter. The

While BI&E does not specify what these changes should have been, this vague and hyperbolic criticism completely ignores the establishment of UST "trigger points" and other reforms to which PGW voluntarily agreed in the 8th Street Settlement. In that document, PGW and BI&E agreed to the delineation of those specific circumstances where a further UST investigation would be undertaken, and it was adopted by the Commission. PGW has implemented those terms, and they are part of PGW's safety toolkit (to the extent that they were not already).

PGW believed that the 8th Street Settlement defined PGW's UST obligations and resolved BI&E's concerns in this area with certainty, providing standards that PGW would observe and BI&E could enforce. As Judge Buckley stated: "Though not culpable, PGW has agreed to voluntarily take steps to protect the safety of the public going forward."[108] This *settlement established clear "trigger points" for further monitoring after marking occurs* that are *limited* to instances "when PGW has direct knowledge through notice or observation" and states that "*in no other circumstances is any obligation imposed, after marking, to be present during subsequent excavation*."[109]

BI&E has failed to show that PGW violated these triggers,[110] and its Complaint should be dismissed on the basis of that admission alone. In bringing this Complaint, BI&E simply ignores, indeed violates,[111] what it previously agreed were reasonable protocols. BI&E's position here would create new requirements that annul the 8th Street Settlement and the Commission's approval of it by creating a whole new set of standards.

---

question of culpability is left unresolved by the terms of the Settlement."). [hereinafter *8th Street Opinion and Order*].

108 *8th Street Recommended Decision* at 34.

109 *8th Street Settlement* at 31–32 (quoting Section V (Amendments to Street Trouble Process, Procedures, And Training) at Subsection 5).

110 N.T. 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.").

111 The 8th Street Settlement was filed on August 18, 2023 and was pending at the time BI&E filed this complaint. The Commission unanimously adopted the 8th Street Settlement without revision on January 8, 2025. The prehearing conference in this case was held after this approval and BI&E has continued to prosecute this case in violation of the terms of the 8th Street Settlement.

B. Reply to BI&E's Exception 2 – BI&E's Constructive-Knowledge Theory Conflicts with the Governing Actual-Knowledge Standard and Fails to Establish Causation.

BI&E's Exception 2 wrongly argues that the Initial Decision required BI&E to prove by "irrefutable knowledge" that PGW knew its facilities were compromised.[112] However, this was not the standard applied in the Initial Decision to determine whether BI&E had met its burden of proof. Rather, BI&E's exceptions are just a renewed attempt to impose strict liability on PGW through a "constructive knowledge" or "should have known" standard, contrary to the law and regulations, and unsupported by the record.

BI&E's theories about PGW's liability have now been twice rejected by a Commission Administrative Law Judge. ALJ Dennis Buckley, in the 8th Street proceeding, found that PGW violated no law or regulation when it did not attend and monitor third-party water and sewer excavations in the absence of notice that there was a problem with PGW's facilities.[113] Here, ALJ Pell has now reached this same conclusion as ALJ Buckley that, based on 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 One Call markings, or as reported by someone else, including a third-party excavator.[114]

---

[112] BI&E Exceptions at 7–13.

[113] As Judge Buckley found: "Indeed, after a review of the record in this case, I can find no substantial evidence that PGW violated the Code or the regulations of the Commission . . . . As the proponent of a rule or order, the Complainant in this proceeding (I&E) bears the burden of proof pursuant to Section 332(a) of the Public Utility Code. 66 Pa. C.S. § 332(a) . . . . As I have stated, nowhere in the record do I see evidence of failure to comply with the requirements of the Public Utility Code or the regulations of the Code by PGW, and I&E did not establish that any violations occurred." *8th Street Recommended Decision* at 27–29. BI&E excepted to this ALJ finding of no culpability. In disposition, the Commission agreed that it would make "no determination as to culpability in this matter" and "we reject any analysis based upon the weight of the evidence" because the matter was settled and not litigated. *8th Street Opinion and Order* at 45.

[114] Initial Decision at 46. Judge Pell went on to find at page 50 that "[B]ased 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

As a matter of evidentiary record, and as explained in detail above, BI&E offered no evidence that PGW had actual knowledge of any adverse condition affecting the main at 815 Jackson Street before the explosion — because there was none. ALJ Pell likewise correctly held that any finding of fault or violation on this record would be speculative, and denied BI&E's non-record "fifteen-factor" framework finding that it could not substitute for proof or alter the actual-knowledge standard. Speculation cannot satisfy BI&E's burden of proof when there is no evidence that PGW violated any law, regulation, or procedure, whether during its One Call markings or months later at the time of the explosion.

1. Accepting BI&E's theory of "constructive knowledge" would be reversible error as it is contrary to binding precedent and has already been expressly rejected by federal regulators.

BI&E has candidly conceded that "[t]he federal regulations do not define "knowledge" and whether "knowledge" should be interpreted as "actual knowledge" or "constructive knowledge."[115] It argues that only constructive knowledge, based upon the previously discussed nine factors, should apply. In support, BI&E looks to the most basic and preliminary of legal research tools — Black's Law Dictionary — to support its position.[116] But even this rudimentary legal source notes that actual notice or observation is required.[117]

BI&E's interpretation directly conflicts with the plain meaning and regulatory history of the federal rule that it claims does not define the term "knowledge." The opening clause of 49 C.F.R. § 192.755 establishes a two-part enforcement standard: (1) when an operator *has knowledge; and* (2) that the support for a segment of a buried cast iron pipeline *is disturbed.* On its face, this regulation

---

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."

115 BI&E M.B. at 32.

116 *Id.* at 32; BI&E Exceptions at 8.

117 The definition of "actual knowledge" provided by Black's Law Dictionary 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 Street, 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.

requires actual notice.[118] Moreover, PGW's bulletins clearly turn on the same notice principles, whereby "notice" is actually received or conditions "noticed by PGW personnel mirror the federal rule's actual-knowledge predicate. As ALJ Pell correctly found, there was no evidence that PGW's personnel failed to comply with Bulletins 54, 312, and 313, and BI&E failed to show otherwise.[119]

Further, federal regulators *expressly rejected* BI&E's "should have known" theory when adopting Rule 192.755. As PGW explained in its Reply Brief, the U.S. Department of Transportation's Materials Transportation Bureau ("MTB") removed the phrase "knows or should know" from the proposed rule because it created uncertainty about how far an operator must go to investigate potential support disturbances.[120] MTB then, and current federal regulations still to this day, instead require that an operator "has knowledge" that support is disturbed. BI&E asks the Commission to create the very standard federal regulators rejected, but Rule 192.755 does not permit enforcement based on speculation, constructive knowledge, or *post hoc* rationalizations. Accepting BI&E's theory would rewrite the regulation and improperly expand operator obligations contrary to law and regulation.[121]

BI&E's refusal to address the actual intentions and language of the regulations they seek to enforce cannot stand. PGW's position all along has remained that 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

---

118 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.

119 Initial Decision at 47–48 ("I cannot conclude that PGW failed to follow Bulletins #312, #313, or #54 in the performance of its duties.").

120 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

121 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. . . ."* *See* 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).

support disturbances.[122] As the Initial Decision correctly found, BI&E's case cannot be based on speculation. Indeed, 49 C.F.R. § 192.755 does not authorize enforcement based on speculation, constructive knowledge, or *post hoc* rationalizations. Accepting BI&E's theory would retroactively rewrite the regulation, resurrecting language that MTB expressly rejected, and impose new unnecessary and costly obligations that are contrary to law.

2. A conclusive causal connection is required to establish a violation of Section 1501.

BI&E opines that a utility cannot "wait for irrefutable knowledge of a UST" or "shirk its responsibilities to ensure the safety of the public."[123] Notwithstanding this opinion, which is unsupported by any factual record here, to establish a Section 1501 violation, BI&E had to prove, to a reasonable degree of certainty, a "conclusive causal connection" between a PGW action or unsafe or inadequate facility and the allegedly unsafe service or facility. Under that standard, inconclusive evidence cannot satisfy the preponderance standard.[124] 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.[125] Furthermore, the Commission does not grant relief and order civil penalties based on purely *post hoc*, hindsight determinations of what could or should have been considered by the utility.[126]

---

122 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.

123 BI&E Exceptions at 13.

124 *Kline v. Pa. Pub. Util. Comm'n*, 352 A.3d 1086, 1095 (Pa. Commw. Ct. 2026) (citing *Povacz v. Pa. Pub. Util. Comm'n*, 280 A.3d 975, 1006–07 (Pa. 2022)) (emphasis added). *Accord Ethan Habrial v. Metro. Edison Co.*, Docket No. C-2018-3005907 (Order entered June 29, 2020).

125 *Bennett v. UGI Central Penn Gas, Inc.,* Docket No. F-2013-2396611 (Final Order entered April 10, 2014) (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) (dismissing alleged violation of section 1501 on the basis that hindsight cannot be used to judge management action in the aftermath of Hurricane Sandy).

126 *W. Penn Power Co. v. Pa. Pub. Util. Comm'n*, 615 A.2d 951 (Pa. Commw. Ct 1992), *reargument denied* (Nov. 10, 1992), *apps. denied* at Nos. 663 and 672 W.D. Docket 1992 (holding 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.)

Here, the Initial Decision correctly found that BI&E's speculation failed to prove with reasonable certainty that any specific PGW action or inaction had a "conclusive causal connection" to the cast iron break or explosion and PGW cannot be held to violate Section 1501 on the mere fact that it *failed to anticipate unforeseen or unusual circumstances* or occurrences months after excavation. Cast iron failures will continue until all cast iron pipes are removed from service, regardless of PGW's vigilance and that alone does not establish inadequate service. As detailed in PGW's Main Brief, BI&E's expert testimony was equivocal, incomplete, and based on an insufficient investigation.[127] The record therefore does not establish a Section 1501 violation.

C. Reply to BI&E's Exception 3 – An "Emergency" One Call Designation Did Not Establish an Actual Emergency or Trigger Additional PGW Duties.

BI&E's third exception misreads the Initial Decision by conflating an "emergency" One Call designation with proof of an actual emergency requiring an emergency response under PGW's bulletins or federal regulations.[128] The Initial Decision correctly credited PGW's testimony in concluding that "emergency" One Call tickets may reflect service interruptions or similar issues, and not necessarily an immediate threat to public safety.[129] PGW rebutted BI&E's claim that the ticket alone triggered heightened obligations; at that point, BI&E had to produce responsive evidence that an actual emergency existed that PGW did not act on. It did not.

Under the proper burden-of-proof analysis, BI&E's argument fails because, after PGW's rebuttal, BI&E still did not show that an actual emergency existed or that PGW was required to take additional action when it receives an "emergency" One Call ticket. Indeed, as the Initial Decision found, BI&E failed to: (1) offer evidence that an actual emergency existed when PGW responded to

---

127 PGW M.B. at 22–26.
128 BI&E Exceptions at 14–15.
129 Initial Decision at 49; FOF 34–36.

the ticket[130]; and (2) interview or call representatives of Clements or Lepore Plumbing to explain the work performed or what Lepore meant by "emergency."[131]

Instead of developing that evidence, BI&E relied on a witness who was never on site during the investigation of 815 Jackson Street. ALJ Pell correctly concluded that BI&E failed to overcome PGW's rebuttal evidence. Moreover, as the Initial Decision found, there is no evidence that PGW "blindly relied"[132] on Lepore's ticket. The record shows that PGW sent trained personnel who responded to each One Call ticket, accurately marked its facilities, and found no evidence of a UST and PGW personnel complied with its bulletins. BI&E's third exception should be denied.

IV. CONCLUSION

PGW respectfully requests that the Commission deny BI&E's exceptions and uphold the Initial Decision because 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 maintenance, the Complaint should be dismissed. Further, BI&E's renewed request for civil penalties in the amount of $300,000.00 must be rejected as unjustified and without any evidentiary basis as discussed in more detail in PGW's Reply Brief.[133]

Respectfully Submitted,

/s/ Norman J. Kennard

Norman J. Kennard, Esq. (Attorney I.D. No. 29921)
Bryce R. Beard, Esq. (Attorney I.D. No. 325837)
Daniel Clearfield, Esq. (Attorney I.D. No. 26183)
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Floor
Harrisburg, PA 17101
717.237.6000, Fax 717.237.6019
nkennard@eckertseamans.com
bbeard@eckertseamans.com
dclearfield@eckertseamans.com
Counsel for Philadelphia Gas Works

Dated: June 8, 2026

[130] *See* FOF 33–40.
[131] Initial Decision at 49.
[132] BI&E Exceptions at 15.
[133] PGW R.B. at 28–34.