

# Pennsylvania Public Utility Commission

Bureau of Investigation and  
Enforcement

2016 Gas Safety Seminar  
September 7, 2016  
State College, PA



# What is the Bureau of Investigation and Enforcement?

The Bureau of Investigation and Enforcement (I&E) is the investigatory and prosecutory bureau responsible for representing the public interest in ratemaking, enforcement and other matters before the Commission.

I&E enforces compliance with:

- The Public Utility Code (Title 66)
- The Commission's Regulations (Title 52)
- Commission Orders
- Other laws delegating enforcement responsibilities

Gas safety is included in the Commission's and I&E's jurisdiction.

# I&E's Prosecutors

Office of Trial Staff → I&E - Rates

Law Bureau  
Prosecutory Staff → I&E - Enforcement

Enforcement Attorneys:

Richard Kanaskie, Chief Prosecutor and Bureau Director

Michael Swindler, Deputy Chief Prosecutor

Adam Young, Senior Prosecutor

Heidi Wushinske, Senior Prosecutor

Stephanie Wimer, Prosecutor

Kourtney Myers, Prosecutor

Bradley Gorter, Prosecutor

# I&E's Origin

I&E was established in 2011 as part of the Commission's reorganization.

Prior to the reorganization, the Office of Trial Staff (OTS) handled rate proceedings and the Law Bureau Prosecutory Staff handled enforcement matters.

The reorganization separated the advisory function from the prosecutory function and transferred all prosecutory functions to I&E.

*Implementation of Act 129 of 2008; Organization of Bureaus and Offices, Docket No. M-2008-2071852 (Order entered August 11, 2011).*

# I&E is an Independent Bureau

The entirety of I&E's work is to perform investigations and prosecutions. Since I&E is a prosecutory bureau, our functions are completely bifurcated from any advisory function that other bureaus in the Commission perform. I&E works on our investigations and prosecutions independently.

# Matters Handled by the Enforcement Division of I&E

I&E initiates investigations and prosecutes, when appropriate, alleged violations regarding the following:

- The Public Utility Code
- The Commission's regulations
- The Commission's orders
- Federal Pipeline Safety Laws and Regulations
- Gas and Hazardous Liquids Pipelines Act
- Unconventional Gas Well Fee of Act 13

# I&E's Gas Safety Division

In addition to I&E's prosecutors, I&E consists of several other divisions. The Gas Safety Division, led by Paul Metro, employs engineers who inspect the facilities and records of natural gas distribution companies and other regulated pipeline operators to ensure compliance with state and federal requirements pertaining to pipeline safety.

# I&E's Gas Safety Division, cont.

The Gas Safety Division also acts as an agent for PHMSA – the Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation.

# Initiating an Investigation

The prosecutors in I&E's enforcement division generally receive information in one of two ways:

- Inside I&E – from another division within I&E
- Outside I&E – from another bureau in the Commission

An I&E investigation regarding a gas safety matter can last from a few months to three years. This timeframe does not begin until after the inspector's investigation.

Other types of referrals:

- Whistleblower or other outside confidential source
- Media reports
- Other agency's actions, i.e. OCA, OSBA

# Non-Compliance (“NC”) Letters

NC letters are sent out when a utility is out of compliance with:

- The PUC Code
- Commission regulations
- Code of Federal Regulations (“CFR”)

The most common cause for I&E to send an NC letter is noncompliance with internal operating procedures.

# NC Letters, cont.

The majority of NC letters are resolved without filing a formal complaint. NC letters move to the formal complaint stage when a utility fails to respond or refuses to fix the out-of-compliance issues.

# NC Letters, cont.

Ways to lessen the likelihood of a formal complaint:

- Cooperate with the investigator
- Answer questions in a timely manner
- Provide requested documents in a timely manner
- Ask questions when uncertain of proper compliance

# Concluding an Investigation

I&E resolves investigations in three ways, which are outlined in Section 3.113 of the Commission's regulations, 52 Pa. Code § 3.113:

- Withdrawal
- Litigation
- Settlement

# Assessing a Civil Penalty

The most commonly used civil penalty provision of the Public Utility Code is Section 3301, 66 Pa.C.S. § 3301, which authorizes the imposition of civil penalties and establishes limits on penalties:

- Up to \$1,000 per violation
- Up to \$1,000 for each and every day's continuance of the violation

# Assessing a Civil Penalty, cont.

State pipeline safety violations:

- Up to \$200,000 per violation per day
- Up to a \$2,000,000 cap in total penalties

# Assessing a Civil Penalty, cont.

Federal pipeline safety violations:

- Up to \$205,638 per violation per day
- Up to a \$2,056,380 cap on total penalties

# Civil Penalty Calculations

1. I&E's investigation of an explosion regarding a jurisdictional gas utility finds 2 violations of Commission and/or PHMSA regulations.

I&E may seek a civil penalty of up to \$411,276 ( $\$205,638 \times 2$ ).

2. I&E's investigation of a gas main strike by a third party contractor finds 27 violations of Commission and/or PHMSA regulations.

I&E may seek a civil penalty of up to \$2,056,380 ( $\$205,638 \times 27 = \$5.55$  million, which exceeds the \$2,056,380 million cap).

# Civil Penalty Calculations, cont.

Typically, I&E will seek the maximum allowable civil penalty only in the most extreme incidents - i.e. those involving explosions and/or fatalities.

The actual amounts sought will vary depending on the severity of the violation and its resulting consequences, among other factors.

# Civil Penalty Guidelines

The civil penalty that I&E seeks in a particular case depends on the facts of the case. I&E evaluates the alleged misconduct on a case-by-case basis with the Commission's Policy Statement on *Factors and Standards for Evaluating Litigated and Settled Proceedings*, 52 Pa. Code § 69.1201. The Policy Statement sets forth 10 factors that are used as guidance to evaluate the amount and appropriateness of a civil penalty.

# Civil Penalty Guidelines, cont.

1. Seriousness of conduct
2. Seriousness of consequences of conduct
3. Whether conduct was intentional or negligent
4. Efforts to modify internal practices
5. Number of customers affected and duration
6. Compliance history
7. Level of cooperation with investigation
8. The amount necessary to defer future violations
9. Past Commission decisions on the issue
10. Any other relevant factor

# Civil Penalty Guidelines, cont.

The civil penalty amount should be determined to be in the public interest.

Parties in settled cases are given more flexibility in reaching amicable resolutions (including any agreed to civil penalty).

The amount ultimately directed by the ALJ or the Commission can be higher or lower than the amount agreed to by the parties.

# Safety First!

