



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

May 5, 2014

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Pennsylvania Public Utility Commission v. Burgly Gas and Oil, Inc., et. al.
Docket No. C-2014-2411284**

Dear Secretary Chiavetta:

On behalf of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission, enclosed for filing please find the Amended Complaint in the above referenced case. Copies have been served on the parties of record in accordance with the Certificate of Service.

Sincerely,

Scott B. Granger
Prosecutor

PA Attorney ID No. 63641

Enclosures

cc: As per Certificate of Service
Wayne Scott, I&E
Heidi Wushinske, I&E

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement, :
Complainant :
: :
v. : Docket No. C-2014-2411284
: :
Burgly Gas & Oil Company: and/or in the :
alternative, Burgly Gas & Oil, Inc.; and/or :
in the alternative Burgly Drilling, Inc. :
Respondents :

AMENDED COMPLAINT

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NOW COMES the Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement (“I&E”), by its prosecuting attorneys, pursuant to Section 701 of the Public Utility Code, 66 Pa. C.S. § 701, and files this Complaint against Burgly Gas & Oil Company (“Burgly,”); and/or in the alternative, Burgly Gas & Oil, Incorporated (“Burgly Gas Inc.”); and/or in the alternative Burgly Drilling, Inc. (“Burgly Drilling Inc.”) alleging violations of the Pennsylvania Public Utility Code, Commission regulations found in the Pennsylvania Code, and the United States Code of Federal Regulations (“CFR”) as adopted in the Pennsylvania Public Utility Code and by Commission regulations. In support of its Amended Complaint, I&E respectfully represents the following:

Parties and Jurisdiction

1. The Pennsylvania Public Utility Commission (“PUC” or “Commission”) with a mailing address of P.O. Box 3265, Harrisburg, PA 17105-3265, is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth pursuant to the Public Utility Code, 66 Pa. C.S. §§ 101, *et seq.*

2. *Complainant is the Commission’s Bureau of Investigation and Enforcement and is the entity established to prosecute complaints against public utilities pursuant to 66 Pa. C.S. § 308.2(a)(11); See also Implementation of Act 129 of 2008; Organization of Bureaus and Offices, Docket No. M-2008-2071852 (August 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E).*

3. Complainant’s prosecuting attorneys are as follows:

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4. One of the Respondents is Burgly Gas & Oil Company (“Burgly”), a natural gas utility with a main mailing address of 710 First Street, Apollo, PA 15613, Attention: Harold E. Brown.

5. And, one of the Respondents is Burgly Gas & Oil, Incorporated (“Burgly Gas Inc.”), a business corporation and natural gas utility organized and existing under the laws of the Commonwealth of Pennsylvania with a registered office at 4087 Greenwood Road, New Kensington, PA 15068.

6. And, one of the Respondents is Burgly Drilling, Incorporated (“Burgly Drilling Inc.”), a business corporation and natural gas utility organized and existing under the laws of the Commonwealth of Pennsylvania with a registered office at 4087 Greenwood Road, New Kensington, PA 15068.

7. Burgly; Burgly Gas Inc.; and Burgly Drilling Inc. (collectively “Respondents”) are “public utilities” as that term is defined at 66 Pa. C.S. § 102,¹ as it is engaged in providing public utility service as a natural gas distribution company to the public for compensation.

¹ At 66 Pa. C.S. § 102, “Public utility” is defined under that term at subsection (1)(i) as:
(1) Any person or corporation now or hereafter owning or operating in this Commonwealth equipment or facilities for:
(i) Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity, or steam for the production of light, heat, or power to or for the public for compensation.
...
(v) Transporting or conveying natural or artificial gas, crude oil, gasoline, or petroleum products, materials for refrigeration, or oxygen or nitrogen, or other fluid substance, by pipeline or conduit, for the public for compensation.
66 Pa. C.S. § 102 “Public utility”.

8. Section 501(a) of the Public Utility Code, 66 Pa. C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Public Utility Code.

9. Section 701 of the Public Utility Code, 66 Pa. C.S. § 701, authorizes the Commission, *inter alia*, to hear and determine complaints against public utilities for violations of any law or regulation that the Commission has jurisdiction to administer or enforce.

10. Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, authorizes the Commission to impose civil penalties of up to \$1,000 per offense on any public utility or any other person or corporation subject to the Commission's jurisdiction for violation(s) of the Public Utility Code and/or Commission regulations. Section 3301 further allows for the imposition of a separate fine for each day's continuance of such violation(s). These civil penalties may be up to \$200,000 for each violation for each day the violation persists, up to a maximum of \$2,000,000 for any related series of violations. *See*, 66 Pa. C.S. § 3301(c)².

11. Respondents, in providing natural gas distribution service for compensation, are subject to the power and authority of this Commission pursuant to

² 66Pa. C.S. § 3301(c) (amended 2012) states specifically:

Any person or corporation, defined as a public utility in this part, who violates any provision of this part governing the safety of pipeline or conduit facilities in the transportation of natural gas, flammable gas, or gas which is toxic or corrosive, or of any regulation or order issued thereunder, shall be subject to a civil penalty of not to exceed \$200,000 for each violation for each day that the violation persists, except that the maximum civil penalty shall not exceed \$2,000,000 for any related series of violations, or subject to a penalty provided under Federal pipeline safety laws, whichever is greater.

66 Pa. C.S. § 3301(c) (amended 2012) (emphasis added).

Section 501(c) of the Public Utility Code, 66 Pa. C.S. § 501(c), which requires a public utility to comply with Commission orders.

12. Pursuant to the Commission's regulations at 52 Pa. Code § 59.33(b), the Commission's Gas Safety Division, which is part of I&E, also has the authority to enforce the federal natural gas pipeline safety regulations set forth in 49 U.S.C.A. §§ 60101, *et seq.* and implemented in 49 C.F.R. Parts 191-193, 195 and 199, 49 C.F.R. §§ 191-193, 195 and 199.

13. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter of this complaint and the actions of the Respondents related thereto.

Background

14. On May 21, 2013, at approximately 9:55 a.m. a McKeesport Public Works excavation crew struck a buried natural gas pipeline ("Pipeline") at the intersection of Walnut and 24th Street in the City of McKeesport resulting in the release of natural gas from the Pipeline ("Incident").

15. Mr. Ralph Graeser, a Supervisor in the Gas Safety Division of the PUC, arrived at the site on May 22, 2013. Mr. Graeser conducted an extensive investigation of the Incident.

16. Mr. Ralph Graeser also conducted an inspection of the suspected Pipeline owner's damage prevention program. Based on Mr. Graeser's inspection and investigation, I&E submits that the following is the sequence of events that describes the Incident.

17. As a result of the Incident, Walnut Street was closed between 15th and 26th Streets.

18. As a result of the Incident, nine individuals (five adults, three children and an infant) were evacuated from the scene to 2500 Walnut Street.

19. As a result of the Incident, at 10:25 a.m., one 40 year old male was transported from Steel City Auto to UPMC McKeesport after reporting feeling ill.

20. The Pipeline is a 4-inch diameter plastic pipe that was installed in approximately 1970, having a total length of 6643 feet.

21. At all times relevant hereto, at least one of the Respondents was/is the owner and operator of the natural gas utility Pipeline and are subject to the minimum safety standards for all natural gas pipelines in this Commonwealth as set forth in 52 Pa. Code §59.33.

22. The Pipeline starts at a gas well that is located behind Babe Chrapp Ford at 637 Eden Park Boulevard, McKeesport, Pennsylvania.

23. The Pipeline is located along Beale Avenue from 35th Street to 24th Street; and along 25th Street and 24th Street, then into Christy Park Industries at 2214 Walnut Street in McKeesport, Pennsylvania.

24. The Pipeline supplies natural gas for compensation through a meter to Christy Park Industries (formerly National Tube) and has been doing so since the Pipeline was constructed in approximately 1970.

25. At the time of the Incident, neither Burgly; Burgly Gas Inc.; nor Burgly Drilling Inc. was a member of the PA One Call system, and the location of the Pipeline was not marked prior to excavation.

26. Neither Burgly; Burgly Gas Inc.; nor Burgly Drilling Inc. has ever filed for a certificate of public convenience from the Pennsylvania Public Utility Commission regarding the natural gas utility service delivered through the Pipeline

27. Neither Burgly; Burgly Gas Inc.; nor Burgly Drilling Inc. reported this Incident to the Public Utility Commission.

28. Neither Burgly; Burgly Gas Inc.; nor Burgly Drilling Inc. warned the public of the existence of this Pipeline by placing and maintaining pipeline markers as close as practical over the Pipeline.

29. Burgly's; Burgly Gas Inc.'s; and/or Burgly Drilling Inc.'s failure to identify and mark the location of this Pipeline caused additional problems and delays during the Incident because no one was aware of the exact location of the Pipeline.

30. Burgly; Burgly Gas, Inc.; and/or Burgly Drilling Inc., as pipeline operators, never registered this Pipeline with the Commission pursuant to the Pennsylvania Gas and Hazardous Liquids Pipelines Act (Act 127), 58 P.S. §§ 801.101 et. seq.

31. Burgly; Burgly Gas Inc.; and/or Burgly Drilling Inc., as pipeline operators, never paid the annual assessment pursuant to the Pennsylvania Gas and Hazardous Liquids Pipelines Act, (Act 127), 58 P.S. §§ 801.101 et. seq.

32. As of the date of this Complaint, Burgly; Burgly Gas Inc.; and/or Burgly Drilling Inc. had still not applied to the Commission to become a certified Public Utility.

33. As of the date of this Complaint, Burgly; Burgly Gas Inc.; and/or Burgly Drilling Inc. had still not registered to become a member of the PA One Call system.

34. As of the date of this Complaint, Burgly; Burgly Gas Inc.; and/or Burgly Drilling Inc., as pipeline operators, had still not registered this Pipeline with the Commission; or, paid the annual assessment pursuant to the Pennsylvania Gas and Hazardous Liquids Pipelines Act, (Act 127), 58 P.S. §§ 801.101 et. seq.

Violations

COUNTS 1-1,095

35. The allegations set forth in paragraphs 1-34 are incorporated herein as if fully set forth.

36. Burgly; Burgly Gas Inc.; and/or Burgly Drilling Inc. failed to comply with the Public Utility Code in that they did not obtain a certificate of public convenience from the Pennsylvania Public Utility Commission prior to beginning to offer, render, furnish, or supply natural gas service through the Pipeline to the public for compensation in 1970.

This is a violation of 66 Pa. C.S. § 1101 from the date Burgly; Burgly Gas Inc.; and/or Burgly Drilling Inc. began furnishing service until such time that Burgly; Burgly Gas Inc.; and/or Burgly Drilling Inc. files an application for a certificate of public convenience or ceases furnishing service. *See*, 66 Pa. C.S. § 3301(b) Continuing offenses.

COUNTS 1,096-2,190

37. The allegations set forth in paragraphs 1-34 are incorporated herein as if fully set forth.

38. Burgly; Burgly Gas Inc.; and/or Burgly Drilling Inc. failed to comply with the CFR, adopted by and through the Commission's regulations, in that they did not properly place and maintain markers as close as practical over this buried natural gas Pipeline at any time since construction of the Pipeline was completed in 1970.

This is a violation of 49 CFR § 192.707 by and through 52 Pa. Code § 59.33, from the date the natural gas Pipeline was completed until such time that Burgly; Burgly Gas Inc.; and/or Burgly Drilling Inc. properly marks the Pipeline. *See*, 66 Pa. C.S. § 3301(b) Continuing offenses.

COUNTS 2,191-3,285

39. The allegations set forth in paragraphs 1-32 are incorporated herein as if fully set forth.

40. Burgly; Burgly Gas Inc.; and/or Burgly Drilling Inc. failed to comply with the CFR, adopted by and through the Commission's regulations, in that they did not maintain a written damage prevention program to prevent damage to the buried Pipeline from excavation activities since the date construction of the Pipeline was completed in 1970.

This is a violation of 49 CFR § 192.614(a) and 66 Pa. C.S. § 59.33 from the date the natural gas Pipeline was completed until such time that Burgly; Burgly Gas Inc.;

and/or Burgly Drilling Inc. properly maintains a written damage prevention program regarding this Pipeline. *See*, 66 Pa. C.S. § 3301(b) Continuing offenses.

COUNTS 3,286-4,380

41. The allegations set forth in paragraphs 1-34 are incorporated herein as if fully set forth.

42. Burgly; Burgly Gas Inc.; and/or Burgly Drilling Inc. failed to comply with the CFR, adopted by and through the Commission's regulations, in that they did not register with and participate in the PA One Call damage prevention program regarding this Pipeline since the date construction of the Pipeline was completed in 1970.

This is a violation of 49 CFR § 192.614(b) and 66 Pa. C.S. § 59.33 from the date the natural gas Pipeline was completed until such time that Burgly; Burgly Gas Inc.; and/or Burgly Drilling Inc. registers with and participates in the Pa One Call system. *See*, 66 Pa. C.S. § 3301(b) Continuing offenses.

COUNTS 4,381-4,631

43. The allegations set forth in paragraphs 1-34 are incorporated herein as if fully set forth.

44. Burgly; Burgly Gas Inc.; and/or Burgly Drilling Inc. failed to comply with the Commission's regulations in that Burgly; Burgly Gas Inc.; and/or Burgly Drilling Inc. did not submit a report to the Public Utility Commission of a reportable accident involving this Pipeline regarding the May 21, 2013 Incident.

This is a violation of 52 Pa. Code § 59.11 from the date of the accident, May 21, 2013, until such time Burgly; Burgly Gas Inc.; and/or Burgly Drilling Inc. submits the required report. *See*, 66 Pa. C.S. § 3301(b) Continuing offenses.

COUNTS 4,632-5,368

45. The allegations set forth in paragraphs 1-34 are incorporated herein as if fully set forth.

46. *Burgly; Burgly Gas Inc.; and/or Burgly Drilling Inc. failed to comply with the Commission's regulations in that Burgly; Burgly Gas Inc.; and/or Burgly Drilling Inc., as pipeline operators within the Commonwealth, failed to register the Pipeline with the Commission; and, failed to pay the annual assessment to the Commission.*

This is a violation of 58 P.S. §§ 801.101, et. seq. ("Act 127") (effective date February 20, 2012); and more specifically, 58 P.S. § 801.301 and 58 P.S. § 801.503, from the effective date of Act 127 until such time that Burgly; Burgly Gas Inc. and/or Burgly Drilling Inc. registers this Pipeline with the Commission. *See*, 66 Pa. C.S. § 3301(b) Continuing offenses.

RELIEF REQUESTED

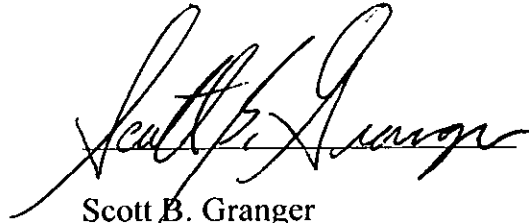
WHEREFORE, for all the foregoing reasons, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission respectfully requests that, after consideration of the record, the Office of Administrative Law Judge and the Commission find Burgly Gas & Oil Company; Burgly Gas & Oil, Inc.,; and/or Burgly Drilling Inc. in violation of each and every count as set forth herein, and grant the following relief:

- a. Burgly; Burgly Gas Inc.; and/or Burgly Drilling Inc. be ordered to pay the maximum allowable civil penalty for continuing gas pipeline safety violations in the amount of \$2,000,000³ pursuant to 66 Pa. C.S. § 3301(a), (b), and (c). Said payment shall be made by certified check payable to the Commonwealth of Pennsylvania and presented to the undersigned prosecutors within twenty (20) days of the date of the Commission's order sustaining this complaint;
- b. Burgly; Burgly Gas Inc.; and/or Burgly Drilling Inc. not be permitted to recover any portion of the civil penalty through rates regulated by the Commission;
- c. Burgly; Burgly Gas Inc.; and/or Burgly Drilling Inc. be ordered to cease and desist from committing any further violations of gas safety regulations;
- d. Burgly; Burgly Gas Inc.; and/or Burgly Drilling Inc. be ordered to take the actions necessary to comply with all Commonwealth laws and regulations as well as all federal regulations as adopted by the Commonwealth; and, to implement the programs and procedures to correct all violations of gas pipeline safety regulations; and

³ See, note 2, *supra*. Also, but for the maximum civil penalty allowable, as set forth in 66 Pa. C.S. § 3301(c), the total civil penalties for the violations alleged and set forth in paragraphs, 31, 34, 37, 40, 43 and 46 above would be \$805,746,000 (eight hundred five million seven hundred forty-six thousand dollars).

- e. Grant such other relief as the Commission deems just and reasonable.

Respectfully submitted,



Scott B. Granger
Prosecutor
PA Attorney ID No. 63641

Heidi Wushinske
Prosecutor
PA Attorney ID No. 93792

P.O. Box 3265
Harrisburg, PA 17105-3265

Date: May 5, 2014

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VERIFICATION

I, Ralph Graeser, Supervisor, Gas Safety Division, Bureau of Investigation and Enforcement, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect the Bureau will be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Date: May 3, 2014



Ralph Graeser, Supervisor
Gas Safety Division
Bureau of Investigation and Enforcement
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17102-3265

(717) 787-1063

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CERTIFICATE OF SERVICE

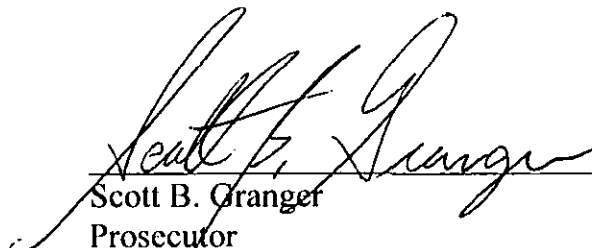
I hereby certify that I have this day served a true and correct copy of the foregoing Amended Complaint upon the parties listed below in accordance with the requirements of 52 Pa Code §1.54 (relating to service by a party).

Notification by First Class Mail:

Al Lander, Esquire
Zachary Shekell, Esquire
Law Offices of Greco & Lander, P.C.
1390 East Main Street, Suite 2
Clarion, PA 16214
Attorneys for Burgly Gas & Oil Company, Inc.

Burgly Gas & Oil
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710 First Street
Apollo, PA 15613

Burgly Drilling, Inc.
Attn: Harold Brown
4087 Greenwood Road
New Kensington, PA 15068


Scott B. Granger
Prosecutor
PA Attorney ID No. 63641

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Dated: May 5, 2014

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