

PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17120

Sharon Laffey  
v.  
Knox Energy Cooperative  
Association, Inc.

Public Meeting August 20, 2015  
2462487-ALJ  
Docket No. C-2015-2462487

**MOTION OF**  
**VICE CHAIRMAN JOHN F. COLEMAN, JR.**

For disposition is an Initial Decision granting the Knox Energy Cooperative Association Inc.'s ("Knox") Motion for Judgment on the Pleadings and dismissing the Formal Complaint of Sharon Laffey. The Complainant had alleged that an exposed gas service line on her property, owned by Knox, created a hazardous condition. The Complainant asked that the Commission order Knox to bury the service line.

Knox filed an Answer and New Matter, and Preliminary Objections, in response to the Complaint. While admitting that a portion of the service line was exposed, Knox denied that a hazardous condition existed, and stated that it had plans to bury the service line in the near future. In addition, as an affirmative defense it asserted that it was not a public utility subject to the jurisdiction of the Commission. Rather, it was asserted that Knox is a bona fide cooperative association, and expressly exempt from the definition of "Public Utility" in the Public Utility Code.<sup>1</sup> The Complainant filed no responsive pleadings to Knox's Preliminary Objections.

The presiding Administrative Law Judge determined that the Preliminary Objections were more properly characterized as a Motion for Judgment on the Pleadings. The Administrative Law Judge then found that Knox was a bonafide cooperative, not a regulated public utility, and determined it was appropriate to dismiss the Complaint.

I agree that Knox is not a public utility as defined by Section 102 of the Public Utility Code, 66 Pa.C.S. §102. However, neither the parties to this proceeding nor the presiding ALJ, addressed the Commission's potential jurisdiction over this matter under Act 127.

Knox is a registered "pipeline operator" as defined by Gas and Hazardous Liquids Pipeline Act of 2011 ("Act 127").<sup>2</sup> Pursuant to Act 127, the Commission has been charged with regulating and supervising all pipeline operators within the Commonwealth of Pennsylvania consistent with Federal pipeline safety laws. The Commission is empowered to promulgate regulations, investigate pipeline operators' facilities, practices and safety related conditions, and where necessary, impose civil penalties or take other appropriate enforcement action for violations.

<sup>1</sup> See Knox Preliminary Objections at ¶¶ 13-16.

<sup>2</sup> Knox is registered as a pipeline operator at Docket A-2012-2294046 and was so registered for 2013, 2014 and 2015. See [http://www.puc.state.pa.us/about\\_puc/consolidated\\_case\\_view.aspx?Docket=A-2012-2294046](http://www.puc.state.pa.us/about_puc/consolidated_case_view.aspx?Docket=A-2012-2294046)

We will take official notice of Knox's registration of its Pennsylvania gas distribution facilities through its annual Act 127 registration form.<sup>3</sup> Accordingly, the facility at the center of this dispute, a gas service line, is a "pipeline facility" subject to our jurisdiction under Act 127. Because there is no evidentiary record, it is not known whether there is a safety related condition that should be investigated by the Commission's Bureau of Investigation and Enforcement ("BIE"). It is appropriate that BIE have the opportunity to examine the safety of the facilities at issue.

The scope of this review is a matter of first impression for the Commission. Act 127 does not expressly address whether private party complaints are permitted. In considering this question, it is proper to consider the Federal regulatory scheme that the Commission is charged with enforcing. The relevant Federal pipeline safety laws do permit private causes of action. 49 U.S.C. § 60121. However, the right is not absolute, and these complaints may be preempted in certain circumstances. As we are charged with supervising pipeline operators in a manner consistent with Federal pipeline laws, I find it appropriate that we allow for private causes of action, consistent with 49 U.S.C. § 60121.


For purposes of this proceeding, including the fact that the Complainant is pro se, and that this is a matter of first impression, I find that the Complainant has satisfied the requirements for bringing a private action under Act 127. Accordingly, I will move that the matter be remanded to the Office of Administrative Law Judge for further proceedings. The Law Bureau is also directed to review this matter and advise the Commission whether it is appropriate and necessary to revise the Commission's internal procedures and/or promulgate regulations on the issue of private causes of action under Act 127.

Knox stated in its Answer and New Matter that it was working with Complainant to relocate and bury the service line. If that has occurred, and the parties are satisfied with this resolution, they are encouraged to file a Certificate of Satisfaction with the Commission's Secretary's Bureau consistent with Section 5.24 of our regulations, 52 Pa. Code § 5.24. The proceeding on remand is stayed for sixty days in order for BIE to contact the parties and conduct an investigation into the Complainant's allegations. At its discretion, BIE may intervene in this docket or, if it chooses, may take any additional action it deems warranted.

**THEREFORE, I MOVE THAT:**

1. The Initial Decision is reversed and remanded to the Office of Administrative Law Judge, consistent with this Motion.
2. The Office of Special Assistants prepare an Order consistent with this Motion.

**Date: August 20, 2015**

  
**JOHN F. COLEMAN, JR.**  
**VICE CHAIRMAN**

---

<sup>3</sup> 52 Pa. Code §5.408