



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

IN REPLY PLEASE
REFER TO OUR FILE

November 4, 2015

Rosemary Chiavetta
Pa. Public Utility Commission
2nd Floor, 400 North Street
P.O. Box 3265
Harrisburg, PA 17105

Re: Pennsylvania Public Utility Commission Bureau of Investigation and
Enforcement v. PECO Corporation; Docket No. C-2015-

Dear Secretary Chiavetta:

Enclosed for filing is the Complaint on behalf of the Bureau of Investigation and Enforcement in the above-referenced case. Copies have been served on the parties of record in accordance with the Certificate of Service.

If you have any questions on this matter, please call me at 717-214-9594.

Sincerely,

Heidi L. Wushinske
Prosecuting Attorney
Attorney ID No. 93792

Enclosures

cc: As per Certificate of Service
Paul Metro, Gas Safety Chief

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PA PUC
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2015
	:	
PECO,	:	
Respondent	:	

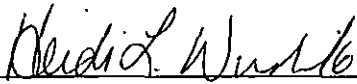
NOTICE TO PLEAD

Pursuant to 58 Pa. C.S. § 2307(b), the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission (Commission) has filed a Complaint in the above-referenced matter. You are hereby notified to file a written response, pursuant to 52 Pa. Code § 1.11, within twenty (20) days of the service of the Notice.

Your Answer must be verified and the original sent to:

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

A copy should also be served on the undersigned counsel.



Heidi L. Wushinske
Prosecutor
Attorney I.D. 93792

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 214-9594

Dated: November 4, 2015

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement, :
Complainant :

v. :

Docket No. C-2015-

PECO Corporation, :
Respondent :

FORMAL 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 PECO Corporation (“PECO,” “Company,” or “Respondent”) alleging violations of the Pennsylvania Public Utility Code, Commission regulations found in the Pennsylvania Code, and the Code of Federal Regulations (“CFR”). In support of its Formal Complaint, I&E respectfully represents the following:

I. 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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717.214.9594

Michael L. Swindler
Deputy Chief Prosecutor
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Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265

4. Respondent is PECO Corporation, a natural gas and electric¹ utility with a main mailing address of 2301 Market Street, Philadelphia, PA 19101, Attention: Romulo L. Diaz, Jr.

¹ This complaint focuses only on PECO Gas.

5. PECO is a “public utility” as that term is defined at 66 Pa.C.S. § 102,² as it is engaged in providing public utility service as a natural gas distribution company to the public for compensation.

6. 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.

7. 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.

8. Section 3301(c) of the Public Utility Code, 66 Pa.C.S. § 3301(c), authorizes the Commission to impose civil penalties 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(c) further allows for the imposition of a separate fine for each day’s continuance of such violation(s).

9. Respondent, in providing gas distribution service for compensation, is subject to the power and authority of this Commission pursuant to Section 501(c) of the Public Utility Code, 66 Pa.C.S. § 501(c), which requires a public utility to comply with Commission orders.

²At 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.

10. Pursuant to the Commission's regulations at 52 Pa. Code § 59.33(b), the Commission's Gas Safety Division ("Gas Safety"), which is part of I&E, also has the authority to enforce the federal 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.

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

II. Background

12. On June 25, 2014, PUC Gas Safety Inspectors Robert Horensky, Terri Cooper Smith, Christopher Whiteash, and Michael Chilek, (collectively "Gas Safety Inspectors") conducted a district regulator station inspection with PECO.

13. As part of their inspection, the Gas Safety Inspectors reviewed PECO's procedures and practices at PECO's West Conshohocken Office.

14. As part of their inspection, the Gas Safety Inspectors also inspected PECO Station Number 17 at Trooper and Germantown Pikes in East Norriton, Montgomery County, Pennsylvania.

15. On July 30, 2014, the Gas Safety Inspectors continued their inspection at PECO's West Conshohocken Office.

16. As part of their inspection, the Gas Safety Inspectors and PECO's engineers and management discussed PECO's practices at length.

17. During the investigation, the Gas Safety Inspectors found that PECO does not have adequate or standardized procedures and standards for regulator maintenance, relief capacity engineering design, annual relief capacity review, or documentation for MAOP verification.

18. The Gas Safety Inspectors also found that PECO does not have a record of the calculation showing the relief capacity at Station 17.

19. In addition, the Gas Safety Inspectors found that PECO engineers were not familiar with the components of the calculation used for relief capacity and relief set-points.

20. PECO Energy Chart GO-PE-Y001-R001 shows relief capacities at all of PECO's district regulator stations.

21. Based on GO-PE-Y001-R001, PECO assigned Station 17 a relief capacity of 387.8 thousand cubic feet per hour ("MCFH") for the Anderson Greenwood 4x6 relief device (an over-pressure protection relief valve) at 17 pounds per square inch gage ("psig").

22. According to the Gas Safety Inspectors, this relief capacity and the associated set-points did not account for station build-up or pipe losses.

23. Additionally, the Gas Safety Inspectors found that PECO does not have a record of the annual relief review.

24. The Gas Safety Inspectors also discovered that PECO's business practice was to set the relief devices on Station 17, and other stations under 60 psig, at 6 psig over the maximum allowable operating pressure ("MAOP").

25. During their inspections, the Gas Safety Inspectors found that Station 17 had no blowdown valves to safely relieve gas pressure from between the regulator isolation valves prior to the performance of routine maintenance on the regulators.

26. On numerous occasions throughout the course of their investigation, the Gas Safety Inspectors discussed their inspection results in detail with PECO's engineers and management.

27. On August 8, 2014, PUC Gas Safety Manager Paul J. Metro sent a noncompliance letter (NC-25A-14, hereinafter "August 8 Noncompliance Letter") to Ronald A. Bradley, the Vice President of PECO's Gas Department.

28. In the August 8 Noncompliance Letter, Mr. Metro discussed the Gas Safety Inspectors' findings from their June 25 and July 30 inspections.

29. Mr. Metro also informed PECO in the August 8 Noncompliance Letter that the Gas Safety Inspectors discovered that PECO was in violation of several federal regulations, as discussed in detail below.

30. The August 8 Noncompliance Letter directed PECO to take the following actions within thirty (30) days of August 8, 2014:

- (a) *Address the pressure relief device set-points on all PECO regulator stations by reducing the relief set-points to at least 3 PSIG below the requirements in **49 CFR §192.201 Required capacity of pressure relieving and limiting stations**, or provide calculations to validate relief set-points.*
Adjusting the set-point down
3 PSIG is an interim step until pipe losses and build-up calculations can be conducted for the reliefs on each station. For example, on a system with a 17 PSIG MAOP outlet, the relief should be set at 20 psig rather than 23 psig;

- (b) Perform calculations for relief capacities for each station including relief piping losses and build-up. Provide the Gas Safety Division with the calculation documentation and results of the calculations for all PECO regulator stations with an outlet operating pressure between 12 psi and 60 psi; and
- (c) Provide a schedule identifying each regulator station by number and address. Indicate on the schedule when the regulator station had work from (a) above performed on the station. Also provide the relief calculations and supporting documentation for each station.

31. The August 8 Noncompliance Letter also directed PECO to take the following actions within sixty (60) days of August 8, 2014:

- (a) Review and update all procedures to represent changes in calculation of relief devices, system set-points, review and documentation of the relief devices and all other changes implemented as a result of this non-compliance letter;
- (b) Perform a study, and provide results to the Gas Safety Division, to examine the effect of lowering regulator set-points far enough below the MAOP as not to introduce system pressure above the MAOP. Setting the regulator at the MAOP is a practice that will lead to violations of in 49 CFR §192.619 as pressure variations exceed the MAOP;
- (c) Perform physical station upgrades and set-point alterations to reliefs, regulators. Alter station piping, if necessary, as required to ensure compliance with 49 CFR §192.201 and §192.743;
- (d) Design and install blow down valves on all PECO regulator stations lacking such valves. These valves should be used to safely relieve pressure at the regulators during annual maintenance service as per 49 CFR §192.203(b)(2); and
- (e) PECO should document all changes to each station and provide this before and after data to the PUC Gas Safety Division.

32. By letter dated September 8, 2014 (“PECO September 8 Letter”), Mr. Bradley advised Gas Safety that PECO performed the corrective actions specified in paragraph 30(a) above.

33. However, PECO denied that it needed to perform the corrective actions listed in paragraphs 30(b) and (c), above, because it believed that its relief devices were operating properly.

34. By letter dated October 9, 2014 (“PECO October 9 Letter”), PECO responded to the August 8 Noncompliance Letter and indicated that it had completed some, but not all, of the 60-day corrective actions.

35. On October 23, 2014, the Commission’s Gas Safety Division issued a follow-up Noncompliance Letter (NC-25A-14 hereinafter “October 23 Noncompliance Letter”), in which it informed PECO that, while timely, PECO’s responses did not comply with the requirements of 49 CFR § 192.619 and § 192.621.

36. In the October 23 Noncompliance Letter, Mr. Metro explained that PECO’s responses were all based on the assumption that the data provided supported MAOPs of 25 and 33 in its medium pressure distribution systems; however, this assumption was unsubstantiated.

37. Mr. Metro also communicated that PECO’s distribution system contains pipelines installed both pre and post implementation of 49 CFR § 192.

38. According to Mr. Metro, while PECO provided generalized practices and parameters for pipeline installations, it provided no verification of operating pressures

between 1965 and 1970, no pressure test records, no design calculations for these systems, and no detailed process used to determine MAOP.

39. Additionally, Mr. Metro found that PECO's regulator relief set-points were not accurate because PECO used assumed MAOPs, rather than MAOPs supported by mathematical data and records.

40. In the October 23 Noncompliance Letter, Mr. Metro informed PECO that it was required comply with the requirements in 49 CFR § 192.201(a)(2)(ii) for its medium pressure system operating between 12 and 60 psig.

41. Mr. Metro further explained that to comply with 49 CFR § 192.201(a)(2)(ii), PECO was required to lower each regulator relief set-point, taking into account build-up and piping losses, and not exceed 6 psig above the operating pressure, for its medium pressure system operating between 12 and 60 psig.

42. Mr. Metro also instructed PECO to compile operating pressure history data for each regulator station and all pressure recording stations, assigning each station to a designated operating system, and schedule a meeting, prior to December 1, 2014, with Gas Safety to review five years of operating pressure history of PECO's systems.

43. In the October 23 Noncompliance Letter, Mr. Metro instructed PECO to, through the MAOP determination process, ensure compliance with all the requirements of 49 CFR § 192 and ensure that its distribution system operating pressures do not exceed the MAOP established for the respective system(s).

44. Mr. Metro also ordered PECO to provide all procedural, standard, and specification changes stemming from the August 8 Noncompliance Letter to the Gas Safety Division upon completion.

45. Finally, PECO was directed to include in these procedures, details of its determination of MAOP, PECO's records retention policy regarding MAOP, and the methodologies used to determine MAOP for each PECO system.

46. Mr. Metro and the PUC Gas Safety Inspectors provided PECO with ample time to research MAOP practices and recover MAOP related records.

47. On March 25, 2015, the Gas Safety Inspectors again met with PECO regarding additional information that PECO obtained during its record review and through the use of a third party consultant.

48. According to the Gas Safety Inspectors, the data that PECO presented did not meet the regulatory requirements for establishing an MAOP for PECO's medium pressure distribution systems. 49 CFR § 192.

49. PECO's distribution system consists of pipelines installed both before and after the implementation of 49 CFR § 192.

50. The Gas Safety Inspectors found that PECO presented generic operating documentation, but could not verify operating design or pressure testing for all piping and could not show the highest actual operating pressure for the five years prior to July 1, 1970, as required by 49 CFR § 192.619(a)(3).

51. In early 2015, Inspectors Horensky and Cooper Smith consulted with the Federal Pipeline and Hazardous Materials Safety Administration ("PHMSA"), which

stated that other states have allowed MAOP to be established through a five year history of operating pressures to establish MAOP for their medium pressure distribution systems.

52. Upon further investigation, the Gas Safety Inspectors discovered that in 1997, PECO filed with PHMSA two incident filings stating that the MAOP was the operating pressure in two separate 20 psig systems and indicating that the MAOP was established through 49 CFR § 192(a)(3).

53. These filings indicated that the MAOP was established through 49 CFR § 192(a)(3), which states that the MAOP should be set at the highest actual operating pressure to which the system was subjected in the five years preceding July 1, 1970.

54. The Gas Safety Inspectors found that PECO could not or did not provide the system operating pressure records for the time period above.

55. To date, PECO has not adjusted the pressure relief valve settings as directed in the August 8 Noncompliance Letter and as required by federal regulations.

56. To date, PECO has also not changed or adjusted set configurations of the regulators or reliefs to comply with the requirements of 49 CFR § 192.

57. Furthermore, to date, PECO has not presented a plan to address needed alterations to each regulator station.

58. PECO has also not yet provided a strategy that addresses its concerns for system capacity, while changing its regulator station configurations and set-points to accommodate the changes in the systems' MAOPs and continuing to provide safe and reliable service.

III. Violations

COUNTS ONE TO SEVENTY-TWO

59. All allegations in paragraphs 1-58 are incorporated as if fully set forth herein.
60. PECO failed to ensure that the maximum allowable operating pressure did not exceed the maximum allowable operating pressure plus 6 psi for its medium pressure regulator stations operating at 12 psi gage or more, but less than 60 psi gage in that PECO assumed an incorrect MAOP for its medium pressure regulator systems and did not have the understanding necessary to account for build-up and pipe losses while determining regulator set-points and capacity for seventy-two of its one hundred fifteen medium pressure regulator stations.

This is a violation of 49 CFR §192.201(a)(2)(ii) and 52 Pa. Code § 59.33(b). (72 counts).

COUNT SEVENTY-THREE

61. All allegations in paragraphs 1-58 are incorporated as if fully set forth herein.
62. PECO failed to prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response in that PECO did not have proper procedures in place regarding its MAOP verification, regulator station maintenance, regulator station design, or relief capacity review.

This is a violation of 49 CFR §192.605(a) and 52 Pa. Code § 59.33(b). (1count).

COUNT SEVENTY-FOUR

63. All allegations in paragraphs 1-58 are incorporated as if fully set forth herein.
64. PECO failed to subject each of its pressure regulating stations at intervals not exceeding fifteen months, but at least once each calendar year, to inspections and tests to determine that it is adequate from the standpoint of capacity and reliability of operation for the service in which it is employed in that PECO could not show calculations for relief capacity or adequate

reliability for all of its one hundred fifteen medium pressure regulator stations.

This is a violation of 49 CFR §192.739(2) and 52 Pa. Code § 59.33(b).

COUNT SEVENTY-FIVE TO SEVENTY-SIX

65. All allegations in paragraphs 1-58 are incorporated as if fully set forth herein.
66. PECO failed to determine at intervals not exceeding fifteen months, but at least once each calendar year, for its pressure regulating stations, sufficient capacity to protect the facilities to which they are connected in that PECO's review did not take into account build-up and pipe losses, nor were its engineers familiar with the contents of the calculations for all of PECO's *one hundred fifteen medium pressure regulator stations*. Furthermore, PECO did not track the annual review of the relief capacity at Station 17; and PECO's calculation was incorrect.

This is a violation of 49 CFR §192.743(a) and 52 Pa. Code § 59.33(b).

COUNT SEVENTY-SEVEN

67. All allegations in paragraphs 1-58 are incorporated as if fully set forth herein.
68. PECO failed to install blowdown valves where necessary in that it did not have blowdown valves on its regulator sets, which are necessary on all stations to safely relieve pressure from the regulator during maintenance.

This is a violation of 49 CFR §192.203(b)(2) and 52 Pa. Code § 59.33(b).

COUNT SEVENTY-EIGHT

69. All allegations in paragraphs 1-58 are incorporated as if fully set forth herein.
70. PECO operated segments of steel and plastic pipeline at a pressure that exceeded a maximum allowable operating pressure in that PECO did not have an MAOP for its medium pressure distribution system that could be substantiate or verified.

This is a violation of 49 CFR §192.619 and 52 Pa. Code § 59.33(b).

IV. 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 PECO in violation of each and every count as set forth herein, and grant the following relief:

- a. PECO be ordered to pay a civil penalty in the amount of \$790,000.00 pursuant to 66 Pa.C.S. § 3301 (c). Said payment shall be made by certified check payable to the Commonwealth of Pennsylvania and presented to the undersigned prosecutor within twenty (20) days of the date of the Commission's order sustaining this complaint;
- b. PECO not be permitted to recover any portion of the civil penalty through rates regulated by the Commission;
- c. PECO be ordered to establish MAOP in its medium pressure system based on operating pressure records from June 25, 2009, to June 25, 2014;
- d. PECO be ordered modify its procedures to include the following:
 - Ensure that its procedures for MAOP record retention, calculations, and verification comply with all requirements contained in the Code of Federal Regulations, Public Utility Code, and the Commission's regulations;
 - Ensure that its regulator station procedures detail relief and regulator capacity calculations;
 - Establish thorough and well-documented engineering procedures to annually review station configurations and relief calculations;
 - Make any and all regulator procedures comply with the requirements of 49 CFR § 192;

VERIFICATION

I, Paul J. Metro, Gas Safety Manager of the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement ("I&E"), hereby state that the facts above set forth are true and correct to the best of my knowledge, information, and belief and that I expect that I&E 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: November 4, 2015



Paul J. Metro

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing Reply to New Matter in accordance with the requirements of 52 Pa. Code § 1.54 *et seq.* (relating to service by a participant).

Notification by first class mail addressed as follows:

Romulo L. Diaz, Jr., Esq.
Michael S. Swerling, Esq.
PECO Energy Company
Legal Department
2301 Market Street, S23-1
Philadelphia, PA 19101



Heidi L. Wushinske
Prosecutor
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Dated: November 4, 2015

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