



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

IN REPLY PLEASE
REFER TO OUR FILE

January 28, 2016

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 Energy Company; Docket No. C-2015-2514773

Dear Secretary Chiavetta:

Enclosed for filing is the Reply to New Matter 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,

A handwritten signature in blue ink that reads "Heidi L. Wushinske".

Heidi L. Wushinske
Prosecuting Attorney
Attorney ID No. 93792

Enclosures

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|------------------------------------------|---|---------------------------|
| Pennsylvania Public Utility Commission, | : | |
| Bureau of Investigation and Enforcement, | : | |
| Complainant | : | |
| | : | |
| v. | : | Docket No. C-2015-2514773 |
| | : | |
| PECO Energy Company, | : | |
| Respondent | : | |

REPLY TO THE NEW MATTER OF PECO ENERGY COMPANY

NOW COMES, the Bureau of Investigation and Enforcement (“I&E” or “Complainant”) of the Pennsylvania Public Utility Commission (“Commission”) by and through its prosecuting attorneys, and files this Answer to the New Matter of PECO Energy Company (“Respondent” or “PECO”), pursuant to 52 Pa. Code § 5.63. In support thereof, I&E avers as follows:

I. INTRODUCTION

On November 25, 2015, I&E filed a Formal Complaint against Respondent at Docket No. C-2015-2514773, alleging that Respondent violated certain provisions of the Code of Federal Regulations related to pipeline safety, as well as the Commission’s regulations. I&E avers that Respondent failed to follow its own damage prevention procedures. I&E appropriately seeks relief, including that the Commission: (1) find Respondent to be in violation of the Commission’s regulations and the Code of Federal Regulations for each of the twenty-one (21) counts set forth in the Formal Complaint; (2) impose a civil penalty upon Respondent in the amount of Three Hundred Fifteen

Thousand Dollars (\$315,000); (3) direct Respondent to modify its Gas Damage Prevention procedure, GO-PE-9003, Revision No: 4;(4) direct Respondent to submit the modifications to the Commission's Gas Safety Division; (5) order Respondent to retrain all personnel who are qualified to perform gas infrastructure locates and their supervisors; (6) direct Respondent to create a team to review and revise its Gas Damage Prevention procedure; (7) order Respondent to cease and desists from committing any further violation of gas safety regulations; and (8) order such other remedy as the Commission may deem to be appropriate.

On January 8, 2016, Respondent, through counsel, filed an Answer and New Matter at the above docket.¹ PECO's Answer and New Matter begins with numerous unnumbered arguments and statements that PECO has characterized as "introductory comments." *See Answer and New Matter of PECO Energy Company*, p. 1-5; Paragraph 1, p. 33. In Paragraph 1 of its New Matter, PECO attempts to incorporate by reference these introductory comments, as well as its answers to I&E's Complaint, totaling nearly 33 pages. In effect, PECO has attempted to pre-brief its case and incorporate by reference arguments in its "introductory comments" and its answers to I&E's Complaint as "new matter." It is clear that in addition to being procedurally deficient, this alleged "new matter" is not new matter at all because it does not consist of new material facts. *See 52 Pa. Code §5.62* (requiring new matter to be under the heading of "new matter" and consist of material facts that are not denials of the averments of the preceding pleading). As such, PECO's introductory comments and answers to I&E's Complaint, which it has

¹ Respondent had been granted an extension of time to respond to the Complaint.

attempted to incorporate by reference as “new matter” are procedurally deficient and should not be considered new matter.²

1. Denied. PECO attempts to incorporate by reference the entirety of its “introductory comments,” as well as 85 paragraphs of its answer to I&E’s Complaint. This is not permitted under the Commission’s regulations and should not be deemed new matter. Moreover, much of PECO’s “introductory comments” contain arguments and conclusions of law to which no response would be required, even if properly filed as new matter. To the extent a response is required, the allegations contained in PECO’s “introductory comments” and answer to I&E’s Complaint (Paragraphs 1-85), these allegations are denied.

2. Admitted.

3. Admitted.

4. Admitted.

5. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

6. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

7. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded. By way of further answer, the documents contained in PECO’s Exhibit A appear to be a copy of its Gas Damage Prevention procedure, GO-PE-9003, Revision No. 2.

8. Denied. With respect to the allegations contained in Paragraph 8, PECO’s Gas Damage Prevention procedure, GO-PE-9003, Revision No. 2, speaks for itself and no further response is required. To the extent that PECO implies the duties set forth in its Gas Damage Prevention procedures were not triggered in this case, this assertion is denied. By way of further answer, PECO received sixteen Pennsylvania One Call System (“PA One Call”) tickets related to the Rosemont College Construction Project.

9. Denied. With respect to the allegations contained in Paragraph 9, PECO’s Gas Damage Prevention procedure, GO-PE-9003, Revision No. 2, speaks for itself and no further response is required.

² Accordingly, I&E has concurrently filed with this Reply to New Matter its Motion to Strike PECO’s inappropriate introductory remarks and request to incorporate these remarks, along with its Answers to I&E’s Complaint, in its New Matter.

10. Denied. Paragraph 10 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

11. Admitted.

12. Denied. Paragraph 12 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

13. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied.

14. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied.

15. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied.

16. Denied. Paragraph 16 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied. Moreover, it is denied that the specified OSHA regulations are relevant to this proceeding.

17. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied. Moreover, it is denied that the specified OSHA regulations are relevant to this proceeding.

18. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied. Moreover, it is denied that the specified OSHA regulations are relevant to this proceeding.

19. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied. Moreover, it is denied that the specified OSHA regulations are relevant to this proceeding.

20. Denied. The averment states a conclusion of law to which no response is required. To the extent a response is required, it is denied. Moreover, it is denied that the specified OSHA regulations are relevant to this proceeding.

21. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded. By way of further answer, the documents contained in PECO's Exhibit C appear to be summaries of PA One Call tickets for the Rosemont College construction project.

22. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded. By way of further answer, the documents contained in PECO's Exhibit D appear to be copies of PA One Call tickets for the Rosemont College construction project.

23. Denied. With respect to the allegations contained in Paragraph 23, the PA One Call tickets, speak for themselves and no further response is required.

24. Denied. With respect to the allegations contained in Paragraph 24, the PA One Call tickets, speak for themselves and no further response is required. Moreover, Paragraph 24 states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

25. Denied. With respect to the allegations contained in Paragraph 25, the PA One Call tickets, speak for themselves and no further response is required. Moreover, Paragraph 25 states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

26. Denied. With respect to the allegations contained in Paragraph 26, the PA One Call tickets, speak for themselves and no further response is required. Furthermore, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded. Specifically, I&E is without sufficient knowledge to form a belief as to how USIC entered its response in the KARL system.

27. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

28. Denied. With respect to the allegations contained in Paragraph 28, the PA One Call tickets, speak for themselves and no further response is required. Moreover, it is denied that PECO received no locate requests for the Rosemont College Construction Project.

29. Denied. With respect to the allegations contained in Paragraph 29, the PA One Call tickets, speak for themselves and no further response is required. By way of further answer, it is denied that PECO received no locate requests for the Rosemont College Construction Project.

30. Denied. With respect to the allegations contained in Paragraph 30, the PA One Call tickets, speak for themselves and no further response is required. By way of further answer, it is denied that PECO received no locate requests for the Rosemont College Construction Project.

31. Denied. With respect to the allegations contained in Paragraph 31, the PA One Call tickets, speak for themselves and no further response is required. By way of further answer, it is denied that PECO received no locate requests for the Rosemont College Construction Project.

32. Denied. With respect to the allegations contained in Paragraph 32, the PA One Call tickets, speak for themselves and no further response is required.

33. Denied. With respect to the allegations contained in Paragraph 33, the PA One Call tickets, speak for themselves and no further response is required.

34. Denied. With respect to the allegations contained in Paragraph 34, the PA One Call tickets, speak for themselves and no further response is required.

35. Denied. With respect to the allegations contained in Paragraph 35, the PA One Call tickets, speak for themselves and no further response is required.

36. Denied. With respect to the allegations contained in Paragraph 36, the PA One Call tickets, speak for themselves and no further response is required.

37. Denied. With respect to the allegations contained in Paragraph 37, the PA One Call tickets, speak for themselves and no further response is required.

38. Denied. With respect to the allegations contained in Paragraph 38, the PA One Call tickets, speak for themselves and no further response is required.

39. Denied. With respect to the allegations contained in Paragraph 39, the PA One Call tickets, speak for themselves and no further response is required.

40. Denied. With respect to the allegations contained in Paragraph 40, the PA One Call tickets, speak for themselves and no further response is required. I&E notes that PECO New Matter Paragraph 40 is duplicative of PECO Paragraph 32.

41. Denied. With respect to the allegations contained in Paragraph 41, the PA One Call tickets, speak for themselves and no further response is required.

42. Denied. With respect to the allegations contained in Paragraph 42, the PA One Call tickets, speaks for themselves and no further response is required.

43. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

44. Denied. With respect to the allegations contained in Paragraph 44, the PA One Call tickets, speak for themselves and no further response is required.

45. Denied. With respect to the allegations contained in Paragraph 45, the PA One Call tickets, speak for themselves and no further response is required.

46. Denied. With respect to the allegations contained in Paragraph 46, the PA One Call tickets, speak for themselves and no further response is required.

47. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

48. Denied. With respect to the allegations contained in Paragraph 48, the PA One Call tickets, speak for themselves and no further response is required.

49. Denied. With respect to the allegations contained in Paragraph 49, the PA One Call tickets, speak for themselves and no further response is required.

50. Denied. With respect to the allegations contained in Paragraph 50, the PA One Call tickets, speak for themselves and no further response is required.

51. Denied. Paragraph 51 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

52. Denied. The averment states a conclusion of law to which no response is required.

53. Denied. With respect to the allegations contained in Paragraph 53, the PA One Call tickets, speak for themselves and no further response is required.

54. Denied. With respect to the allegations contained in Paragraph 54, the PA One Call tickets, speak for themselves and no further response is required.

55. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded. By way of further answer, the documents contained in PECO's Exhibit E appear to be screens shots of inspection reports for Rosemont College.

56. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

57. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

58. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded. Specifically, I&E is without knowledge sufficient to form a belief regarding how USIC uses PECO's marker balls.

59. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded. By way of further answer, PECO's Exhibit I appears to be copies of the 3M documents referenced in Paragraph 59.

60. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

61. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

62. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded. By way of further answer, PECO's Exhibit J appears to be copies of the PECO's marker ball standard.

63. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded. Specifically, I&E is without knowledge to form a belief regarding PECO's development of its internal standard for marker balls. By way of further answer, PECO's marker ball standard and the 3M documents speak for themselves and no further response is required.

64. Denied. The averment states a conclusion of law to which no response is required.

65. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded. By way of further answer, the photographs supplied by PECO in its Exhibit J appear to be undated photographs of a job site and marker posts.

66. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded. By way of further answer, it is unclear from the photographs precisely where Eastern Caisson was drilling or what was in its plain view.

67. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

68. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

69. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

70. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

71. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

72. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

73. Denied. The response is not “new matter” and no response is required. Specifically, the averments contained in Paragraph 73 do not contain *new* material facts, but rather restate facts set forth in I&E’s Complaint.

74. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded. By way of further answer, PECO’s Damage Prevention Inspector should have been aware of the scope of the project, which included the concrete stairs.

75. Denied. With respect to the allegations contained in Paragraph 75, the PA One Call tickets, speak for themselves and no further response is required. By way of further answer, it is denied that PECO received no locate requests for the Rosemont College Construction Project.

76. Denied. The averment states a conclusion of law to which no response is required.

77. Denied. It is denied that the location of the concrete stairs provided no safety or access concerns that would require PECO to relocate its facilities.

78. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied. By way of further answer, it is specifically denied that the installation of the concrete stairs was beyond the scope of the Rosemont College Construction Project and that PECO should not have known of it.

79. Denied. Paragraph 79 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

80. Denied. Paragraph 80 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

81. Denied. Paragraph 81 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

82. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded. By way of further answer, the documents contained in PECO's Exhibit H to be a copy of the Pennsylvania Supreme Court's decision in *Excavation Technologies, Inc. v. Columbia Gas Co. of Pa.*, 985 A.2d 840 (Pa. 2009).

83. Denied. Paragraph 83 references published case law that speaks for itself and no response is required. To the extent a response is required, it is denied. By way of further answer, the referenced case does not even mention the Public Utility Code, Commission's regulations, or Code of Federal Regulations relating to pipeline safety.

84. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied. Moreover, the PA One Call Law is a statutory text that speaks for itself.

85. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied. Moreover, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

86. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied. Moreover, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

87. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied. Moreover, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

88. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied. Moreover, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

89. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded. By

way of further answer, it is specifically denied that PECO is being held to a standard that exceeds existing federal or state requirements.

90. Denied. Paragraph 90 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

91. Denied. Paragraph 91 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

92. Denied. Paragraph 92 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

93. Denied. Paragraph 93 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

94. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied. Moreover, it is denied that PECO had no duty to discover the scope of a project being conducted over or near its pipeline.

95. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied. Moreover, it is denied that PECO had no duty to discover the scope of a project being conducted over or near its pipeline.

96. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied. Moreover, it is denied that PECO had no duty to discover the scope of a project being conducted over or near its pipeline.

97. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

98. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

99. Denied. Paragraph 99 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

100. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

101. Denied. With respect to the allegations contained in Paragraph 101, the PA One Call tickets, speak for themselves and no further response is required.

102. Denied. Paragraph 102 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

103. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied. Moreover, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

104. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

105. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

106. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

107. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

108. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

109. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

110. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

111. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded. By way of further answer, the documents contained in PECO's Exhibit D appear to be copies of responses to the designer and electronic records of the disposition of the PA One Call requests.

112. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

113. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

114. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

115. Denied. Paragraph 115 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

116. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

117. Denied. Paragraph 117 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

118. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

119. Denied. Paragraph 119 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

120. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

121. Denied. Paragraph 121 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

122. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

123. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

124. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

125. Denied. Paragraph 125 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

126. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

127. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

128. Denied. Paragraph 128 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

129. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

130. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded. Specifically, I&E is without knowledge regarding what PECO did or did not believe.

131. Denied. With respect to the allegations contained in Paragraph 131, PECO's Gas Damage Prevention procedure, GO-PE-9003, Revision No. 2, speaks for itself and no further response is required.

132. Denied. With respect to the allegations contained in Paragraph 132, PECO's Gas Damage Prevention procedure, GO-PE-9003, Revision No. 2, speaks for itself and no further response is required.

133. Denied. With respect to the allegations contained in Paragraph 133, PECO's Gas Damage Prevention procedure, GO-PE-9003, Revision No. 2, speaks for itself and no further response is required. Moreover, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded. To the extent a response is required, this allegation is denied.

134. Denied. With respect to the allegations contained in Paragraph 134, PECO's Gas Damage Prevention procedure, GO-PE-9003, Revision No. 2, speaks for itself and no further response is required.

135. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

136. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

137. Denied. With respect to the allegations contained in Paragraph 137, PECO's Gas Damage Prevention procedure, GO-PE-9003, Revision No. 2, speaks for itself and no further response is required.

138. Denied. With respect to the allegations contained in Paragraph 138, PECO's Gas Damage Prevention procedure, GO-PE-9003, Revision No. 2, speaks for itself and no further response is required.

139. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

140. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

141. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

142. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded. By way of further answer, the document contained in PECO's Exhibit B appears to be PECO's Gas Damage Prevention procedure, GO-PE-9003, Revision 3.

143. Denied. With respect to the allegations contained in Paragraph 143, PECO's Gas Damage Prevention procedure, GO-PE-9003, Revision No. 3, speaks for itself and no further response is required.

144. Denied. With respect to the allegations contained in Paragraph 144, PECO's Gas Damage Prevention procedure, GO-PE-9003, Revision No. 3, speaks for itself and no further response is required.

145. Denied. With respect to the allegations contained in Paragraph 145, PECO's Gas Damage Prevention procedure, GO-PE-9003, Revision No. 3, speaks for itself and no further response is required.

146. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

147. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

148. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

149. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

150. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

151. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

152. Denied. Paragraph 152 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

153. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

154. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

155. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

156. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded. Specifically, I&E is without knowledge of what PECO deems it had reason to believe.

157. Denied. The response is not “new matter” and no response is required. Specifically, the averments contained in Paragraph 157 do not contain new material facts, but rather consist of opinion and conclusions. To the extent a response it required, it is denied.

158. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

159. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded. Specifically, I&E is without knowledge of what PECO deems it had reason to believe.

160. Denied. The response is not “new matter” and no response is required. Specifically, the averments contained in Paragraph 160 do not contain new material facts, but rather consist of opinion and conclusions. To the extent a response it required, it is denied.

161. Denied. It is specifically denied that I&E’s contentions in the Complaint assume that excavators will not submit PA One Call requests. Moreover, Respondent is without knowledge to know what I&E did or did not assume in its Complaint.

162. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

163. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

164. Admitted in part and denied in part. It is admitted that PECO installed a new section of the main in a different location after the incident. Regarding the remainder of Paragraph 164, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded. Specifically, I&E is without knowledge of PECO's specific reason for installing a new section of the main.

165. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

166. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

167. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

168. Denied. I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

169. Denied. It is denied that PECO fully cooperated with the Commission's investigation into the August 7, 2013 incident. By way of further answer, the Commission's Gas Safety Division had to contact PECO twice to get PECO personnel to the site at the time of the leak on August 7, 2013.

170. Denied. The averments contained in Paragraph 170 are specifically denied and proof thereof is demanded.

171. I&E incorporates its replies to Paragraphs 1-171 of PECO's New Matter as if fully set forth herein.

172. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

173. I&E incorporates its replies to Paragraphs 1-171 of PECO's New Matter as if fully set forth herein.

174. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

175. I&E incorporates its replies to Paragraphs 1-171 of PECO's New Matter as if fully set forth herein.

176. Denied. Paragraph 176 references statutory text that speaks for itself and no response is required. To the extent a response is required, it is denied.

177. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied. Moreover, it is specifically denied that the subject matter of the Complaint is compliance with the PA One Call Law, as the Complaint did not charge PECO with any violations of the PA One Call Law.

178. I&E incorporates its replies to Paragraphs 1-171 of PECO's New Matter as if fully set forth herein.

179. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

180. I&E incorporates its replies to Paragraphs 1-171 of PECO's New Matter as if fully set forth herein.

181. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

182. I&E incorporates its replies to Paragraphs 1-171 of PECO's New Matter as if fully set forth herein.

183. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied. Moreover, I&E is without knowledge sufficient to form a belief as to the truth of the matters asserted and the same is therefore denied and proof thereof demanded.

184. I&E incorporates its replies to Paragraphs 1-171 of PECO's New Matter as if fully set forth herein.

185. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

186. I&E incorporates its replies to Paragraphs 1-171 of PECO's New Matter as if fully set forth herein.

187. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

188. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

189. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

190. Denied. The averment states a conclusion of law to which no response is required. To the extent a response it required, it is denied.

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 deny PECO's New Matter and find PECO in violation of each and every count as set forth in the Complaint.

Respectfully submitted,



Heidi L. Wushinske
Prosecutor
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission

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

Date: January 28, 2016

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: January 28, 2016

s/s Paul J. Metro
Paul J. Metro
Gas Safety Manager

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:

Christopher A. Lewis, Esq.
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Dated: January 28, 2016