



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

May 3, 2016

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

Re: Pennsylvania Public Utility Commission, Bureau of Investigation and
Enforcement v. Pine Roe Natural Gas Co., Inc.
Docket No. C-2014-2400485

Dear Secretary Chiavetta:

Enclosed for filing please find an original of the Bureau of Investigation and Enforcement's Motion for Default Judgment in the above-referenced proceeding. Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Step M Wimer", is written over a horizontal line.

Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

Prosecutor for the Bureau of
Investigation and Enforcement

Enclosures

cc: As per Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**


Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2014-2400485
	:	
Pine Roe Natural Gas Co., Inc.,	:	
Respondent	:	

NOTICE TO PLEAD

The Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission) has filed a Motion for Default Judgment in the above-captioned matter, pursuant to the Commission's regulations at 52 Pa. Code §5.103. You are hereby notified to file a written response within twenty (20) days of the service of the Motion, consistent with 52 Pa. Code §5.61.

Your Answer must be verified, pursuant to 52 Pa. Code §1.36, and the original sent to:
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Additionally, you must serve a copy on the undersigned prosecutor.



Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 772-8839
stwimer@pa.gov

Dated: May 3, 2016

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, :
Bureau of Investigation and Enforcement, :
Complainant :
v. : Docket No. C-2014-2400485
Pine Roe Natural Gas Co., Inc., :
Respondent :

MOTION FOR DEFAULT JUDGMENT

NOW COMES the Pennsylvania Public Utility Commission's (Commission) Bureau of Investigation and Enforcement (I&E), by its prosecuting attorneys, and files this Motion for Default Judgment against Pine Roe Natural Gas Co., Inc. (Respondent or Pine Roe) pursuant to Section 5.103 of the Commission's regulations, 52 Pa. Code § 5.103. In support thereof, I&E respectfully represents as follows:

1. I&E commenced this action on January 14, 2014 by filing an initial Formal Complaint against Respondent alleging, *inter alia*, violations of various gas safety regulations discovered during inspections conducted by the I&E Gas Safety Division (Gas Safety), as well as violations pertaining to the filing of annual assessment reports to the Commission.

2. In the initial Complaint, I&E sought relief including that a civil penalty in the amount of \$40,500 be imposed and that Pine Roe not be permitted to recover any portion of the civil penalty through rates regulated by the Commission. I&E also requested that Pine Roe address the violations set forth in the initial Complaint by implementing certain programs and procedures that I&E alleged are non-existent. Additionally, I&E demanded that Pine Roe cease and desist from committing further violations of gas safety regulations.

3. Pine Roe requested an extension of time to answer I&E's initial Complaint. By Secretarial Letter dated February 18, 2014, Pine Roe's extension of time was granted and Pine Roe was directed to answer I&E's initial Complaint on or before March 6, 2014.

4. On March 4, 2014, Pine Roe properly filed an Answer to the initial Complaint *pro se* with the Commission's Secretary's Bureau and denied the material averments therein. Pine Roe alleged in its filed Answer that it believes it has cured the violations raised in I&E's initial Complaint. Pine Roe also requested a reduction of the civil penalty.

5. Following the filing of I&E's initial Complaint on January 14, 2014, subsequent inspections by Gas Safety found evidence of additional violations of gas safety regulations that were deemed so harmful to the safety of the public that I&E found it necessary to file an Amended Formal Complaint incorporating these additional violations. Therefore, I&E filed an Amended Complaint on March 4, 2016.¹

6. I&E's Amended Complaint alleges, *inter alia*, violations of various gas safety regulations discovered during inspections conducted by Gas Safety and during the repair of a June 2015 gas leak, violations of the Commission's assessment requirements, failing to file reports related to unaccounted-for-gas, failing to adhere to its tariff and contracting with an affiliate without an approved affiliated interest agreement. Due to the increase in violations, I&E increased its proposed civil penalty to \$318,055 and sought payment of Respondent's outstanding assessment for the July 1, 2014 to June 30, 2015 Fiscal Year (2014-2015 Fiscal Year) in the amount of \$365. Additionally, I&E demanded that Pine Roe cease and desist from committing further violations of the Public Utility Code, Commission regulations and Federal pipeline safety regulations and requested that the Commission order such other remedy as

¹ I&E initially filed the Amended Complaint on February 3, 2016. Upon discovering that the Amended Complaint filed on February 3, 2016 was not served by certified mail pursuant to 66 Pa.C.S. § 702, I&E re-filed the Amended Complaint on March 4, 2016 and served it upon Respondent by certified mail on that same day.

deemed to be appropriate, including revocation of Respondent's Certificate of Public Convenience. I&E's Amended Complaint replaces the initial Complaint filed at this docket on January 10, 2014.

7. On March 4, 2016, the Amended Complaint was served by certified mail to Respondent at P.O. Box 146 Clarion, PA 16214, Attention: John Habjan, President, and 353 East New Castle Street Zelienople, PA 16063, Attention: Joseph D. Gaudet, Statutory Agent.

8. Attached to the Amended Complaint was a Notice advising Respondent that it must file an Answer within twenty (20) days of service of the Amended Complaint.

9. The Notice also advised Respondent that if it failed to file an answer to the Amended Complaint, I&E would request that the Commission issue an Order imposing the penalty set forth in the Complaint.

10. The Notice further provided Respondent with detailed instructions related to filing an Answer to the Amended Complaint.

11. The Notice also notified Respondent that if it is a corporation, it is required to be represented by legal counsel pursuant to 52 Pa. Code § 1.21.

12. On March 7, 2016, Respondent received the Amended Complaint. A true and correct copy of proof of delivery of the Amended Complaint is attached as Exhibit 1.

13. On March 21, 2016, Respondent, still without legal counsel, contacted I&E's prosecuting attorney assigned to this matter by telephone and requested an extension of time to file an answer to I&E's Amended Complaint. I&E advised Respondent that it did not oppose Respondent's request, provided that Respondent's Answer to the Amended Complaint was received by I&E by the close of business on April 11, 2016. Respondent agreed that it would respond to I&E's Amended Complaint on or before April 11, 2016.

14. There is no indication that Respondent ever formalized its request for an extension of time in writing to the Commission's Secretary, as there is no evidence of such a filing in the Commission's records.

15. On April 11, 2016, I&E received an e-mail from Respondent containing a Microsoft Word attachment. The attachment consists of a letter addressed to Secretary Chiavetta and purports to provide a response that corresponds to some, but not all, of the numbered paragraphs in I&E's Amended Complaint. The attachment did not contain a title, such as "Answer."

16. There is no indication that Respondent's e-mail attachment was filed with the Secretary's Bureau pursuant to 52 Pa. Code § 1.4 (related to general instructions for filing). No entry in the Commission's filing records appears at the above-captioned docket related to any response by Respondent to I&E's Amended Complaint.²

17. Accordingly, it must be determined that Respondent failed to file an Answer to the Complaint with the Commission as required by 52 Pa. Code §§ 1.4 and 5.61.

18. Pursuant to Section 5.61(c) of the Commission's regulations, a Respondent who fails to file an Answer to a Complaint within the 20-day response period may be deemed in default, and the relevant facts stated in the Complaint may be deemed admitted. 52 Pa. Code § 5.61(c).

19. The Commonwealth Court has upheld the Commission's authority to sustain complaints that are not answered within twenty days. *See Fusaro v. Pa. PUC*, 382 A.2d 794, 797 (Pa. Cmwlth. 1978).

² The e-mail attachment also does not contain a proper verification pursuant to 52 Pa. Code § 1.36 or a Certificate of Service pursuant to 52 Pa. Code § 1.54.

20. Respondent's failure to properly file an Answer to I&E's Amended Complaint should not be treated gingerly merely because it did not secure legal representation. Respondent's election to appear *pro se* in a contested proceeding when it is a corporation is contrary to the Commission's regulation at 52 Pa. Code § 1.21(b), which provides that persons in adversarial proceedings, except for individuals representing themselves, shall be represented by an attorney admitted to practice in the Commonwealth of Pennsylvania. *See also Walcavage v. Excell 2000, Inc.*, 480 A.2d 281 (Pa. Super 1984) (holding that a corporation may appear in court only through an attorney at law admitted to practice before the court). Respondent is a corporation, was notified of the requirement to obtain legal counsel, had ample time to secure legal representation and failed to do so to its own detriment.

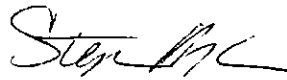
21. Proceeding *pro se* does not absolve Respondent of the responsibility to comply with procedural rules, impose an affirmative duty on the opposing party or the court to instruct Respondent on procedure, or require the court to ignore the procedural requirements in order to reach the merits of the claim. *Jones v. Rudenstein*, 585 A.2d 520, 522 (Pa. Super. 1991); *See also Passalacqua v. Passalacqua*, 56 Pa. D. & C.4th 38 (Pa. County Ct. 2002). "The right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law." *Faretta v. Cal.*, 422 U.S. 806, 834 n. 46 (U.S. 1975).

WHEREFORE, for the reasons set forth above, I&E respectfully requests that its Amended Complaint be sustained and that the Commission enter a Default Order against Respondent that:

- a. Directs Respondent to pay the requested civil penalty of \$318,055 within thirty (30) days of the entry date of the Commission's Order;

- b. Directs Respondent to pay its outstanding assessment of \$365 for the 2014-2015 Fiscal Year;
- c. Directs Respondent to cease and desist from committing further violations of the Public Utility Code, Commission regulations and Federal pipeline safety regulations; and
- d. Order such other remedy as the Commission may deem to be appropriate, including revocation of Respondent's Certificate of Public Convenience at A-00102046.

Respectfully submitted,



Stephanie Wimer
Prosecutor
PA Attorney ID No. 207522

Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
stwimer@pa.gov
(717) 772-8839

Date: May 3, 2016

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EXHIBIT 1

My Online Services

Profile Print Guide Export

Systems Reports E-Services Supplies

Home > E-Services > Status History

Status History ?

Tracking Number Information

Meter:	12650040	Mailing Date:	03/04/16 10:10 AM
Tracking Number:	9171969009350083559133	Sender:	
Current Status:	OK : Delivered	Recipient:	
Class of Mail	FC	Zip Code:	16214
Service:	ERR	City:	CLARION
Value	\$2.080	State:	PA

[Proof of delivery](#)

Pauline Breckel

P.O. Box 744

Status Details

▼ Status Date	Status
Mon, 03/07/16, 10:33:00 AM	OK : Delivered
Mon, 03/07/16, 08:12:00 AM	Arrival at Tracking Pick-up point
Mon, 03/07/16, 07:27:00 AM	Dispatched from Sort Facility
Sun, 03/06/16, 05:22:00 PM	Processed (processing scan)
Sat, 03/05/16, 10:33:00 AM	Processed (processing scan)
Sat, 03/05/16, 05:22:00 AM	Dispatched from Sort Facility
Fri, 03/04/16, 07:05:00 PM	Processed (processing scan)
Fri, 03/04/16, 05:50:00 PM	Origin Acceptance
Fri, 03/04/16, 01:40:00 PM	OK: USPS acknowledges reception of Info

Note: Delivery status updates are processed throughout the day and posted upon receipt from the Postal Service.

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**BEFORE THE
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Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement,
Complainant

v.

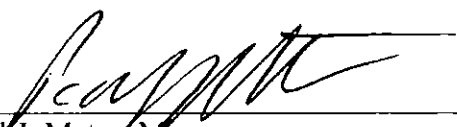
Pine Roe Natural Gas Co., Inc.,
Respondent

Docket No. C-2014-2400485

VERIFICATION

I, Paul J. Metro, Manager, Gas Safety Division, Bureau of Investigation and Enforcement, 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 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, 2016



Paul J. Metro, Manager
Gas Safety Division
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

v.

Pine Roe Natural Gas Co., Inc.,
Respondent

Docket No. C-2014-2400485

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document 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:

John Habjan, President
Pine Roe Natural Gas Co., Inc.
P.O. Box 146
Clarion, PA 16214

Joseph D. Gaudet
Pine Roe Natural Gas Co., Inc.
353 East New Castle Street
Zelienople, PA 16063

Notification by Electronic Mail:

Pauline Griebel
Fleming1170@yahoo.com



Stephanie M. Wimer
Prosecutor
PA Attorney ID No. 207522

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
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Dated: May 3, 2016

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