

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,  
Bureau of Investigation and Enforcement

v.

PECO Energy Company

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C-2015-2514773

**ORDER DENYING MOTION TO STRIKE**

On November 25, 2015, the Pennsylvania Public Utility Commission's (Commission's) Bureau of Investigation and Enforcement (I&E) filed a complaint with the Commission against PECO Energy Company (PECO). The complaint concerns an August 7, 2013 incident occurring at approximately 3:51 p.m. where a subcontractor struck a four inch gas main owned and operated by the Respondent. The subcontractor struck the Respondent's gas main while using a drill rig and auger to install a light pole at the Rosemont College athletic fields located at 1400 Montgomery Avenue, Rosemont, Pennsylvania.

According to the complaint, after the subcontractor struck the gas main, the gas vented upward and was ignited by the drill rig, causing a fire at the drill rig. The fire damaged the drill rig and injured two workers.

The complaint alleges that at approximately 4:24 p.m. the Respondent's responders arrived on the site and shut off the gas flow from the main. No evacuation occurred because the buildings surrounding the site of the incident were empty. The Commission's gas safety inspectors arrived at the site of the incident at approximately 6:54 p.m.

The complaint alleges that PECO violated the Public Utility Code, Commission regulations and federal regulations. The complaint requests that the Commission impose a civil

penalty of \$315,000.00 on PECO, and among other items, direct PECO to modify its gas damage prevention procedures and retrain personnel to follow the modified procedures.

PECO filed an answer with new matter on January 8, 2016. The answer generally admits that the incident occurred on August 7, 2013 at Rosemont College. The answer denies that PECO violated the Public Utility Code, Commission regulations and federal regulations.

The new matter asserts that the subcontractor failed to contact Pa One Call before commencing excavation work on August 7, 2013. The new matter alleges that PECO had, prior to the August 7, 2013 incident, responded to Pa One Call requests from contractors and subcontractors working at the Rosemont College athletic field by dispatching its contractor, USIC, Inc. (USIC) to locate and mark its facilities. The new matter contends that USIC properly located and marked PECO's facilities in response to these requests. According to the new matter none of these Pa One Call requests related to the installation of light poles at the athletic field.

The new matter argues that had the subcontractor contacted Pa One Call prior to commencing excavation, PECO would have dispatched USIC to locate and mark its facilities for the subcontractor. The new matter contends that PECO cannot be held responsible for the subcontractor's failure to contact Pa One Call. The answer with new matter requests that the Commission deny the complaint.

On January 28, 2016, I&E filed a reply to PECO's new matter. The reply denies the assertions in PECO's new matter and requests that the Commission find PECO in violation of the Public Utility Code, Commission regulations and federal regulations.

Also on January 28, 2016, I&E filed, pursuant to 52 Pa.Code § 5.103, a motion to strike portions of PECO's new matter. The motion to strike requests that the Commission strike paragraph 1 of the new matter which incorporates the introductory comments in PECO's answer and answering paragraphs in PECO's answer. According to I&E, the introductory comments and answers to the complaint's allegations fail to comply with the Commission's regulations governing new matter at 52 Pa.Code § 5.62.

In addition, the motion requests that the Commission strike paragraphs 73, 157 and 160 of PECO's new matter. The motion asserts that these paragraphs do not assert additional material facts as required by 52 Pa.Code § 5.62. According to the motion, paragraph 73 reiterates facts set forth in the I&E complaint, while paragraphs 157 and 160 consist of PECO's opinions and conclusions, rather than facts. The motion requests that the Commission strike the portions of PECO's new matter cited above.

On February 17, 2016, PECO filed a response to the motion to strike. Generally, the response asserts that the Commission's regulations should be construed liberally to secure the just, speedy and inexpensive resolution of Commission proceedings, pursuant to 52 Pa.Code § 1.2(a). In addition, PECO argues that the introductory comments consist of four pages which provide context and background for the facts and defenses set forth in PECO's answer and new matter. PECO argues that there is no harm to I&E in incorporating the introductory comments and answering paragraphs.

Concerning paragraph 73, PECO acknowledges that it does repeat certain information set forth in I&E's complaint. However, PECO argues that it would be difficult to understand the assertions in paragraphs 74 through 78 without the assertions in paragraph 73. Concerning paragraph 157, PECO asserts that it is a factual allegation not alleged in I&E's complaint. PECO acknowledges that paragraph 160 is a legal conclusion but that it can be asserted in new matter to support PECO's affirmative defenses. The response requests that the Commission deny the motion to strike.

By notice dated October 12, 2016, the Commission scheduled a prehearing conference for this matter on November 29, 2016 at 10:00 a.m. in Hearing Room 3, Commonwealth Keystone Building in Harrisburg and assigned the matter to me.

The motion to strike is ready for disposition. For the reasons set forth below, I will deny the motion.

I&E contends that the paragraphs it requests be stricken are not appropriate for inclusion in PECO's new matter. To the extent that the paragraphs are not appropriate for inclusion in new matter, they are impertinent.

Blacks Law Dictionary defines "impertinent" as follows:

"That which does not belong to a pleading, interrogatory, or other proceeding; out of place; superfluous; irrelevant. A term applied to matter not necessary to constitute the cause of action or ground of defense. Such matter may be stricken from the pleading.

Blacks Law Dictionary, 5<sup>th</sup> Ed. 1979, p. 679.

To the extent that the allegations in paragraphs 1, 73, 157 and 160 of PECO's new matter are "impertinent" as defined above, the paragraphs need not be stricken but may be treated as surplus and ignored. Dept. of Env'tl. Resources v Hartford Accident and Indemnity Co. 396 A.2d 885 (Pa.Cmwlt. 1979). The right of a tribunal to strike impertinent matter should be sparingly exercised and only when a party can affirmatively show prejudice. Goehring v Harleysville Mutual Casualty Co. 73 D. & C. 2d 784 (1976). I&E has not asserted in its motion to strike how the allegations in paragraphs 1, 73, 157 and 160 of PECO's new matter will prejudice its case.

In addition, the regulation at 52 Pa.Code § 1.2(a) provides that the presiding officer or the Commission may disregard an error or defect of procedure which does not affect the substantive rights of the parties. A presiding officer may ignore the procedural defects of a pleading in order to secure a just, speedy and inexpensive determination of this proceeding pursuant to 52 Pa.Code § 1.2(a).

I will ignore the procedural defects that may exist in PECO's new matter and, to the extent that the allegations in paragraphs 1, 73, 157 and 160 of PECO's new matter are impertinent, treat the allegations in the new matter as surplus and ignore them. I will deny the motion to strike.

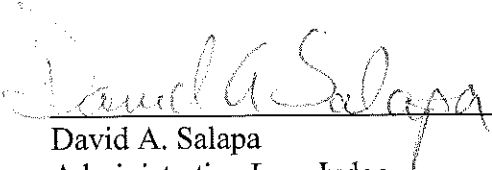
ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion to strike filed by the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement at Docket No. C-2015-2514773 is denied.

Date: October 20, 2016

  
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David A. Salapa  
Administrative Law Judge

C-2015-2514773 – PUBLIC UTILITIES COMMISSION BUREAU OF INVESTIGATION  
AND ENFORCEMENT v. PECO

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