

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

**Pennsylvania Public Utility
Commission, Bureau of
Investigation and Enforcement
(I&E) v. Pine Roe Natural Gas Co.,
Inc.**

**Public Meeting March 2, 2017
2400485-OSA
Docket No. C-2014-2400485**

MOTION OF COMMISSIONER DAVID W. SWEET

Before the Commission for our consideration is a Motion for Default Judgment filed by our Bureau of Investigation and Enforcement (I&E) against Pine Roe Natural Gas Co., Inc. (Pine Roe). For the reasons outlined here today, I move that I&E's Motion for Default Judgment be denied and its Amended Complaint be referred to the Commission's Office of Administrative Law Judge (OALJ) for mediation. If mediation is unsuccessful, this proceeding will be assigned to an ALJ for appropriate proceedings.

On January 4, 2014, I&E filed with the Commission a Complaint against Pine Roe alleging violations of the Pennsylvania Code, the Public Utility Code and the Code of Federal Regulations. In its Complaint, I&E requested that Pine Roe be ordered to pay a civil penalty in the amount of \$40,500, none of which could be recovered through rates regulated by the Commission.

On March 4, 2014,¹ Pine Roe filed a response to I&E's Complaint outlining the actions it had taken to address the alleged violations, asserting that it was in compliance with all safety codes and requesting a decrease in the penalty requested by I&E due to its compliance with the items in the Complaint and due to its small utility size. Pine Roe's response was not signed by an attorney as required at 52 Pa. Code § 1.21.

On March 4, 2016, I&E filed with the Commission an Amended Complaint against Pine Roe² in order to incorporate additional alleged violations that occurred subsequent to the filing of its initial Complaint in January 2014. I&E requested that Pine Roe be ordered to pay a civil penalty of \$318,055, as well as the outstanding assessment balance of \$365.

In reviewing the information included in I&E's Motion for Default Judgment in this proceeding, it appears that, while Pine Roe did not file a formal answer to the Amended Complaint, there was contact between Pine Roe and I&E regarding the Amended Complaint and Pine Roe's response to I&E's allegations. Additionally, Pine Roe had attempted, although inappropriately in a *pro se* format, to respond and correct the alleged violations in the original I&E complaint. I believe that shows willingness on the part of Pine Roe to participate in this

¹ On February, 14, 2014, Pine Roe filed a request for an additional 30 days' time to respond to the Complaint, which was granted via Secretarial Letter dated February 18, 2014.

² I&E filed the amended complaint on Feb. 3, 2016, but refiled it on Mar. 4, 2016, when it determined that the Feb. 3rd filing was not served by certified mail pursuant to 66 Pa. C.S. § 702.

proceeding and address the concerns of I&E. I note that it is critical that Pine Roe understand that the informal contact between it and I&E staff is not enough to address I&E's Amended Complaint.

Due to Pine Roe's circumstances,³ the seriousness of the alleged violations and the requested civil penalty amount included in the Amended Complaint, this matter would be best treated in a formal manner. I believe a Default Judgment is not the appropriate step in this proceeding where Pine Roe has attempted to respond and to rectify the alleged deficiencies and that carries such serious potential repercussions. Instead, this matter should be referred to OALJ for mediation. If mediation proves unsuccessful, this proceeding shall be assigned to an ALJ for formal adjudication. It is not required that Pine Roe be represented by an attorney during the mediation process. However, I note that Pine Roe *must* be represented by an attorney during any subsequent adjudication before an ALJ. In referring I&E's Amended Complaint to OALJ, official directives in the form of hearing notices and prehearing orders explain the necessity of engaging legal counsel in order to defend this matter, as well as the dire consequences if Pine Roe fails to comply. Should Pine Roe fail to comply with this additional opportunity to correct its actions, the matter shall not be subject to Default Judgment. Because of the unique nature of this proceeding and Pine Roe's circumstances, we believe it appropriate to require I&E to present evidence to support its allegations before an ALJ for adjudication, regardless of Pine Roe's filing of an Answer. Therefore, I move that the regulation at 52 Pa. Code § 5.61(c), in which a respondent failing to file an answer within the applicable period may be deemed in default and the relevant facts stated in the pleadings may be deemed admitted, be waived. This waiver is solely due to the unique circumstances of this case and due to Pine Roe's apparent willingness to participate in this proceeding.

THEREFORE, I MOVE THAT:

1. The Bureau of Investigation and Enforcement's Motion for Default Judgment be rejected.
2. The Bureau of Investigation and Enforcement's Amended Complaint be referred to the Office of Administrative Law Judge for mediation.
3. If, after sixty days in mediation, the parties have failed to reach agreement, the parties may request an extension of 30 additional days or the case will be assigned to an Administrative Law Judge for appropriate proceedings.
4. That 52 Pa. Code § 5.61(c) is waived for the purposes of this proceeding.
5. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

Date: March 2, 2017



David W. Sweet, Commissioner

³ As of this Commission's Annual Rate Comparison Report issued April 15, 2016, Pine Roe served approximately 170 residential customers in the townships of Beaver, Clarion, Monroe and Piney in Clarion County.