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October 19, 2017

VIA FIRST CLASS MAIL

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: **Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. PECO Energy Company; Docket No. C-2015-2511928; PECO'S APPLICATION FOR DEPOSITIONS BY ORAL EXAMINATION**

Dear Secretary Chiavetta:

Enclosed for filing in the referenced matter is PECO Energy Company's Application for Depositions by Oral Examination upon counsel in this matter. Counsel have been served via U. S. First Class mail, as per the Certificate of Service.

Thank you for your attention to this matter, and please do not hesitate to contact me with any questions or concerns.

Very truly yours,


Christopher A. Lewis

CAL/smh
Enclosure

cc: Hon. Christopher P. Pell (*w/ enclosure, via U. S. First Class Mail*)
Michael L. Swindler, Deputy Chief Prosecutor (*w/ enclosure, via U. S. First Class Mail*)
Heidi L. Wushinske, Prosecutor (*w/ enclosure, via U. S. First Class Mail*)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY
COMMISSION, BUREAU OF
INVESTIGATION AND ENFORCEMENT,

Complainant,

v.

PECO ENERGY COMPANY,

Respondent.

Docket No. C-2015-2511928

PROPOSED ORDER

The application for an Order to take the oral depositions of Robert Horensky, Michael Chilek, and Terri Cooper Smith in the above-captioned matter is granted.

So Ordered this _____ day of _____, 2017.

Date: _____

Honorable Christopher P. Pell
Administrative Law Judge

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
Complainant	:	
	:	
v.	:	Docket No. C-2015-2511928
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

APPLICATION FOR DEPOSITIONS BY ORAL EXAMINATION

TO: DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE CHRISTOPHER P. PELL:

PECO Energy Company (“hereinafter “PECO”), by and through its counsel, Blank Rome LLP, files this Application for Depositions by Oral Examination, pursuant to Sections 5.322 and 5.343 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code §§ 5.322 and 5.343, and in connection therewith avers as follows:

1. PECO files this Application for Depositions by Oral Examination (“Application”) requesting the issuance of an Order pursuant to Section 5.343 of the Commission’s regulations permitting the depositions of the three witnesses for whom the Bureau of Investigation and Enforcement (“I&E”) has submitted Direct Testimony and Exhibits: Michael Chilek, Terri C. Cooper Smith, and Robert D. Horensky.

2. This proceeding arises out of allegations regarding PECO’s compliance with federal regulations promulgated by the Pipeline and Hazardous Materials Safety Administration (“PHMSA”) in 1970 concerning the maximum allowable operating pressures (“MAOP”) established for PECO’s medium pressure pipelines operating between 12 and 60 psig.

3. The federal Pipeline Safety Laws authorize the Secretary of the USDOT to establish and enforce federal safety standards for natural gas and hazardous liquid pipelines and liquefied natural gas (“LNG”) facilities.¹ The USDOT has delegated that authority to PHMSA, an agency within the USDOT.² PHMSA administers a national pipeline safety program, which is applicable to most pipelines and LNG facilities. PHMSA has exclusive authority to regulate the safety of all interstate pipeline facilities.³

4. The Pipeline Safety Laws permit a state to regulate intrastate pipeline facilities subject to that state’s jurisdiction, if the state certifies adoption of the Federal Gas Pipeline Safety Regulations to PHMSA and meets other program requirements.⁴ In Pennsylvania, PHMSA regulates interstate gas pipelines and the Commission regulates intrastate gas pipelines. The Commission’s gas pipeline safety regulations for public utilities are codified at 52 Pa. Code § 59.33(b) and essentially incorporate by reference the federal requirements, including 49 C.F.R. Part 192, which sets forth safety standards applicable to gas pipelines.⁵

5. On November 4, 2015, I&E filed a Formal Complaint in this proceeding, alleging, among other things, that PECO fails to comply with applicable regulations governing the establishment of the MAOP for the pipelines located in PECO’s medium pressure natural gas distribution systems. I&E alleged that PECO operates segments of its steel and plastic pipelines in its medium pressure gas distribution system at pressures exceeding MAOP because PECO cannot substantiate or verify the MAOP of the pipelines in those systems with design calculations, pressure test records, or documentation of the highest actual operating pressures

¹ 49 U.S.C. §§ 60101-140 (2012 & Supp. II 2014), amended by Protecting Our Infrastructure of Pipelines and Enhancing Safety Act of 2016, Pub. L. 114-183, 130 Stat. 514.

² 49 C.F.R. § 1.53. For convenience, references in this document to PHMSA include any of its predecessor agencies.

³ 49 U.S.C. § 60104(c).

⁴ 49 U.S.C. § 60105.

during the five years before July 1, 1970. The Formal Complaint also recommended that PECO adopt several corrective actions.

6. On December 21, 2015, PECO filed an Answer denying the allegations in the Formal Complaint. PECO stated that in 1970, it established the MAOPs for the pipelines in its medium pressure gas distribution systems in accordance with new federal pipeline safety regulations adopted by USDOT in its August 19, 1970 final rule.⁶ PECO explained that the Formal Complaint provided no legal authority to support the proposition that a pipeline operator has an obligation to create and maintain records before the effective date of the original Federal Gas Pipeline Safety Regulations. PECO also explained that the pipelines in its medium pressure distribution systems operate at pressures between 12 and 60 psig.

7. Accordingly, Section 192.619(a)(2) of the Federal Gas Pipeline Safety Regulations,⁷ which requires pressure testing for pipelines that operate at 100 psig or more does not apply to the steel pipelines in PECO's medium pressure distribution systems because they operate at pressures below 100 psig and therefore do not require the kind of strength test specified in Section 192.619. Rather, the steel lines in these systems are subject to the leak test requirements of Section 192.509⁸ that are not used for determining MAOP and have no relevance under Section 192.619(a)(2)⁹. Leak test records must be kept for only five years under

⁵ 49 C.F.R. Part 192.

⁶ Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards, 35 FED. REG. 13,248 (Aug. 19, 1970).

⁷ 49 C.F.R. § 192.619(a)(2).

⁸ 49 C.F.R. § 192.509.

⁹ When developing the original federal safety regulations in 1970, PHMSA initially proposed to subject records for leak tests and strength tests to the same life-of-the-pipe retention requirement. Minimum Federal Safety Standards for Gas Pipelines; Testing and Upgrading, 35 Fed. Reg. 5724, 5726 (Apr. 8, 1970) (proposed § 192.517). The final rule retained this retention period only for strength tests and did not include any recordkeeping requirement for leak tests. 1970 Final Rule, 35 Fed. Reg. at 13,270 (§ 192.517).

Section 192.517(b).¹⁰ Records documenting leak tests of plastic pipelines, which are performed under Section 192.513, also are required to be kept for only five years.¹¹

8. Finally, PECO explained that its records provide detailed information regarding the practices and procedures that have been consistently used (before and after adoption of the Federal Gas Safety Law) to design, construct, and test all of the pipelines in its medium pressure gas distribution systems. In addition, a third party consultant reviewed PECO's existing records, procedures, standards and data and determined that PECO's existing MAOP levels are appropriate and that PECO has been operating its system at the lowest possible pressures needed to meet customer demands. All of this information, combined with the systems' safe operating history, provided more than adequate basis to substantiate the MAOPs of the pipelines in its medium pressure gas distribution systems.

9. PECO's Answer further averred that PECO has operated its medium pressure gas distribution systems without a MAOP incident throughout the ensuing 46 years, during which time the Commission's Pipeline Safety Division ("PSD")¹² engaged in active oversight and performed audits of the PECO system, all the while raising no issue respecting PECO's compliance with MAOP regulations.

10. PECO also explained that the Formal Complaint's proposal to require that PECO reduce the MAOP levels for the pipelines in its medium pressure gas distribution systems would not enhance safety. Instead, such measures would force PECO to choose between either reducing operating pressures and placing over 27,500 customers at risk of a supply curtailment during winter peak periods or avoiding a non-compliance order.

¹⁰ 49 C.F.R. § 192.517(b).

¹¹ 49 C.F.R. §§ 192.513 and 192.517(b).

¹² The Commission's Pipeline Safety Division was formerly named the Gas Safety Division.

11. On August 9, 2017, PECO served Requests for Production of Documents, Requests for Admission, and Interrogatories (First Set) upon counsel for I&E. Under the Commission's rules and regulations, I&E's responses to this discovery would have been due twenty (20) days later, or on and around August 29, 2017.

12. Prior to the due date, I&E requested an extension of time to respond to PECO's First Set of discovery, and PECO agree to extend the due date for the responses to October 16, 2017.

13. On August 29, 2017, I&E served PECO with copies of prepared Direct Testimony and Exhibits of I&E's witnesses: Michael Chilek (I&E Statement No.1); Terri C. Cooper Smith, (I&E Statement No. 2), and Robert Horensky (I&E Statement No. 3).

14. On September 19, 2017, PECO served I&E with its Requests for Production of Documents and Interrogatories (Second Set). This discovery sought information concerning specific issues raised by the prepared direct testimony and exhibits of I&E's witnesses.

15. On or around October 2, 2017, I&E filed Objections to PECO's second set of discovery, but stated in the objections that it was making a good faith effort to produce the information sought, subject to applicable privileges.

16. Prior to the due date, I&E requested an extension of time to respond to PECO's Second Set of discovery, and PECO agreed to extend the due date for the responses to October 16, 2017.

17. On October 17, 2017, PECO received responses to both its First Set and Second Set of discovery.

18. The PHMSA regulations at issue in this proceeding are highly complex and interrelated.

19. PECO wishes to obtain discovery from I&E's witnesses concerning their direct testimony and exhibits, their knowledge and understanding of the PHMSA regulations and the PHMSA interpretations relating to MAOP, and I&E's enforcement practices regarding same from 1970 to present.

20. The information sought by PECO cannot be obtained through alternative means because only I&E's witnesses have this information. In addition, interrogatories are not an appropriate discovery method for obtaining the information since they would need to be so numerous as to be overly burdensome for both PECO in framing them and I&E in answering them.

21. Section 5.343 of the Commission's regulations sets forth procedures that are normally followed in connection with taking depositions by oral examination.

22. Section 5.322 of the Commission's regulations provides that the parties may informally agree to modify discovery or deposition procedures.

23. I&E has informally agreed to the depositions by oral examination. Further, the parties have agreed that the depositions occur on the date and time, and in the location, set forth in the Notice, attached as Exhibit A.

24. Code Section 333(b)(6) permits the presiding officer to allow the depositions of Commission employees based on a specific finding that the party applying to take the deposition is seeking significant, unprivileged information not discoverable by alternative means.

25. Each of I&E's witnesses is a Commission employee, and PECO is seeking significant, unprivileged information that is not discoverable by alternative means.

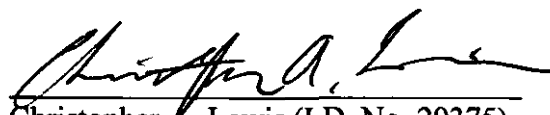
26. Allowing depositions of I&E witnesses will also expedite the hearing in this matter, since it would obviate the need for lengthy cross-examination during the hearing.

27. PECO has requested that I&E consent to the depositions of the three I&E witnesses, and I&E has agreed.

WHEREFORE, on the basis of the foregoing, PECO respectfully requests that the Administrative Law Judges issue an order granting this Application for Depositions by Oral Examination.

Respectfully submitted,

BLANK ROME LLP



Christopher A. Lewis (I.D. No. 29375)

Melanie Carter (I.D. No. 312294)

Naomi Zwillenberg (I.D. No. 318742)

One Logan Square

130 N. 18th Street

Philadelphia, PA 19103

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NZwillenberg@BlankRome.com

Dated: October 19, 2017

DATE: November 1, 2017
TIME: 1 p.m., Eastern Standard Time
PLACE: PECO Energy Company
300 Front St,
Conshohocken, PA 19428
Phone: (610) 832-6402

WITNESS: Terri C. Cooper Smith
BUSINESS ADDRESS: Pennsylvania Public Utility Commission, P.O. Box 3265,
Harrisburg, PA 17105-3265
DATE: November 2, 2017
TIME: 9:00 a.m., Eastern Standard Time
PLACE: PECO Energy Company
300 Front St,
Conshohocken, PA 19428
Phone: (610) 832-6402

PECO wishes to obtain discovery from I&E's witnesses concerning:

1. Their direct testimony and exhibits;
2. Their knowledge and understanding of the PHMSA regulations and the PHMSA interpretations relating to MAOP;
3. I&E's enforcement practices regarding same from 1970 to present.



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY
COMMISSION, BUREAU OF
INVESTIGATION AND ENFORCEMENT,

Complainant,

Docket No. C-2015-2511928

v.

PECO ENERGY COMPANY,

Respondent.

CERTIFICATE OF SERVICE

I, Naomi Zwillenberg, hereby certify that I have this day served a copy of foregoing in the above matter upon all interested parties by mailing a copy, properly addressed and postage prepaid to:

Honorable Christopher P. Pell
Administrative Law Judge
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107

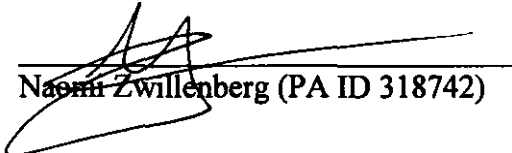
Michael L. Swindler, Deputy Chief Prosecutor
Heidi L. Wushinske, Prosecutor
Pennsylvania Public Utility Commission
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Harrisburg, PA 17105-3265

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Dated at Philadelphia, Pennsylvania, October 19, 2017.

BLANK ROME LLP

By:


Naomi Zwillenberg (PA ID 318742)

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10/19/2017

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Christopher A. Lewis, Esquire

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