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Via Electronic Filing and Overnight Delivery

April 2, 2019

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

Re: **Docket Number C-2018-3005956**
Wallace McGaughey v. Peoples Natural Gas Company LLC

Dear Secretary Chiavetta:

On behalf of Peoples Natural Gas Company LLC (“Peoples”), please find enclosed for filing a Brief in the above-noted docket.

Please contact the undersigned at (412) 208-6834 should you have any questions or concerns regarding this matter.

Very truly yours,

Jennifer L. Petrisek
Senior Counsel

cc: All Parties listed on the Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WALLACE MCGAUGHEY)	
)	
V.)	DOCKET NO. C-2018-3005956
)	
PEOPLES NATURAL GAS COMPANY LLC)	

BRIEF OF PEOPLES NATURAL GAS COMPANY LLC

PROCEDURAL HISTORY

On October 31, 2018, Wallace McGaughey (the “Complainant”) filed a formal complaint against Peoples Natural Gas Company LLC (“Peoples” or the “Company”) which, among other things, averred that Peoples is in violation of the Federal Pipeline Safety Regulations, 49 CFR 192, for failing to maintain and repair a service line located between the meter and the Complainant’s premise wall at 2460 Home Street, Indiana, Pennsylvania 15701. As relief, Complainant sought reimbursement for the expenses associated with the repair of the aforementioned service line. The formal complaint was served on Peoples on November 13, 2019.

On December 6, 2018, Peoples filed an Answer to the formal complaint denying the Complainant’s allegations. Peoples also filed Preliminary Objections on December 6, 2018 requesting to strike Complainant’s relief for reimbursement as an impertinent matter.

On January 4, 2019, Complainant filed an Answer to the Formal Complaint, which is dated December 20, 2018.

On January 4, 2019, a Telephonic Hearing Notice was issued that set an initial telephonic hearing for February 6, 2019 at 10 a.m. A Prehearing Order was issued on January 17, 2019.

An Order Granting Preliminary Objections and Dismissing a Portion of the Complaint was issued by Administrative Law Judge Calvelli on January 17, 2019. The Order dismissed any claims against Peoples insofar as they relate to a claims for monetary damages, but retained any remaining issues, such as whether Peoples was improperly passing on costs to customers that should be borne by Peoples and claims that Peoples has disregarded certain laws and regulations regarding gas service line maintenance and repair obligations, to be considered during an Initial Hearing.

On February 6, 2019, a telephonic hearing was held to address the formal complaint at which hearing both parties were present. Complainant presented his own testimony and offered two (2) Complainant Exhibits, which were admitted into evidence. Peoples was represented by Jennifer L. Petrisek, Esquire, who presented testimony of one (1) witness and offered nine (9) Exhibits, which were admitted into evidence. A transcript of the telephonic hearing was prepared consisting of _____ pages. At the conclusion of the telephonic hearing, Administrative Law Judge Calvelli granted Peoples' request to file a Post Hearing Brief.

On March 6, 2019, Administrative Law Judge Calvelli issued a Briefing Order setting forth the briefing parameters.

In accordance with the Briefing Order, Peoples submits the following:

PROPOSED FINDINGS OF FACT

1. Complainant, Wallace McGaughey, owns a property located at 2460 Home Street, Indiana, Pennsylvania 15701 (the "Premise"). (Transcript, Page 7).
2. In October, 2018 a gas leak was detected on the gas service line that runs from the meter, located at the edge of the road, to the Premise (the "Customer Owned Service Line"). (Transcript, Pages 7-8).
3. Peoples notified Mr. McGaughey that he was responsible for the repair of the Customer-Owned Service Line. (Transcript, Page 8).

4. Mr. McGaughey arranged for, and paid for, the repair of the Customer-Owned Service Line. (Exhibit C-2, Page 3).
5. Mr. McGaughey disagrees that he retains ownership and maintenance obligations for the Customer-Owned Service Line. (Transcript, Page 8).
6. The Peoples Natural Gas Company LLC tariff, Section 4, sets forth that the customer owns, provides and is responsible for the repair of the Customer-Owned Service Line. (Transcript, Page 43; Exhibit B).
7. Section 59.34 of Title 52 of the Pennsylvania Code requires a utility to survey customer-owned service lines and if a leak is found on a customer-owned service line, the utility would record the leak and require the customer to repair or replace the customer-owned service line. (Transcript, Page 44; Exhibit C).
8. Section 115.10 of Title 66 of the Pennsylvania Consolidated Statutes provides that a utility shall not be authorized or required to assume ownership of customer-owned service line. (Transcript, Page 45; Exhibit D).

DISCUSSION

The central issues in this Formal Complaint pertain to (1) whether Peoples owns the Customer-Owned Service Line and (ii) whether Peoples is responsible to repair or replace the Customer-Owned Service Line in the event said line fails. Complainant contends that Peoples, as the utility, is responsible to operate, maintain and repair/replace the Customer-Owned Service Line pursuant to 49 CFR 192. Peoples contends that the Customer-Owned Service Line is owned by the customer of record (or the person/party owning the underlying real property) and the customer of record is responsible for the maintenance and repair/replacement of said line.

As in all Formal Complaint proceedings, the Complainant has the burden of proof to show that Peoples is responsible or accountable for the problem described in the complaint. Patterson v. Bell Telephone Co. of Pa., 72 Pa. PUC 196 (1990); Feinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976). The Complainant must establish his case by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlt. 1990), alloc. den., 602 A.2d 863 (Pa.

1992). To meet the burden of proof, the Complainant must present evidence more convincing, by even the smallest amount, than that presented by the Respondent. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950). In this case, the Complainant is unable to meet the burden as described below.

(A) Peoples Tariff Language Outlines Ownership of the Customer-Owned Service Line.

Section 4, Page 45, of the Peoples Natural Gas Company LLC Retail Tariff outlines the responsibilities related to connection for service. Specifically, paragraph one (1) provides the following:

The applicant hereby undertakes to furnish, be responsible for, and pay the necessary costs of service pipe, fixtures, fittings, valves, regulators, and appliances to make the necessary connections between the Company's lines and the place of consumption or the agreed upon delivery point to the applicant and keep the same in good repair, in a skillful and workmanlike manner, furnishing at his own expense said material, and the labors, care and supervisions necessary and proper to safely conduct and burn the gas, but the applicant shall not otherwise make changes in or interfere with said pipes and appliances and material. The arrangement and location of all piping and appliances (including meters) shall be subject to the approval of the Company, but the Company shall not be responsible in any manner for the selection, maintenance, or use of said pipes and appliances, or for said labor, care, or supervisions, and shall have no duty or obligation with respect to the same. To facilitate this process, the Company makes available a manual entitled "Service Line Installation Standards'."

The referenced Tariff language clearly outlines the applicant, which in this case would be Wallace McGaughey at the time he applied for service in 2014, is owner of the Customer-Owned Service Line and is responsible for the maintenance and repair/replacement of the Customer-Owned Service Line. Mr. McGaughey was made aware of this fact on February 19, 2014 via a New Customer Notification Letter that was sent to Mr. McGaughey's Premise, which was his mailing address as well as his service address. The Notification Letter provides in part:

What Pipelines Do You Own?

You own the service line that runs from the property line (which often is the curb stop/valve) to your meter. If your line needs service, the contractor must be qualified under DOT regulations and be part of a DOT approved drug and alcohol program. You also own the house line that runs

from the meter to your appliances. The cost of repair or replacement of both the service and house lines are the responsibility of you or the property owner.

What Pipelines Does the Gas Company Own?

We own the main line that runs down your street. We also own a short service line (located near the street) that connects our line to the customer's service line. Repair or replacement of the main line and our service line is our responsibility. (An exception exists in some situations in the Johnstown and Altoona areas, where the gas company owns and maintains the entire service line.)

While Mr. McGaughey indicated in testimony that he did not recall receiving this letter, the letter was sent to his mailing address and he affirmed in testimony that he regularly received mail at that address. Furthermore, the referenced Tariff is on file with the Pennsylvania Public Utility Commission, available via the Commission's website and also via the Company's website and was readily available to Mr. McGaughey.

(B) Title 52 of The Pennsylvania Code Outlines the Customer and the Utility Obligations for the Customer-Owned Service Line.

Section 59.34 of Title 52 of the Pennsylvania Code sets forth a definition of a customer-owned service line as well as the responsibilities related to a customer-owned service line. Subsection (a) defines a customer-owned service line as "...includes that piping serving a residential or commercial customer which is between the main, pipeline or other source of supply and whichever is the more remote of either the meter set assembly, or the wall of the residence or commercial building if the customer owns part of the piping." In this case, the line in dispute is located between the meter, which is placed by and owned by Peoples and the location where the gas supply is recorded, and the exterior wall of the Premise. Pursuant to Section 59.34(a), the line in question is clearly a customer-owned service line.

Section 59.34(a) further adds that Peoples is responsible to periodically survey each customer-owned service line for leakage, which Mr. Thomas, Peoples witness confirmed in testimony is conducted on a routine basis and also upon a gas odor investigation. (Transcript, Pages 39-40). Section 59.34(c) goes on to provide that if a leak is detected, the "*public utility shall require the customer to repair or renew the line*, and may shut off gas service until repair or renewal has been effected." (emphasis added). Peoples actions in October 2018 were in compliance with Section 59.34 of The Pennsylvania Code – the

Company responded to an odor of gas complaint, conducted a leak investigation, detected a leak, recorded the leak, and notified the customer that they were responsible for repairing the leak.

(C) Section 1510 of Title 66 of The Pennsylvania Consolidated Statutes Sets Forth the Ownership of Maintenance of Gas Service Lines.

Section 1510 of the Statutes sets forth that the utility shall furnish, install and maintain service lines in accordance with the rules and regulations of the utility's filed tariff. As set forth in Section (A) of the Discussion Section of this Brief, the Peoples Tariff identifies the responsibility for the provision, installation and maintenance of the connections between the Company's lines and the place of consumption to be the responsibility of the customer. Section 1510 continues by providing that a "...public utility shall not be authorized or required to acquire or assume ownership of any customer's service line..." and "(m)aintenance of service lines shall be the responsibility of the owner of the service line."

Again, Peoples' actions in October 2018 are in compliance with the law – Peoples identifies ownership and maintenance obligations for service lines in its Tariff, which is on file with the Pennsylvania Public Utility Commission. Further, in compliance with the Statute, Peoples does not own the line in question in this Complaint, namely the line referred to herein as the Customer-Owned Service which runs from the meter to the exterior Premise wall, and required Mr. McGaughey, as the owner, to take responsibility for the maintenance of the Customer-Owned Service Line.

(D) Section 192.16 of Title 49 of the Code of Federal Regulations Provides for Customer Buried Piping.

Contrary to Mr. McGaughey's argument, Title 49 of the Code of Federal Regulations does not require the utility to maintain and repair/replace the line in question in this Complaint, namely the line referred to herein as the Customer-Owned Service which runs from the meter to the exterior Premise wall. Section 192.16 of 49 CFR provides that the operator, in this case, Peoples, is not responsible to maintain the customer's buried piping, the customer is responsible to repair any unsafe conditions, and the operator is responsible only to notify the customer, of amongst other things, that the operator does not maintain the customer's buried piping:

192.16 Customer Notification

(a) This section applies to each operator of a service line who does not maintain the customer's buried piping up to entry of the first building downstream, or, if the customer's buried piping does not enter a building, up to the principal gas utilization equipment or the first fence (or wall) that surrounds that equipment. For the purpose of this section, "customer's buried piping" does not include branch lines that serve yard lanterns, pool heaters, or other types of secondary equipment. Also, "maintain" means monitor for corrosion according to § 192.465 if the customer's buried piping is metallic, survey for leaks according to § 192.723, and if an unsafe condition is found, shut off the flow of gas, advise the customer of the need to repair the unsafe condition, or repair the unsafe condition.

(b) Each operator shall notify each customer once in writing of the following information:

(1) The operator does not maintain the customer's buried piping.

(2) If the customer's buried piping is not maintained, it may be subject to the potential hazards of corrosion and leakage.

(3) Buried gas piping should be -

(i) Periodically inspected for leaks;

(ii) Periodically inspected for corrosion if the piping is metallic; and

(iii) Repaired if any unsafe condition is discovered.

(4) When excavating near buried gas piping, the piping should be located in advance, and the excavation done by hand.

(5) The operator (if applicable), plumbing contractors, and heating contractors can assist in locating, inspecting, and repairing the customer's buried piping.

(c) Each operator shall notify each customer not later than August 14, 1996, or 90 days after the customer first receives gas at a particular location, whichever is later. However, operators of master meter systems may continuously post a general notice in a prominent location frequented by customers.

(d) Each operator must make the following records available for inspection by the Administrator or a State agency participating under 49 U.S.C. 60105 or 60106:

(1) A copy of the notice currently in use; and

(2) Evidence that notices have been sent to customers within the previous 3 years.

As Mr. Thomas testified at the Hearing, this Section of the CFR was part of a proposed rulemaking, issued by the Department of Transportation ("DOT"), in 1994. The Notice proposed to define customer owned piping and comments were issued by various parties and considered by the DOT.

In the proposed rulemaking, the DOT specifically considered the term “Customer Owned Service Lines” and noted that some lines are, in fact, owned by the customer:

Not all customer meters are located adjacent to a home or building wall or end-use equipment. Some customer meters are located at property lines or at other locations more convenient for the gas distribution operator or for the customer. *In such cases, the service line ends at the meter and the pipe running from the outlet of the meter to the exterior wall or end-use equipment is called a customer-owned service line.* (emphasis added). (Federal Register, Volume 59, Number 23, February 3, 1994, Pages 5168.)

The proposed rulemaking went on to describe that the DOT is aware of situations where a customer is responsible for a service line:

RSPA is aware there are situations where the meter is adjacent to, but not at, the home or building wall or the end-use equipment. In these- instances. The operator is responsible for the pipeline up to the meter, and the- customer is responsible for the small portion of buried pipeline from the outlet of the meter to the home or building wall or to the end-use equipment. (Id, page 5169).

In the Final Rule, the DOT discussed that various commenters, as well as the DOT felt that the term “Customer Owned Service Lines” could be confused with the term “Service Line” which was already defined and discussed in Section 192. As a result, the DOT elected to instead utilize the term *Customer Buried Piping*. (Federal Register, Volume 60, Number 156, August 14, 1995, Page 41821 - 41822).

As evidenced by Exhibit A submitted by Peoples at the Hearing, Peoples is in compliance with this provision of the CFR by providing notification to Mr. McGaughey of his responsibility related to the Customer-Owned Service Line.

(E) Conclusions

For the reasons stated herein, Peoples contends that it is, and has been, in compliance with all applicable state and Federal rules and regulations related to the Customer-Owned Service Line in question under the Formal Complaint. As discussed herein, Peoples is in compliance with (1) its Tariff, which is on file with the Pennsylvania Public Utility Commission, (2) Section 59.34 of Title 52 of the Pennsylvania Code, (3) Section 1510 of Title 66 of the Pennsylvania Consolidated Statutes and (4) Section

192.16 of the CFER which specifically contemplates certain service lines are owned by the customer and not the utility, and maintenance for such lines lies with the customer.

PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S.A. § 701.
2. Complainant carries the burden of proving Respondent violated specific state or Federal rules, regulations or utility tariff(s).
3. Complainant did not carry the burden and further did not meet the burden of proving Respondent failed to provide reasonable and adequate customer service. 66 Pa.C.S.A. § 1501.

PROPOSED ORDERING PARAGRAPHS

1. That the complaint of Wallace McGaughey against Peoples Natural Gas Company LLC at Docket No. C-2018-3005956 is hereby denied.
2. That the Secretary shall mark the docket in this matter closed.

WHEREFORE, Peoples Natural Gas Company LLC, based upon the foregoing, respectfully requests that the complaint of Wallace McGaughey against Peoples Natural Gas Company LLC at Docket No. C-2018-3005956 be dismissed.

Respectfully submitted,



Jennifer L. Petrisek

Counsel for

Peoples Natural Gas Company LLC

Dated: April 2, 2019


CERTIFICATE OF SERVICE

I hereby certify that I have on this 2nd day of April, 2019 served a true copy of Peoples Natural Gas Company LLC's Brief upon the individuals listed below in the manner stated:

VIA OVERNIGHT DELIVERY:

Wallace McGaughey
29001 Gaylord Road
Walker, LA 70785

Administrative Law Judge Andrew Calvelli
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120



Jennifer L. Petrisek

Dated this 2nd day of April, 2019