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October 19, 2020

Via Electronic Filing

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

Re: Dwayne Ackie, Miguel J. Chavarria, Jr., Maurice A. Goodwin and Wayne Rauceo
v. Philadelphia Gas Works, Docket No. C-2019-3013933

Dear Secretary Chiavetta:

Enclosed for electronic filing, please find Philadelphia Gas Works' (PGW") Motion in Limine Regarding the Testimony Submitted by the Complainants in this Proceeding. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

Kristine E. Marsilio

Kristine E. Marsilio

cc: Cert. of Service w/enc. (via email only)
Hon. Darlene Heep w/enc. (via email only)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dwayne Ackie, Miguel J. Chavarria, Jr.,	:	
Maurice A. Goodwin and Wayne Rauceo,	:	Docket No. C-2019-3013933
Complainants	:	
	:	
v.	:	
	:	
Philadelphia Gas Works,	:	
Respondent	:	

NOTICE TO PLEAD

TO: Karin Gunter

You are hereby notified to file a response to the enclosed Motion in Limine in the form and manner as directed by the Administrative Law Judges or a judgment may be entered against you.

Respectfully submitted,

Kristine E. Marsilio

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Dated: October 19, 2020

Counsel for Philadelphia Gas Works

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dwayne Ackie, Miguel J. Chavarria, Jr., :
Maurice A. Goodwin and Wayne Rauceo, : Docket No. C-2019-3013933
Complainants :
 :
v. :
 :
Philadelphia Gas Works, :
Respondent :

**PHILADELPHIA GAS WORKS’
MOTION IN LIMINE REGARDING THE TESTIMONY
SUBMITTED BY THE COMPLAINANTS IN THIS
PROCEEDING**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE DARLENE HEEP:

Pursuant to Section 5.103 of the Pennsylvania Public Utility Commission's regulations, 52 Pa. Code § 5.103, and the Prehearing Order dated February 11, 2020 issued in the above-captioned proceeding, Philadelphia Gas Works (“PGW”) submits this Motion in Limine (“Motion”) to bar from consideration in this proceeding certain portions of the pre-served Direct Testimony submitted on behalf of the Complainants in this proceeding. Specifically, PGW moves to exclude from this proceeding the following portions of the Direct Testimony of Dwayne Ackie (“EE St. No. 1), the Surrebuttal Testimony of Dwayne Ackie (“EE St. No. 1-SR”), and the Direct Testimony of Wayne Rauceo (“EE St. No. 4”) (the “Contested Portions”):

- EE St. No. 1, p. 12, line 7 (“without his employee badge”);
- EE St. No. 1, p. 12, line 8 (beginning with the sentence, “He used [...]” through and including line 11;
- EE St. No. 1, p. 12, line 17 through and including p. 13, line 6;

- EE St. No. 1, p. 13, lines 13-17;
- EE St. No. 1, p. 16, line 6 through and including p. 17, line 3;
- EE St. No. 1-SR, p. 4, lines 2-3 (“Yet still he begged the security guard to let him in unannounced to the Operations Supervisor without his PGW ID card and PPE.”);
- EE St. No. 4, p. 7, lines 5-16;
- EE St. No. 4, p. 8, lines 1-7 and 15-25; and
- EE St. No. 4, p. 9, lines 1-6.

A copy of the Contested Portions is attached hereto as Exhibit A. These Contested Portions constitute uncorroborated hearsay that may not be relied upon to support findings of fact or conclusions of law. As such, the Contested Portions of EE St. Nos. 1, 1-SR, and 4 should not be admitted to the record or otherwise considered in this proceeding.

I. BACKGROUND

1. This proceeding was initiated on October 31, 2019 with the filing of a Complaint against PGW by Dwayne Ackie, Miguel J. Chavarria, Jr., Maurice A. Goodwin and Wayne Rauceo (collectively, “Complainants”), wherein Complainants alleged “safety violations and other concerns.”

2. PGW timely filed an Answer on November 20, 2019 and filed Preliminary Objections on that date. Administrative Law Judge Darlene Heep (“ALJ Heep”) issued an Order Granting in Part and Denying in Part Preliminary Objections on January 3, 2020.

3. ALJ Heep convened a Prehearing Conference on February 6, 2020, at which time a procedural schedule was established. ALJ Heep issued a Hearing Notice on February 10, 2020 and an Order on February 11, 2020, in which she memorialized the original procedural schedule.

In this February 11 Prehearing Order, ALJ Heep ordered the parties to file Motions in Limine no later than 1 p.m. on June 2, 2020 (the day prior to the originally-scheduled first day of hearings in this case).

4. This procedural schedule was modified several times due to COVID-19 health directives and to accommodate the requests of the parties.

5. In accordance with the revised litigation schedule, the Complaints served the Direct Testimony of Complainants Dwayne Ackie, Miguel Chavarria, Jr., Maurice Goodwin, and Wayne Rauceo on July 2, 2020. The Complainants served the Amended Direct Testimony of Miguel Chavarria, Jr. on July 27, 2020.

6. PGW served the Rebuttal Testimony of Raymond M. Snyder, Daniel J. Cassidy, and Brian McGuire on August 17, 2020.

7. Complainants served the Surrebuttal Testimony of Dwayne Ackie and Wayne Rauceo on August 28, 2020.

8. PGW served the Supplemental Rebuttal Testimony of Brian McGuire on August 31, 2020, in which Mr. McGuire addressed the Amended Direct Testimony of Mr. Chavarria.

9. Complainants served the Surrebuttal Testimony of Mr. Chavarria on September 14, 2020.

10. Hearings in this proceeding are currently scheduled for October 20-22, 2020.¹ PGW is following the framework of the February 11 Prehearing Order wherein Motions in Limine were due by 1 p.m. on the day prior to the first day of hearings.

¹ At the request of the parties, ALJ Heep has indicated that she intends to cancel the first day of hearings on October 20, 2020.

11. Accordingly, PGW submits this Motion, seeking to exclude the Contested Portions from being admitted to the record or otherwise considered in this proceeding.

II. LEGAL STANDARDS

12. Section 5.403(a)(1) of the Commission's regulations authorizes the presiding officer to control the receipt of evidence, including ruling on the admissibility of evidence.² The presiding officer also has authority to confine the evidence to the issues in the proceeding and to impose necessary limitations upon the admission of evidence.³ Section 5.403(b) of the Commission's regulations requires the presiding officers to "actively employ these powers to direct and focus the proceedings consistent with due process."⁴

13. A motion in limine has been recognized as a valid means of requesting that the presiding officer control the receipt of evidence in the proceeding.⁵

14. Pursuant to the Pennsylvania Rules of Evidence, hearsay evidence is not admissible, subject to certain enumerated exceptions.⁶ Pennsylvania Rule of Evidence 801 defines "hearsay" as an out-of-court statement offered to prove the truth of the matter asserted.⁷

15. While the Commission, as an administrative agency having quasi-judicial functions, is not limited by the strict rules relating to the admissibility of evidence, essential principles must be observed.⁸ It has long been recognized in Pennsylvania that hearsay rules are

² 52 Pa. Code § 5.403(a)(1).

³ 52 Pa. Code §§ 5.403 and 5.483.

⁴ 52 Pa. Code § 5.403(b).

⁵ See e.g. *Pa. Public Utility Commission v. PPL Electric Utilities Corporation*, Docket No. R-2015-2469275 (Sixth Prehearing Order dated July 14, 2015); see also 52 Pa. Code § 5.403(b) (requires presiding officers to "actively employ [Section 5.403(a)] powers to direct and focus the proceedings consistent with due process.").

⁶ Pa.R.E. 802.

⁷ Pa.R.E. 801.

⁸ *Pittsburgh and Lake Erie Railroad Company, v. Pennsylvania Public Utility Commission*, 85 A.2d 646, 653 (Pa. Super Ct. 1952); *Bleilevens v. State Civil Service Commission*, 312 A.2d 109, 111 (Pa. Commw. 1973).

not mere "technical rules of evidence" but instead are fundamental rules of law that should be followed by agencies when facts crucial to the issue are sought to be placed on the record.⁹

16. Further, the Commission has held that "[a]lthough the Pennsylvania Rules of Evidence are relaxed in an administrative proceeding, crucial findings of fact may not be established solely by hearsay evidence."¹⁰ The Commission has expressly refused to make findings of fact on the basis of hearsay without separate evidence corroborating it.¹¹ Even when hearsay is admissible pursuant to an exception, it is well-settled that a finding based wholly on hearsay cannot support a legal conclusion by an administrative agency.¹²

III. ARGUMENT

17. Complainants make several assertions that are based entirely on uncorroborated hearsay of which the witnesses have no first-hand knowledge. As such, the statements cannot serve as the basis of findings, nor can they serve to support a conclusion that PGW engaged in unsafe practices or otherwise violated the Public Utility Code or the Commission's regulations.

18. Specifically, Mr. Ackie and Mr. Rauceo allege that Passyunk Plant Manager Mr. McGuire entered the Plant the evening of February 23, 2018 without his employee badge or protective equipment and that he was permitted access because he begged the security guard to let him in.¹³ These allegations, however are based entirely on uncorroborated hearsay.

⁹ See, e.g., *Loudon v. Viridian Energy*, PA PUC Docket No. C-2011-2244309 (Initial Decision dated February 2, 2012, Final Order entered March 29, 2012); *Gibson v. WC.A.B.*, 861 A.2d 938 (Pa. 2004); and *Anthony v. PECO Energy Co.*, PA PUC No. C-2014-2408057 (Order entered July 30, 2014).

¹⁰ *Pa. PUC, Bureau of Investigation & Enforcement v. Yellow Cab Co. of Pittsburgh*, Docket No. 2012-2249031, 2013 WL 5912555 (Pa. P.U.C. Oct. 8, 2013).

¹¹ See, e.g., *Jackson v. PECO Energy Co.*, Docket No. F-2013-2351046 (July 5, 2013); *Davis v. Equitable Gas, LLC*, Docket No. C-2011-2252493, 2012 WL 3838095 (April 27, 2012).

¹² *Walker v. Unemployment Compensation Board of Review*, 367 A.2d 366 (Pa. Cmwlth. 1976).

¹³ EE St. No. 1 p. 12-13; EE St. No. 1-SR at 4; EE St. No. 4 at 7.

Specifically, when asked how he knew that Mr. McGuire allegedly entered the Passyunk Plant on the evening of February 23, 2018 without his employee badge, Mr. Ackie testified: “The main gate security guard informed myself and Pat McGlone that McGuire did not have his employee badge.”¹⁴ Mr. Ackie further testified that he does not know the name of the security guard who allegedly made this out-of-court statement, nor is the security guard an employee of PGW.¹⁵

19. Similarly, regarding this incident, Mr. Rauceo testified: “Freddy Fernandez brought to my attention that Brian McGuire, on that night, came in at the front gate without his employee ID.” Mr. Rauceo went on to quote conversations that allegedly occurred between the security officer and Mr. McGuire (all based on out-of-court statements allegedly made by Freddy Fernandez to Mr. Rauceo).¹⁶

20. With their witnesses having no first-hand knowledge of this alleged incident, Complainants rely exclusively on these out-of-court statements to prove the truth of the matter asserted (*i.e.* that Mr. McGuire entered the Passyunk Plant without his employee badge on the evening of February 23, 2018 by begging the security guard to let him in). These sorts of statements, allegedly made by individuals who are unavailable for cross-examination, are the exact types of statements that the hearsay rules seek to omit.

21. Additionally, Mr. Ackie and Mr. Rauceo allege that, on the evening of February 23, 2018, Mr. McGuire drove a Company vehicle on the Plant without headlights and entered

¹⁴ EE St. No. 1 at 12.

¹⁵ EE St. No. 1 at 12-13.

¹⁶ EE St. No. 4 at 7.

security gates without proper identification.¹⁷ This testimony is also based on uncorroborated hearsay. Specifically, when asked in his Direct Testimony how he knew that Mr. McGuire allegedly took “off the headlights” on the plant protection van on the evening of February 23, 2018, Mr. Ackie testified: “Wayne Rauceo, Operations Supervisor at Passyunk plant, saw the security footage of McGuire on the evening of February 23, 2018. It was shown to him in the CCTV room by [a] security guard working in that room.”¹⁸ Thus, clearly, Mr. Ackie’s testimony is based solely on out-of-court statements made by Mr. Rauceo to Mr. Ackie and is not based on Mr. Ackie’s first-hand knowledge.

22. Similarly, while Mr. Rauceo testified that he saw the video, his interpretation of the video and his conclusions that Mr. McGuire’s actions constitute safety violations are based entirely on out-of-court statements allegedly made by Mr. Fernandez (a non-PGW employee). For example, Mr. Rauceo testified that Mr. Fernandez explained how Mr. McGuire contacted security to let him through the secondary gate without a badge, told him that the guards at the gates were terminated for breach of security related to this incident, told him that a supervisor watched the video and indicated that the actions were grounds for termination, and told him that the security guards wrote reports of this incident.¹⁹ All of this testimony constitutes hearsay, as these are out-of-court statements made by Mr. Fernandez being offered to prove that Mr. McGuire drove a Company vehicle on the evening in question in a manner that was unsafe.

¹⁷ EE St. No. 1 at 12-13; EE St. No. 4 at 8-9.

¹⁸ EE St. No. 1 at 13.

¹⁹ EE St. No. 4 at 8-9.

23. To the extent Complainants rely on uncorroborated hearsay and do not have first-hand knowledge over the allegations related to the evening of February 23, 2018, such allegations cannot support findings of fact or conclusions of law in this proceeding.

III. CONCLUSION

For the reasons set forth above, PGW respectfully requests that ALJ Heep rule determining that the Contested Portions of EE St. Nos. 1, 1-SR, and 4 should not be admitted into the evidentiary record or considered in this proceeding, as they constitute uncorroborated hearsay.

Respectfully submitted,

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Date: October 19, 2020

EE STATEMENT. NO. 1

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DIRECT TESTIMONY

OF

DWAYNE ACKIE,
ON BEHALF OF COMPLAINANTS

CONCERNING SAFETY VIOLATIONS AND OTHER CONCERNS
AT
PGW PASSYUNK GAS PROCESSING PLANT

Docket No.: C-2019-3013933

JUNE 28, 2020

1 A TRUE AND CORRECT COPY OF THE PASSYUNK PLANT OPERATIONS
2 SHIFT SCHEDULE FOR FEBRUARY 23, 2018 IS ATTACHED AS EXHIBIT
3 "IV-A" TO THIS TESTIMONY.

4 Q: TELL ME WHAT HAPPENED ON THE EVENING OF FEBRUARY 23, 2018
5 WHEN PLANT MANAGER BRIAN MCGUIRE RETURNED TO THE
6 PASSYUNK PLANT?

7 A: Brian entered Passyunk plant without his employee badge and plant protective equipment
8 against plant policies and headed to the Control room. He used the Plant protection van
9 which he took off the headlights and sped off to the Control room. McGuire placed the
10 workers and residents of Philadelphia in great danger that night when he took the
11 headlights off as Passyunk Plant had loaded LNG Trailers going in and out of the plant.
12 On getting to the Control room McGuire confronted me, it was then I smell alcohol
13 reeking from him. McGuire use profanity in asking me what I was doing there, (my
14 location the Gas analyzer machine). I answered to him waiting to get my readings, he
15 then challenged me by saying readings are on the CPU then proceeded out the door
16 calling on the supervisor Wallace Benson who's office he bypassed in order to harass me

17 Q: HOW DO YOU KNOW MCGUIRE ENTERED THE PASSYUNK PLANT ON
18 THE EVENING OF FEBRUARY 23, 2018 WITHOUT HIS EMPLOYEE BADGE?

19 A: The main gate security guard informed myself and Pat McGlone that McGuire did not
20 have his employee badge. McGuire asked her "pretty please," showed her his driver's id,
21 and told her not to let them (the Operations Supervisor – Wallace Benson) that McGuire
22 was there.

23 Q: DO YOU KNOW THE NAME OF THE SECURITY GUARD WHO TOLD YOU
24 THIS?

25 A: No.

1 Q: **IS SHE AN EMPLOYEE OF PGW?**

2 A: **No. She is an employee of Sovereign Security.**

3 Q: **WHEN DID SHE TELL YOU AND PAT MCGLONE THIS ABOUT MCGUIRE?**

4 A: **On February 23, 2018, about 20 minutes after Brian left the plant. McGlone and I went**
5 **on a break at the front gate, and asked the main gate security guard why McGuire didn't**
6 **notify the supervisors that he was there.**

7 Q: **WHAT ARE THE PROCEDURES FOR PERSONS GAINING ACCESS TO**
8 **PASSYUNK PLANT AFTER HOURS, I.E., 4:30 P.M.?**

9 A: The policy is that the gate has to notify the Operations Supervisor of a person trying to
10 gain access into the plant – with or without employee badges. This policy applies from
11 4:30 p.m. to 4:30 a.m. and all weekends, Saturdays and Sundays because they are not
12 business hours.

13 Q: **HOW DO YOU KNOW MCGUIRE "TOOK OFF THE HIGHLIGHTS" ON THE**
14 **PLANT PROTECTION VAN ON THE EVENING OF FEBRUARY 23, 2018?**

15 A: **Wayne Rauceo, Operations Supervisor at Passyunk plant, saw the security footage of**
16 **McGuire on the evening of February 23, 2018. It was shown to him in the CCTV room**
17 **by security guard working in that room.**

18 Q: **YOU MENTIONED PASSYUNK PLANT MANAGER BRIAN MCGUIRE GAVE**
19 **A STATEMENT IN YOUR EEOC/PHRC MATTER, CORRECT?**

20 A: Yes

21 Q: **IS THIS THE STATEMENT MR. MCGUIRE GAVE IN CONNECTION TO**
22 **YOUR EEOC/PHRC CHARGE OF DISCRIMINATION?**

23 A: Yes

24

25

1 A: False. I smelled liquor on him when he came into the Control Room. He was a short
2 distance from me.

3 **A TRUE AND CORRECT COPY OF PGW'S INTERROGATORY RESPONSE**
4 **REGARDING THIS FEBRUARY 2018 INCIDENT IS ATTACHED AS EXHIBIT**
5 **"IV-B" TO THIS TESTIMONY.**

6 **Q: DID YOU DISCUSS THIS INCIDENT WITH ANY MANAGEMENT LEVEL**
7 **PERSONNEL AT PGW? IF SO, WHO?**

8 A: Yes, Charles Grant and John Ferrer

9 **Q: FROM HIS EEOC STATEMENT, CHARLES GRANT LISTS HIS POSITION AS**
10 **SENIOR VICE PRESIDENT, LABOR, HUMAN RESOURCES AND**
11 **CORPORATE COMMUNICATIONS. WHAT POSITION DOES JOHN FERRER**
12 **HOLD AT PGW?**

13 A: John Ferrer is PGW Director of Security

14 **Q: TELL ME WHAT HAPPENED REGARDING THAT/THOSE DISCUSSIONS?**

15 A: Grant made it known that Maurice and I was being hunted by McGuire and eventually
16 contacted me to tell me McGuire was suspended with intent to terminate

17 **Q: WHEN DID CHARLES GRANT CONTACT YOU TO TELL YOU MCGUIRE**
18 **WAS SUSPENDED WITH INTENT TO TERMINATE?**

19 A: About around April 2018

20 **Q: HOW DID CHARLES GRANT CONTACT YOU TO TELL YOU ABOUT**
21 **MCGUIRE BEING SUSPENDED WITH INTENT TO TERMINATE?**

22 A: By telephone. He called me on my cellphone.

23 **Q: WHAT DID CHARLES GRANT TELL YOU, IF ANYTHING, WAS THE**
24 **REASON FOR MCGUIRE'S SUSPENSION WITH INTENT TO TERMINATE?**

25

1 A: He said, "I've got some good news for you, Mr. Ackie. Your boss Brian McGuire has
2 been suspended with an intent to terminate." He then told me I would not be harassed or
3 bothered {I can't remember exactly which one} again.

4 Q: WAS MCGUIRE SUSPENDED AFTER FEBRUARY 23, 2018? IF SO, FOR HOW
5 LONG, IF YOU KNOW.

6 A: Yes. He was suspended for 6 or 8 weeks.

7 Q: WAS BRIAN MCGUIRE, PGW PASSYUNK PLANT MANAGER,
8 TERMINATED?

9 A: No

10 Q: DID ANYONE TELL YOU WHY MCGUIRE WAS NOT TERMINATED?

11 A: No.

12 V. SEPTEMBER 11, 2018 RYAN O'DONNELL VEHICLE ACCIDENT

13 Q: FINALLY, IN THE FORMAL COMPLAINT, THERE IS A STATEMENT THAT
14 OPERATIONS SUPERVISOR RYAN O'DONNELL LEFT THE PASSYUNK
15 PLANT ON SEPTEMBER 11, 2018 WITHOUT PROPER NOTIFICATION OF
16 PLANT PERSONNEL.

17 Q: DO YOU KNOW ANYTHING ABOUT THIS INCIDENT?

18 A: Yes.

19 Q: HOW DO YOU KNOW ABOUT THIS INCIDENT?

20 A: Because I was on shift – the operator that worked with O'Donnell. My shift was 2:00
21 p.m. to 10:00 p.m.

22 Q: WHAT HAPPENED ON SEPTEMBER 11, 2018 CONCERNING PGW
23 OPERATIONS SUPERVISOR RYAN O'DONNELL?

24 A: Ryan O'Donnell left the plant without notifying either Gary Nelson {Working Foreman}
25 or me, and got into a vehicle accident. The last time I saw O'Donnell was at 2:15 p.m. in

EE STATEMENT. NO. 1

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SURREBUTTAL TESTIMONY

OF

DWAYNE ACKIE,
ON BEHALF OF COMPLAINANTS

CONCERNING SAFETY VIOLATIONS AND OTHER CONCERNS
AT
PGW PASSYUNK GAS PROCESSING PLANT

Docket No.: C-2019-3013933

AUGUST 27, 2020

1 A: Yes. McGuire states that he can enter the plant at any time and that he has all the
2 credentials to enter the plant.¹⁰ Yet still he begged the security guard to let him in
3 unannounced to the Operations Supervisor without his PGW ID card and PPE. Plant
4 policy for after hours and weekends require him and anyone else to notify the Supervisor.
5 McGuire adhered to this policy a couple weeks before on February 10, 2018, when he
6 entered the plant to retrieve his vehicle. Wayne Rauceo (Operations Supervisor) was
7 notified. McGuire didn't discuss his use of a vehicle that he barred all operational
8 personnel from using unless there was an emergency. That same vehicle McGuire drove
9 turning the headlights off as to avoid detection and drove not to his office located 50
10 meters from the guard booth, but to Central Control located 2 blocks from his office.
11 McGuire says he believes that I made false accusations when in fact my statements are
12 completely correct. McGuire was smelling of alcohol as he asked me "What the fuck you
13 doing there?" "There" being at the Gas Analyzer Machine. I told him "Getting my
14 readings." McGuire argued with me saying, "There are no readings there but they are on
15 the CPU at my SPO desk." McGuire didn't catch me sleeping. That is untrue. McGuire
16 would have confronted me then and there about sleeping, if he had caught me. Also,
17 McGuire should have given me a disciplinary warning or other action, if I were caught
18 sleeping on the job. He did not. Instead, McGuire confronted the Operations Supervisor,
19 Wallace Benson about the lights in Benson's office being off, the truck unloading gate
20 being opened and Wallace not having his FR pants. I witnessed all of this.

21 **III. CONCLUSION**

22 **Q: DOES THIS COMPLETE YOUR SURREBUTTAL TESTIMONY?**

23 A: Yes

24

25

¹⁰ PGW Statement No. 3 at 7.

EE STATEMENT NO. 4

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DIRECT TESTIMONY

OF

WAYNE RAUCEO,
ON BEHALF OF COMPLAINANTS

CONCERNING SAFETY VIOLATIONS AND OTHER CONCERNS
AT
PGW PASSYUNK GAS PROCESSING PLANT

Docket No.: C-2019-3013933

JUNE 30, 2020

1 THE FORMAL COMPLAINT MENTIONS AN INCIDENT THAT OCCURRED
2 AT PGW PASSYUNK PLANT IN FEBRUARY 2018 INVOLVING PLANT
3 MANAGER BRIAN MCGUIRE.

4 Q: WHAT, IF ANYTHING, DO YOU KNOW ABOUT THIS INCIDENT?

5 A: I MET WITH SECURITY SUPERVISOR FREDDY FERNANDEZ, WHILE I WAS
6 WORKING THE MIDDLE SHIFT ON THE FOLLOWING WEEK OF THE
7 INCIDENT. AT THAT TIME FREDDY WAS THE SECURITY SUPERVISOR OF
8 THE CCTV ROOM. FREDDY FERNANDEZ BROUGHT TO MY ATTENTION
9 THAT BRIAN MCGUIRE, ON THAT NIGHT, CAME IN AT THE FRONT GATE
10 WITHOUT HIS EMPLOYEE ID AND TOLD THE FEMALE SECURITY GUARD,
11 "DO YOU KNOW WHO I AM?" SHE SAID "NO." HE SAID, "I AM BRIAN
12 MCGUIRE, THE PLANT MANAGER." SHE SAID, "SO YOU ARE BRIAN
13 MCGUIRE?" HE SAID, "YES." THEN BRIAN IN TURN TOLD THE FEMALE
14 GUARD, "SHHHH! DON'T SAY ANYTHING, I'M GOING TO GO TO THE BACK."
15 BRIAN LEFT THE GUARD CHECK, AND TOOK A COMPANY VEHICLE AND
16 WENT TO THE BACK – TO THE OPERATIONS AREA OF THE PLANT.

17 THEN FREDDY FERNANDEZ SHOWED ME A VIDEO IN THE CCTV ROOM
18 WITH A COMPANY VEHICLE LEAVING THE FRONT AREA WITH THE
19 HEADLIGHTS ON AND WITHIN A FEW METERS OF DRIVING, THE
20 HEADLIGHTS ON THE VEHICLE WENT OFF. THEN BRIAN MADE A RIGHT
21 HAND TURN TO GET INTO THE SECONDARY GATE ENTRANCE TO THE
22 OPERATIONS AREA. THE VEHICLE CAME TO A STOP AS SOON AS HE MADE
23 THE RIGHT TURN. AFTER ABOUT 5 MINUTES, THE VEHICLE BEGAN TO
24 MOVE AND WENT THROUGH THE SECONDARY GATE ENTRANCE. THAT
25 WAS THE END OF THE VIDEO I SAW.

1 FREDDY WENT ON TO EXPLAIN TO ME HOW THE VEHICLE WAS ABLE TO
2 GO FROM A STILL POSITION TO GOING THROUGH THE SECONDARY GATE.
3 THERE WAS ANOTHER SECURITY GUARD, WHO WAS DOING HIS ROUNDS,
4 COMING OUT OF THE OPERATIONS AREA. BRIAN SAW THAT SECURITY
5 GUARD, CALLED HIM OVER AND ASKED THE SECURITY GUARD IF HE
6 COULD SWIPE BRIAN IN. THE SECURITY GUARD SWIPED BRIAN IN, WHICH
7 IS HOW HE WAS ABLE TO GET INTO THE OPERATIONS AREA.

8 THE REASON WHY BRIAN MCGUIRE'S ACTIONS OF TURNING OFF THE
9 VEHICLE HEADLIGHTS AND NOT ANNOUNCING HIS PRESENCE AT THE
10 PLANT WERE SO DANGEROUS IS WE WERE DOING LNG TRUCK UNLOADING
11 AT THE TIME. THAT MEANS THE LNG TRUCK WOULD BE MOVING BACK
12 AND FORTH FROM THE OPERATIONS AREA TO OUT OF THE PLANT. IF THE
13 DRIVER OF THE LNG TRUCK DID NOT SEE BRIAN THAT COULD HAVE
14 RESULTED IN AN ACCIDENT.

15 ON ANOTHER SHIFT, ON ANOTHER DAY, FREDDY FERNANDEZ TOLD ME
16 BOTH THE FEMALE GUARD AT THE FRONT GATE AND THE SECOND
17 SECURITY GUARD WHO LET BRIAN INTO THE SECONDARY GATE WERE
18 TERMINATED FOR BREACH OF SECURITY.

19 ON ANOTHER OCCASION, FREDDY FERNANDEZ TOLD ME THAT A
20 SUPERVISOR FROM 9TH AND MONTGOMERY CAME TO RETRIEVE THE
21 VIDEO FROM THE CCTV ROOM. UPON REVIEWING THE VIDEO, THE PGW
22 SUPERVISOR STATED, "HMMM. THIS IS GROUNDS FOR TERMINATION (OF
23 BRIAN MCGUIRE)."

24 FOR THE PAST TWO WEEKS, FREDDY FERNANDEZ IS NOW BACK AT
25 PASSYUNK PLANT, SECOND SHIFT. RECENTLY, FREDDY MENTIONED BOTH

1 SECURITY GUARDS WROTE REPORTS OF THE INCIDENT BEFORE THEIR
2 TERMINATION ABOUT WHAT HAPPENED THE NIGHT THAT BRIAN
3 MCGUIRE CAME TO THE PLANT WITHOUT HIS EMPLOYEE ID. BOTH
4 SECURITY GUARDS' REPORTS INDICATED BRIAN MCGUIRE WAS UNDER
5 THE INFLUENCE. THE SECURITY GUARDS AND FREDDY FERNANDEZ
6 WORK FOR SOVEREIGN SECURITY.

7 Q: WHAT PGW POLICIES DO YOU KNOW REGARDING THE USE OF
8 COMPANY VEHICLES?

9 A: FROM MY UNDERSTANDING, IF YOU ARE CAUGHT DRIVING OR
10 OPERATING A VEHICLE UNDER THE INFLUENCE OF DRUGS OR ALCOHOL,
11 YOU ARE REQUIRED TO GO DOWN TO 9TH AND MONTGOMERY FOR A TEST.
12 YOU ARE NOT ALLOWED TO DRIVE DOWN, A SUPERVISOR MUST TAKE
13 YOU THERE. DURING WORK, AS A SUPERVISOR, IF YOU NOTICE THAT
14 ANOTHER EMPLOYEE IS UNDER THE INFLUENCE, YOU CALL A
15 SUPERVISOR WHO IS NOT WORKING, AND THAT SUPERVISOR WILL
16 ESCORT THE EMPLOYEE TO GET A TEST.

17 Q: IS THIS PGW POLICY, AS YOU KNOW IT, WRITTEN OR VERBAL?

18 A: BOTH.

19 Q: IS THAT YOUR TESTIMONY OF WHAT YOU KNOW ABOUT THE
20 FEBRUARY 2018 INCIDENT WITH BRIAN MCGUIRE?

21 A: YES.

22 A TRUE AND CORRECT COPY OF RESPONSIVE PAGES OF PGW'S ETHICS
23 AND CONFLICT OF INTEREST COMPLIANCE POLICY AND PROGRAM IS
24 ATTACHED AS EXHIBIT "II" TO THIS TESTIMONY.
25

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PGW's Motion in Limine, upon the person(s) listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email Only

Karin M. Gunter, Esquire
Law Office of Karen M. Gunter
85 Old Cedarbrook Road
Wyncote, PA 19095
Kgunterlaw2@gmail.com

Dated: October 19, 2020

Kristine E. Marsilio

Kristine E. Marsilio, Esq.