

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dwayne Ackie, Miguel J. Chavarria, Jr.,  
Maurice A. Goodwin and Wayne Rauceo

v.

Philadelphia Gas Works

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C-2019-3013933

MAIN BRIEF OF  
COMPLAINANTS

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## STATEMENT OF THE CASE

### I. Statement of Form

Dwayne Ackie (“Ackie”), Miguel J. Chavarria, Jr. (“Chavarria”), Maurice A. Goodwin (“Goodwin”) and Wayne Rauceo (“Rauceo”)(hereinafter “Complainants”) are all Philadelphia residents and employees of Respondent Philadelphia Gas Works (“PGW”) at its Passyunk Gas Processing Plant (“Passyunk Plant”) in South Philadelphia<sup>1</sup>. Combined, Complainants have nearly 60 years of work experience at PGW most of which is in the Gas Processing Department. Messrs. Ackie and Goodwin are Senior Process Operators<sup>2</sup>; Mr. Chavarria is a Working Foreman<sup>3</sup>; and Mr. Rauceo is an Operations Supervisor<sup>4</sup>, the only one of the four in management. As a collection of real and personal assets used to furnish natural gas to customers in the City of Philadelphia, PGW is a “city natural gas distribution operation.”<sup>5</sup>

### Procedural History and Prior Determinations

Complainants initiated this action by formal complaint on October 31, 2019 (“Complaint”). They generally aver safety violations and other concerns at the Passyunk plant.<sup>6</sup> Specifically, they “allege specific plant operations concerns such as manipulation of equipment temperature indicators, structural [liquefied] natural gas tank cracks that are not properly repaired, dangerously unmanned plant apparatus, employees handling equipment under the

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<sup>1</sup> PGW St. No. 3 at 1:4-5.

<sup>2</sup> EE St. No. 1 at 1:10; EE St. No. 2 at 1:10.

<sup>3</sup> EE St. No. 3 at 1:19.

<sup>4</sup> EE St. No. 4 at 1:10.

<sup>5</sup> Petition of PGW for Approval of Demand-Side Mgmt Plan for FY 2016-2020 and PGW Universal Service and Energy Conservation Plan for 2014-2016, 52 Pa.Code § 62.4 – Request for Waivers, P-2014-2459362, 2016 Pa. PUC LEXIS 88 at \*395-96 (Mar. 8, 2016); *see also* 66 Pa.C.S. § 102.

influence, abandonment of work areas, faulty override valves and uncontrolled unsafe gas migration,”<sup>7</sup> *inter alia*. They seek enforcement of gas safety standards and correction of safety and operation standards, *inter alia*.

PGW filed an Answer and Preliminary Objection on November 20, 2019. PGW’s preliminary objections challenging the Commission’s jurisdiction over the specific safety violations and other concerns averred in the Complaint, Complainants’ standing and the legal sufficiency of the claims.<sup>8</sup> On January 3, 2020, Administrative Law Judge (“ALJ”) Darlene Heep (“Heep”) entered an order granting in part and denying in part PGW’s preliminary objections. Specifically, ALJ Heep sustained and dismissed the preliminary objections with regards to claims of employment discrimination and those in paragraphs 14 and 16 of the Complaint, and overruled all other preliminary objections.<sup>9</sup> Judge Heep found jurisdiction for the Commission lies in 66 Pa.C.S. § 331(a), the general powers of the Commission and ALJs; standing for Complainants in 66 Pa.C.S. § 701 as “person(s) . . . having an interest in the subject matter” of the Complaint; and legal sufficiency of the remaining claims in 66 Pa.C.S. § 1501 based on PGW’s status as a public utility required to provide and maintain service and *facilities* for “. . . safety of its patrons, employees, and the public. . . “<sup>10</sup> (emphasis added)

On January 17, 2020, *as amended* ALJ Heep issued a Pre-Hearing Conference Order scheduling the In-Person Pre-Hearing Conference for February 6, 2020 with prehearing memoranda due on or before February 5, 2020. Complainants, their counsel and counsel for

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<sup>6</sup> October 31, 2019 Formal Complaint, Preliminary Statement.

<sup>7</sup> Order Granting in Part and Denying in Part Preliminary Objections, January, 3, 2020 at 1-2. (“Prelim. Obj. Order”); *see also* Complaint ¶¶ 7-18

<sup>8</sup> Preliminary Objections of PGW at 1-2. (“PGW Prelim. Obj.”)

<sup>9</sup> Prelim. Obj. Order at 9.

PGW attended the in-person prehearing conference on February 6, 2020 before ALJ Heep, at which time they discussed a procedural schedule for the proceeding and related matters.

On or about February 12, 2020, the ALJ issued a scheduling order that established deadlines for: (i) direct, rebuttal and surrebuttal testimony submission; (ii) discovery requests, motions to compel and responses thereto; (iii) exchanges of exhibits; (iv) motion in limine filings; and (v) other evidentiary and procedural provisions.<sup>11</sup> Unfortunately, in March 2020, the Commonwealth and the nation began put in place COVID-19 restrictions and protocols that impacted the progression of this matter. The parties engaged in motion practice including two discovery motions to compel filed by Complainants and three motions in limine filed by PGW.<sup>12</sup> There were various extensions of time for submission of testimony and the evidentiary hearing due in part to the pandemic.

Ultimately, on October 21, 2020, ALJ Heep convened a telephonic evidentiary hearing in this matter. In attendance were Complainants; PGW witnesses Raymond Snyder (“Snyder”), its former Senior Vice President Gas Management; Daniel J. Cassidy (“Cassidy”), its Vice President Technical Operations; and Brian McGuire (“McGuire”), its Manager of Passyunk Plant and each parties’ respective counsel. The following direct, rebuttal and surrebuttal testimony were entered in evidence:<sup>13</sup>

- Direct Testimony of Dwayne Ackie with Exhibits 7 - 11 EE St. No. 1
- Surrebuttal Testimony of Dwayne Ackie EE St. No. 1-SR

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<sup>10</sup> *Id.* at 4-8.

<sup>11</sup> February 12, 2020 Prehearing Order.

<sup>12</sup> Complainants filed their motions on March 13, 2020 and March 19, 2020. PGW filed its motions on October 19, 2020, January 8, 2021 and January 19, 2021. All motions have been resolved by order.

<sup>13</sup> Tr. at 4

- Direct Testimony of Maurice A. Goodwin EE St. No. 2
- Amended Direct Testimony of Miguel J. Chavarria, Jr. EE St. No. 3
- Surrebuttal Testimony of Miguel J. Chavarria, Jr. EE St. No. 3-SR
- Direct Testimony of Wayne Rauceo EE St. No. 4
- Surrebuttal Testimony of Wayne Rauceo EE St. No. 4-SR
- Rebuttal Testimony of Raymond E. Snyder, PE PGW St. No. 1
- Rebuttal Testimony of Daniel J. Cassidy PGW St. No. 2
- Rebuttal Testimony of Brian McGuire PGW St. No. 3
- Surrebuttal Testimony of Brian McGuire PGW St. No. 3-SR

In addition to resolving PGW’s first motion in limine,<sup>14</sup> ALJ Heep provided PGW with additional time to produce documents, if any, responsive to Complainants’ discovery request related to Exhibit 6 in their Response in Opposition to the October 19, 2020 Motion in Limine.<sup>15</sup>

The ALJ also permitted Complainants Ackie and Chavarria to supplement their pre-served testimony based on events at the Passyunk Plant on October 15 – 16, 2020.<sup>16</sup> Messrs. Ackie and Chavarria were subject to direct and cross examination regarding the release of inodorous gas during a project testing certain liquefied natural gas (“LNG”) pumps.<sup>17</sup> On November 4, 2020, PGW served its late-filed answers documents pursuant to the October 21, 2020 ruling of ALJ Heep.

Thereafter, on November 24, 2020 and November 30, 2020, Judge Heep issued two orders. The order of November 24, 2020 set a briefing schedule for the late-filed answers of PGW. Main briefs are due on February 12, 2021 and Reply briefs are due on March 5, 2021,

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<sup>14</sup> Tr. at 6:7:11 (ALJ Heep excluded EE St. No. 1-SR at 4:2-3)

<sup>15</sup> Tr. at 7:13 – 9:18 (documents related to the February 2018 incident at Passyunk Plant); *see* Complaint, ¶ 11.

<sup>16</sup> Tr. at 17:21 – 19:25; 69:3 - 25 (including giving PGW opportunity to response to supplement testimony presented for first time at October 21, 2020 evidentiary hearing.)

*inter alia*. The November 30, 2020 order, in response to PGW's request for extension of deadlines, set an amended briefing schedule for October 15 – 16, 2020 valve incident.

Accordingly, on December 18, 2020, PGW witness Mr. McGuire provided surrebuttal testimony regarding the October 15 - 16, 2020 valve incident testimony of Messrs. Ackie and Chavarria.<sup>18</sup> On that same day, Mr. Rauceo served supplemental direct testimony with regards to the late-filed additional documents PGW provided on November 4, 2020.<sup>19</sup> On January 7, 2021, Messrs. Ackie and Chavarria served reply testimony to Mr. McGuire's surrebuttal testimony with regards to the October 15 – 16, 2020 valve incident.<sup>20</sup> Thereafter, on January 8, 2021, PGW witness Mr. Cassidy provided supplemental rebuttal testimony with regards to the late-filed additional documents of PGW.<sup>21</sup> And finally, on January 15, 2020, Mr. Rauceo served supplemental surrebuttal testimony regarding the late-filed answers of PGW.<sup>22</sup>

As the additional testimony served after the October 21, 2020 evidentiary hearing has not been admitted in evidence at this time, the parties presented the ALJ with a joint proposal for admission of such evidence without cross examination and with each party reserving the right to make appropriate argument for or against reliance of such testimony in the ALJ's decision and at her discretion. ALJ Heep will address this matter in her decision.

Finally, on February 5, 2021, PGW filed a joint and unopposed motion for protective order that was granted the same day. On February 9, 2021, the ALJ ended an order resolving

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<sup>17</sup> Tr. at 20:6 – 68:13 and 81:17 – 108:20.

<sup>18</sup> PGW St. No. 3-SUR

<sup>19</sup> EE St. No. 4-SUP

<sup>20</sup> EE St. No. 1-REPLY and EE St. No. 3-REPLY.

<sup>21</sup> PGW St. No. 2-SR.

<sup>22</sup> EE St. No. 4-SSR.

PGW's motions in limine filed on January 8, 2021 and January 19, 2021.<sup>23</sup>

### **BURDEN OF PROOF**

The Complaint sets forth averments challenging the adequacy of PGW's Passyunk Plant facility, and as such is governed by 66 Pa.C.S. § 1501, *et seq.*<sup>24</sup> As the parties seeking an order/rule in this matter, Complainants have the burden of proof to establish that PGW is not maintaining an "adequate, efficient, safe and reasonable facility" and operations at its Passyunk Plant for the safety of its employees, patrons and the public, *inter alia*.<sup>25</sup> Accordingly, Complainants must show by a preponderance of substantial evidence that "the relief sought is proper and justified under the circumstances."<sup>26</sup> Preponderance of evidence requires Complainants to present evidence that is "more convincing" than that presented by PGW that the Passyunk Plant is "unreasonable, unsafe, inadequate, insufficient or . . . otherwise in violation" of the Commissions rule and regulations.<sup>27</sup> Substantial evidence has been defined to mean "relevant evidence that a reasonable mind may accept as adequate to support a conclusion" that a

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<sup>23</sup> Per the February 9, 2021 order and the late-filed answers of PGW, Mr. Rauceo's supplemental direct testimony "raising legal issues and a discovery matter", i.e., based on his beliefs and opinions are excluded. Specifically, his beliefs and opinions regarding legal issues and discovery as stated in: EE St. No. 4-SUP at 1:8-12 ("But, I am aware . . ."); 1:22-25; and 2:9-24 are excluded. However, the HR letter attached as EE St. No. 4-SUP, Exhibit VI remains. It is unclear whether EE St. No. 4-SUP, Exhibit IV remains.

Further, regarding the October 15-16, 2020 valve incident, the reply testimony of Mr. Ackie based on incidents that occurred on October 5, 2020 and October 14, 2020 remain as well as the alleged uncorroborated evidence in Messrs. Ackie's and Chavarria's reply testimony remains.

<sup>24</sup> Preliminary Objections Order at 6. *See also* 66 Pa.C.S. § 1504 and 1505.

<sup>25</sup> 66 Pa.C.S. §§ 332(a), 1501.

<sup>26</sup> Motheral, Inc. v. Duquesne Light Co., C-00003926, 2001 Pa. PUC LEXIS 4, \*9-\*10 (Mar. 23, 2001) (citing Se-Ling Hosiery v Margulies, 364 Pa. 45, 70 A.2d 854, 855 (1954)).

<sup>27</sup> Petition of PGW, 2016 Pa. PUC LEXIS 88, \*23.

fact needed to be established exists.<sup>28</sup>

If Complainants meet their burden of proof and elements of their prima facie case, then the ALJ must look at the evidence presented by PGW to determine whether it is of “co-equal value or weight” to counter/refute Complainants’ evidence.<sup>29</sup> If PGW does present evidence of co-equal or greater value, Complainants must then present additional evidence tipping the scales in their favor.<sup>30</sup>

## SUMMARY OF ARGUMENT<sup>31</sup>

Complainants

### ARGUMENT

PGW relies largely on the Commission’s determination in two electric utility customer service cases for its position that Complainants in this matter fail to “show any kind of safety violations or concerns with the way the Plant was being operated.”<sup>32</sup> Specifically, PGW maintains “you need more than the potential for a safety hazard to be in violation of the law.”<sup>33</sup> However, their position contradicts the very focal point of the Commission’s holding. The Commission held in Povacz v. PECO Energy Company<sup>34</sup> and reiterated in Randall v. PECO<sup>35</sup>, “the proper focus of an inquiry regarding the safety of a utility facility or service is whether the

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<sup>28</sup> *Id.* (citation omitted)

<sup>29</sup> Motheral, 2001 Pa. PUC LEXIS 4, \*10 (citation omitted).

<sup>30</sup> *Id.*

<sup>31</sup> Complainants withdraw their claims in paragraph 8 of the Complaint as they provided no testimony in support of those allegations. (Complaint ¶ 8)

<sup>32</sup> EE St. No. 3 at 2:9-10.

<sup>33</sup> *Id.* at 2:12-13, n.5 (citations omitted)

<sup>34</sup> Docket No. C-2015-2475023, Opinion and Order at 30 (March 28, 2019), appeal docketed, No. 492 CD 2019 (Pa.CmwltH April 26, 2019)

preponderance of the evidence demonstrates that a utility facility or service *caused or will cause harm to the public.*<sup>36</sup> (emphasis added) Based on the relevant and competent testimony and documentary evidence in the matter before the ALJ, Complainants have demonstrated just that focal point.

**I. COMPLAINANTS' CLAIMS DEMONSTRATE A PATTERN AND PRACTICE OF SAFETY AND OPERATIONS VIOLATIONS AT PGW PASSYUNK PLANT.**

Unlike the complainants in Povacz and Randall, Complainants in this proceeding are current employees of PGW, who have collectively worked for PGW some 60 years to date.<sup>37</sup> And for Mr. Chavarria and Mr. Rauceo, their entire careers have been in PGW gas processing departments, primarily at the Passyunk plant.<sup>38</sup> They hold various positions in gas processing.

Messrs. Ackie and Goodwin are senior process operators.<sup>39</sup> As senior process operators, on a daily basis, their job duties include “Operate all primary equipment and control auxiliary equipment related to all plant processes by regulating pressure, flow, level etc. Record all operating data [measurement, pressure, temperature, etc.]. Operate and interpret combustible gas indicator and oxygen analyzers. Look for unusual/abnormal conditions around the plant and report to supervisor. Perform safety checks in the plant.”<sup>40</sup> Further, their daily duties require them to “operate valves around the plant, operate the boilers and water pumps throughout the plant. Run generators throughout the plant. Escort people and firewatch certain jobs done around

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<sup>36</sup> Docket No. C-2016-253766, Opinion and Order at 31 (May 9, 2019), appeal docketed, No. 607 CD 2019 (PaCmwlth May 22, 2019)

<sup>37</sup> EE St. No. 1 at 1:7-8; EE St. No. 2 at 1:7-8; EE St. No. 3 at 1:9-11; and EE St. No. 4 at 1:7-8.

<sup>38</sup> EE St. No. 3 at 1:9-17; and EE St. No. 4 at 1:7-15.

<sup>39</sup> EE St. No. 1 at 1:10 and EE St. No. 2 at 1:10.

<sup>40</sup> EE St. No. 1 at 2:2-7.

the plant, and assistant maintenance shops.”<sup>41</sup>

Mr. Chavarria is a Working Foreman of Operations, who previously worked as a process operator.<sup>42</sup> His daily job duties as a working foreman are to “monitor temperatures, pressures of natural gas and stored liquefied natural gas. . . also operate different equipment for the Plant’s operations. Equipment includes vaporizers, boilers, pumps, valves and compressors.”<sup>43</sup>

And finally, Mr. Rauceo, the only management level complainant, is an Operations Supervisor at Passyunk plant who was formerly a Shift Supervisor at the plant.<sup>44</sup> His daily duties are to “supervise[ ] the start up operation and shut down of natural gas, LNG and vaporization facilities. Monitor[ ] the safe operation of associated equipment. Participate[ ] in the training of senior process operator and working foreman in all facets of operations, oversee the day to day operation at Passyunk Plant.”<sup>45</sup>

For Messrs. Ackie and Goodwin, the only Plant Manager and General Supervisor they have worked under at Passyunk plant have been Brian McGuire and David Martinez (“Martinez”), respectively.<sup>46</sup> Mr. Rauceo has worked in management with other plant managers, i.e., Donald Henry and Michael Duffy and other general supervisors, Michael Duffy and Mr. McGuire prior to becoming plant manager.<sup>47</sup> But the complainant with the most experience and longevity with PGW Gas Processing in general and Passyunk Plant in particular is Mr. Chavarria,

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<sup>41</sup> EE St. No. 2 at 2:2-5.

<sup>42</sup> EE St. No. 3 at 1:18-21, 2:10-12.

<sup>43</sup> *Id.* at 2:1-3.

<sup>44</sup> EE St. No. 4 at 1:9-18.

<sup>45</sup> *Id.* at 2:3-8.

<sup>46</sup> EE St. No. 1 at 1:19 – 2:1; and EE St. No. 2 at 1:19 – 2:1.

<sup>47</sup> EE St. No. 4 at 1:19 – 2:1.

who has worked under plant managers at Passyunk too numerous to name and general supervisors Mike Duffy, Brian McGuire, Don Henry and Jim McLaughlin.<sup>48</sup>

The Code defines “facilities” as follows:

All plant and equipment of a public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with, the business of any public utility.

66 Pa.C.S. § 102.

The facility at issue in this proceeding is PGW’s Passyunk Plant, located in South Philadelphia with residential homes within 200 yards from the Plant’s process area and LNG tank.<sup>49</sup> The Plant itself is sprawling with streets and roads within its complex along with several buildings and other structures.<sup>50</sup> Mr. McGuire’s office is located in the Main Office building, while the senior process operators are located in the Central Control Room approximately 2 city blocks away.<sup>51</sup> PGW’s Director, Gas Processing Curt Malkemes (“Malkemes”) described LNG as “predominantly methane (CH<sub>4</sub>) that has been converted temporarily to liquid form for ease of storage and transport.”<sup>52</sup> Further, he stated “[t]he handling and processing of LNG requires great care in order to ensure public safety because LNG is not odorized, and LNG vapors are potentially flammable and dangerous. Due to the critical and extremely safety sensitive nature of Plant operations, PGW operates its Plants 24-hours a day, 7 days per week. Additionally, it is

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<sup>48</sup> EE St. No. 3 at 1:13-21.

<sup>49</sup> PGW St. No. 3 at 1:4-5 and EE St. No. 3-SR at 2:2-3.

<sup>50</sup> EE St. No. 1, Exhibit V (diagram of Passyunk Plant layout)

<sup>51</sup> *Id.* at 14:6, 14:18 – 15:3.

<sup>52</sup> EE St. No. 1, Exhibit II(A) at 1 (Malkemes EEOC Statement, October 22, 2018)

imperative that LNG Plants are adequately staffed at all times.”<sup>53</sup> Distinguishable for the electric utility cases cited by PGW, the inodorous LNG and its potentially flammable and dangerous vapors present a significantly different risk, and in this proceeding, actual harm than that raised in the Povacz and Randall cases. It is against this backdrop Complainants bring their claims.

**A. Faulty Valves, Release of Inodorous Gas and Promotion and Protection of Employees who Violate Safety Protocols.**<sup>54</sup>

There are significant allegations and testimony regarding faulty valves, release of inodorous natural gas at the Passyunk plant and its equipment as well as promotion and protection of employees who violate safety protocols and who are not competent for their positions.<sup>55</sup> These allegations and competent testimony show a pattern and the continuous nature of ongoing safety violation, which have caused and will/did cause harm to the public as well as Passyunk plant personnel including Complainants and for which PGW has tried to cover up. Most recently, such events occurred in October 2020.

On October 5, 2020, General Supervisor Martinez left the fire system offline at the end of his work day, which left the Plant vulnerable due to the nature of LNG.<sup>56</sup> Then less than 10 days later, on October 14, 2020, during a project to test some of the LNG pumps, there was a

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<sup>53</sup> *Id.*

<sup>54</sup> Complaint ¶¶ 7, 16-17.

<sup>55</sup> Tr. at 20:10 – 67:25; EE St. No. 1-REPLY at 1:7 – 4:9; and Tr. at 81:24 – 108:12; EE St. No. 3-REPLY at 1:10- 5:3. EE St. No. 4 at 4:8-6:23 & Exhibit I; EE St. No.4-SR at 4:12-5:19.

Though ALJ Heep in her January 3, 2020 preliminary objections order specially sustained PGW’s objection to this March 22, 2016 release of natural gas incident due to a faulty override valve in Complaint ¶ 16, Complainants present it now as part of a pattern and practice, continuing in nature in conjunction with the October 2020 incidents. (Prelim. Obj. Order at 1, 9)

<sup>56</sup> EE St. No. 1-REPLY at 4:2-9.

procedure involving packing the LNG pumps headers with LNG.<sup>57</sup> Martinez forgot to open HCV110, a valve required to be open to introduce LNG into the header.<sup>58</sup> Plant Manager McGuire intervened, calling Martinez over the plant radio system about the error, and later contacted a working foreman reprimanding the foreman for not having “Dave’s back.”<sup>59</sup> The very ne, on October 15, 2020, during continuing testing of LNG pumps, there was an unauthorized, unscheduled release of LNG in the Plant.<sup>60</sup> Some Passyunk plant Operations personnel acknowledged PCV1027, an emergency shut down valve that stays open as long as a positive electrical ground is achieved, has been faulty for years – a fact they state PGW has known of for years.<sup>61</sup>

Messrs. Ackie and Chavarria worked on October 15 – 16, 2020 and have first-hand knowledge of the incident. Furthermore, one or the other was present when either the Operations Supervisor made an excited utterance regarding PCV1027 or received ordinary briefing of work conditions as a regularly conducted business activity.<sup>62</sup> Such unauthorized, unscheduled releases have in the past triggered public alarms, which PGW falsely stated was a controlled release.<sup>63</sup>

Further, though PGW Passyunk management contend the practice no longer exists, Mr. Martinez again violated safety protocols by using essential Passyunk plant personnel, both of

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<sup>57</sup> Tr. at 20:12-13. *See also* EE St. No. 1-REPLY at 3:22-23.

<sup>58</sup> EE St. No. 1-REPLY at 3:23-24.

<sup>59</sup> PGW argued such testimony should not be used

<sup>60</sup> *See* footnote 54, *supra*, and Tr. at 86:17-22.

<sup>61</sup> EE St. No. 1-REPLY at 2:14-18; Tr. at 21:10 – 23:2 (discussing valve 1027 “problems for years” and operations supervisor John Walker’s “panicking” during the incident); and EE St. No. 4-REPLY at 4:4-5:3.

<sup>62</sup> *Id.* *See also* Pa.R.E. 803(2) and 803(1), (6). Both are exceptions to the hearsay rule for which the declarant does not have to be available as a witness.

<sup>63</sup> Formal Complaint ¶ 16. *See also* EE St. No. 3 at 4:7 – 5:18.

whom are African American, black/brown employees to act a chauffeurs to following him to Philadelphia Airport, returning his empty personal car to the employee lot while Martinez went on vacation.<sup>64</sup> Mr. Ackie was the senior process operator used and Mr. Walker was the Operations Supervisor used. Interestingly, another essential worker and a working foreman, Jose Ortiz (white Hispanic) was not called upon by Martinez to chauffeur him. Mr. Walker, as management personnel, is higher in rank and job responsibilities than Ortiz.<sup>65</sup>

### **B. Manipulation of Equipment Temperature Indicators - LNG Vaporization System.**

Continuing with a practice that Complainants state that began in 2000, Passyunk Plant management “bypassed the low temperature sensors (TE1019 indicators) on the LNG vaporizers piping by wrapping the sensors in steam hoses.”<sup>66</sup> By wrapping the TE1019 indicator, the internal electrical element is obstructed preventing accurate readings, warnings/alarms and fail safe systems and ultimately “sabotaging engineered and designed components of the Plant’s vaporization system.”<sup>67</sup>

## **II. COMPLAINANTS’ CLAIMS DEMONSTRATE UNREASONABLE AND UNSAFE OPERATIONS PRACTICES AT PASSYUNK PLANT.**

### **A. Plant Manager’s Unannounced Return to Plant during LNG Truck Unloading.**<sup>68</sup>

Mr. Ackie worked the B Shift (6:00 p.m. to 6:00 a.m.) on February 23, 2018 when

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<sup>64</sup> EE St. No. 1 at 3:16 – 5:12, Exhibit I-A and I-B. *See also* EE St. No. 1-SR at 2:19 – 3:7.

<sup>65</sup> EE St. No. 1 at 2:8-13.

<sup>66</sup> Complaint ¶ 7. *See also* EE St. No. 3 at 3:9 – 4:4 (equating this vaporization practice with that of unscheduled, unauthorized release of LNG over the acceptable Plant yard gas pressure of 100 psi) and EE St. No. 3-SR at 1:10 – 2:12. *Accord* EE St. No. 4 at 10:8 – 12:13, Exhibit III-A, and EE St. No. 4-SR at 1:9 – 3:7.

<sup>67</sup> *Id.*

<sup>68</sup> Complaint ¶ 11.

Plant Manager McGuire returned to the Plant around 11:35 p.m. without his company issued badge and without being announced to the on duty operations supervisor.<sup>69</sup> Though Mr. McGuire contend he can enter the plant at any time because he is the plant manager, Plant policy for after hours and weekends require him and anyone else to notify the Supervisor of their presence at the plant.<sup>70</sup> Mr. McGuire did not.<sup>71</sup> It is also important to note there was LNG truck unloading occurring at the Plant at this time. Mr. McGuire used a company vehicle to get from the main gate area to the Central Control Room where Messrs. Ackie and Wallace Benson (“Benson”) on duty supervisor were, with the headlights off.<sup>72</sup> Also working the B shift that evening as Michael Tomczak (“Tomczak”), a working foreman in the LNG Control room.<sup>73</sup> When Mr. McGuire approached Mr. Ackie in the Central Control Room, Ackie states McGuire “smelled of alcohol,” used profanity at him, falsely accused Ackie of sleeping on the job and did not have fire retardant protective equipment on.<sup>74</sup>

### **B. Other Safety Violations and Operations Concerns.<sup>75</sup>**

There are a host of other safety and operations violations are expressed in the Complaint and testified to more fully by the Complainants. These claims related to Passyunk Plant personnel who repeatedly left the plant with no notification to fellow shift co-workers of

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<sup>69</sup> EE St. No. 1 at 10:22 – 17:11, Exhibits II, IV, IV-A, IV-B and V.

<sup>70</sup> *Id.* and EE St. No. 1-SR at 3:18 – 4:1, 4: 3 (“Plant . . . ) -20; *see also* EE St. No. 1 at 13:9-12.

<sup>71</sup> EE St. No. 1 at 1:19-22.

<sup>72</sup> *Id.* *Accord* EE St. No. 4 at 7:1 – 9:24, Exhibit II; EE St. No. 4-SUP at 1:2 – 8 (up to “February 23, 2018” only), 1:14 – 2:25, Exhibits IV, V ad VI.; EE St. No. 4-SSR at 1:18 – 4:15.

<sup>73</sup> EE St. No. 1, Exhibit IV-A.

<sup>74</sup> EE St. No. 1-SR at 4:7-20.

<sup>75</sup> Complaint ¶¶ 9, 10 and 13.

their whereabouts putting the Plant, employees and public at large in danger.<sup>76</sup> Furthermore, this same employee clocked in a co-worker on Christmas Day 2017, while that co-worker was not at the Plant and did not arrive until some 2 hours plus later.<sup>77</sup>

### **CONCLUSION WITH RELIEF REQUESTED**

1. Based on the competent testimony provided in this proceeding, Complainants have met their burden of proof with regards to Complaint ¶¶ 7, 9-13, 15, 17 and 16 as part of a pattern and practice of a continuing nature under 66 Pa.C.S. § 1501, *et seq.*
2. Complainants withdraw with prejudice their claims in Complaint ¶ 8.
3. The Commission finds the PGW Passyunk Gas Processing facility, equipment and operations are unsafe, inadequate and unreasonable with respect to equipment and personnel management, *inter alia* pursuant to 66 Pa.C.S. § 1505.
4. The Commission reserves the right to make specific remedies including but not limited to civil penalties upon further review and inspection of the facility.

### **PROPOSED FINDINGS OF FACT and PROPOSED ORDERING PARAGRAPHS**

1. Complainants are all residents of Philadelphia and employees of Respondent Philadelphia Gas Works (“PGW”) at its Passyunk Gas Processing Plant.<sup>78</sup>
2. Respondent PGW is a collection of real and personal assets used to furnish natural gas to

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<sup>76</sup> EE St. No. 3 at 5:19 – 6:22 (Operations Supervisor Ryan O’Donnell leaving Plant without notifying co-workers and leaving radio at a local store in September 2019); EE St. No. 1 at 17:12 – 20:3, Exhibits VI-A and VI-B (Operations Supervisor Ryan O’Donnell leaving Plant without notifying co-workers and getting into a vehicle accident with company car in September 2018) and EE St. No. 1-SR at 1:14-2:8.

<sup>77</sup> EE St. No. 2 at 3:11 – 6:9 (Operations Supervisor Ryan O’Donnell clocked in Working Foreman Michael Tomczak when the latter was not present and did not arrive to work for some 2 hours later). *Accord* EE St. No. 1 at 5:13 – 8:14, Exhibit II.

<sup>78</sup> Complaint ¶¶ 1-4, as verified.

customers in the City of Philadelphia, PGW is a “city natural gas distribution operation”.<sup>79</sup>

3. Passyunk Plant is a complex of buildings and internal street located in South Philadelphia near residential homes.<sup>80</sup>

4. Passyunk Plant “operates as a natural gas distribution facility, an LNG storage facility, and vaporization facility.”<sup>81</sup>

5. LNG, liquefied natural gas, is an inodorous gas with flammable and dangerous vapors, which is “predominantly methane (CH<sub>4</sub>) that has been converted temporarily to liquid form for ease of storage and transport.”<sup>82</sup>

6. As such, LNG must be handled with care to ensure public safety.<sup>83</sup>

7. Messrs. Ackie and Goodwin are Senior Process Operators and have daily job duties of operating equipment, operate and interpret combustible indicator and gas analyzers and perform safety checks, *inter alia*.<sup>84</sup>

8. Mr. Chavarria is a Working Foreman of Operations whose daily job duties including monitoring temperatures, pressures of natural gas and stored liquefied natural gas, *inter alia*.<sup>85</sup>

9. Mr. Rauceo is an Operations Supervisor whose daily job duties include supervising the start up operation and shut down of natural gas, LNG and vaporization facilities, *inter alia*.<sup>86</sup>

10. At all times relevant to the events in this proceedings, Complainants continued to hold their

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<sup>79</sup> See footnote 5, *supra*.

<sup>80</sup> See footnotes 49 – 50, *supra*.

<sup>81</sup> EE St. No. 1, Exhibit II (A) at 2 (Malkemes EEOC Statement, October 22, 2018)

<sup>82</sup> *Id.* at 1.

<sup>83</sup> *Id.*

<sup>84</sup> See footnotes 39 – 41, *supra*.

<sup>85</sup> See footnotes 43 – 43, *supra*.

respective positions.

11. PGW Passyunk Plant has engaged in multiple violations of the Code pursuant to its failure to maintain a reasonable, safe, adequate and efficient facility based on the complete testimony of Complainants in this matter.<sup>87</sup>

### **PROPOSED CONCLUSIONS OF LAW**

1. Jurisdiction is conferred on the Commission over this proceeding under 66 Pa.C.S. § 331(a).
2. Complainants have standing to bring this Formal Complaint pursuant to 66 Pa.C.S. § 701.
3. The claims in the Formal Complaint are legally sufficient pursuant to 66 Pa.C.S. §1501, 1505.
4. Complainants bear the burden of proof as the party seeking an order/ruling pursuant to 66 Pa.C.S. § 332(a).

**Respectfully submitted,**

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Date: February 12, 2021

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<sup>86</sup> See footnotes 44 – 45, *supra*.

<sup>87</sup> See Complainants testimonies provided, *supra*.