

**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

**REPLY BRIEF OF COMPLAINANTS  
COUNTER-PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW  
AND COUNTER-PROPOSED ORDER**

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## I. COUNTER-PROPOSED FINDINGS OF FACTS

### **Parties, Witnesses and PGW Gas Processing Facility & its Management Personnel**

1. Complainants are Dwayne Ackie, Miguel J. Chavarria, Jr., Maurice Goodwin and Wayne Rauceo.<sup>1</sup>
2. Complainants initiated this action by Formal Complaint on October 31, 2019.<sup>2</sup>
3. Complainants are all residents of Philadelphia.<sup>3</sup>
4. Complainants are all current employees of Respondent, Philadelphia Gas Works (PGW).<sup>4</sup>
5. Respondent Philadelphia Gas Works (PGW) operates the Passyunk Gas Processing Plant (Passyunk Plant) located at 3100 Passyunk Avenue in South Philadelphia.<sup>5</sup>
6. The Passyunk Plant is a natural gas distribution facility, a liquefied natural gas (LNG) storage facility and vaporization facility.<sup>6</sup>
7. LNG is predominantly methane (CH<sub>4</sub>) that has been converted temporarily to liquid form for ease of storage and transport.<sup>7</sup>
8. PGW condenses natural gas from its gaseous form into LNG at close to atmospheric pressure by cooling the gas to approximately -260 °F and stores it in tanks at plants.<sup>8</sup>
9. The handling and processing of LNG requires great care in order to ensure public safety because LNG is not odorized.<sup>9</sup>
10. LNG vapors are potentially flammable and dangerous.<sup>10</sup>
11. Due to the critical and extremely safety sensitive nature of Plant operations, PGW operates its plants 24-hours a day, 7 days a week.<sup>11</sup>
12. It is imperative LNG Plants are adequately staffed at all times with at least the

<sup>1</sup> EE St. No. 1 at 1:3; EE St. No. 2 at 1:3; EE St. No. 3 at 1:3; and EE St. No. 4 at 1:3.

<sup>2</sup> Ackie, et al. v. PGW, Docket No. C-2019-3013933 (Formal Complaint October 31, 2019)

<sup>3</sup> EE St. No. 1 at 1:3; EE St. No. 2 at 1:3; EE St. No. 3 at 1:3; and EE St. No. 4 at 1:3.

<sup>4</sup> EE St. No. 1 at 1:6; EE St. No. 2 at 1:6; EE St. No. 3 at 1:6; and EE St. No. 4 at 1:6

<sup>5</sup> EE St. No. 1, Exhibit II (A) at 2 and PGW St. No. 3 at 1:4-5.

<sup>6</sup> EE St. No. 1, Exhibit II (A) at 2.

<sup>7</sup> EE St. No. 1, Exhibit II (A) at 1.

<sup>8</sup> EE St. No. 1, Exhibit II (A) at 1.

<sup>9</sup> EE St. No. 1, Exhibit II (A) at 1.

<sup>10</sup> EE St. No. 1, Exhibit II (A) at 1.

<sup>11</sup> EE St. No. 1, Exhibit II (A) at 1.

following personnel scheduled and present at all times: one (1) Supervisor; one (1) Working Foreman; and one (1) Process Operator.<sup>12</sup>

13. Complainant Dwayne Ackie is a Senior Process Operator at Passyunk Plant.<sup>13</sup>
14. Mr. Ackie became a Senior Process Operator in 2016.<sup>14</sup>
15. Complainant Maurice Goodwin is a Senior Process Operator at Passyunk Plant.<sup>15</sup>
16. Mr. Goodwin became a Senior Process Operator in 2017.<sup>16</sup>
17. Complainant Miguel J. Chavarria, Jr. is a Working Foreman at Passyunk Plant.<sup>17</sup>
18. Mr. Chavarria became a Working Foreman in 2006.<sup>18</sup>
19. Complainant Wayne Rauceo is an Operations Supervisor at Passyunk Plant.<sup>19</sup>
20. Mr. Rauceo became an Operations Supervisor in 2012.<sup>20</sup>
21. PGW witness Brian McGuire became Plant Manager at Passyunk Plant in May 2015.<sup>21</sup>
22. PGW witness Raymond M. Snyder is PGW's former Senior Vice President, Gas Management from 2015 to 2019 having retired in 2019.<sup>22</sup>
23. PGW witness Daniel J. Cassidy is PGW's Vice President, Technical Operations hired in that position in September 2019.<sup>23</sup>
24. David Martinez became General Supervisor, Operations at Passyunk Plant in 2015.<sup>24</sup>
25. Ryan O'Donnell became an Operations Supervisor at Passyunk Plant in March 2016.<sup>25</sup>
26. Messrs. McGuire and Martinez work Monday through Friday from 6:00 a.m. to 3:30

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<sup>12</sup> EE St. No. 1, Exhibit II (A) at 1-2.

<sup>13</sup> EE St. No. 1 at 1; 10, 13-14.

<sup>14</sup> EE St. No. 1 at 11-12.

<sup>15</sup> EE St. No. 2 at 1:10, 13-14.

<sup>16</sup> EE St. No. 2 at 1:11-12.

<sup>17</sup> EE St. No. 3 at 1:13, 19.

<sup>18</sup> EE St. No. 3 at 1:20-21.

<sup>19</sup> EE St. No. 4 at 1:10, 13-14.

<sup>20</sup> EE St. No. 4 at 1:11-12.

<sup>21</sup> PGW St. No. 3 at 1:3, 7.

<sup>22</sup> PGW St. No. 1 at 1:3-4.

<sup>23</sup> PGW St. No. 2 at 1:3, 7.

<sup>24</sup> EE St. No. 4, Exhibit I.

<sup>25</sup> EE St. No. 4, Exhibit I.

p.m.<sup>26</sup>

**Manipulation of Temperature Indicator (TE1019)**

27. Passyunk Plant vaporization season occurs between November and March.<sup>27</sup>
28. LNG, liquefied natural gas, is predominantly methane (CH<sub>4</sub>) that has been converted temporarily to liquid form for ease of storage and transport.<sup>28</sup>
29. The LNG Vaporization System converts LNG, which enters the system at -260 °F and is vaporized at a temperature between 40 °F and 80 °F, into vapor natural gas (VNG).<sup>29</sup>
30. When the gas is vaporized, it is sent to the VNG common header, distribution line and the natural gas cage, which is an area where pressure is reduced.<sup>30</sup>
31. After the pressure is reduced, the VNG is sent to the end user.<sup>31</sup>
32. The TE1019, temperature indicator/sensor, is downstream of the VNG common header, which senses internal process temperatures and sends temperature readings to a system operated by a Working Foreman, whose responsibility it is to operate the vaporizers and auxiliary equipment associated with the LNG vaporization process.<sup>32</sup>
33. During the vaporization, if the TE1019 sensor picks up an internal process temperature or line temperature of 0 degrees, it sends an audio alarm through the control system and activates vaporization system shutdown safety features.<sup>33</sup>
34. Since 2000 to the present, Passyunk Plant management began to bypass the low temperature sensors (TE1019 indicators) on the LNG vaporizers piping by wrapping the piping with in steam hoses/lances.<sup>34</sup>
35. Temperature sensors TE1013 and TE1015 are upstream sensors and also part of the vaporization shutdown system operating as initial shutdown features.<sup>35</sup>
36. Since it is downstream, TE1019 functions as a fail-safe, backup shutdown feature to

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<sup>26</sup> Tr. at 25:24-26:2, 27:3-5.

<sup>27</sup> Formal Complaint ¶ 7.

<sup>28</sup> EE St. No. 1, Exhibit II (A) at 1.

<sup>29</sup> Formal Complaint ¶ 7. *See also* EE St. No. 1, Exhibit II (A) at 1; and EE St. No. 3 at 1:10 -18.

<sup>30</sup> Formal Complaint ¶ 7.

<sup>31</sup> Formal Complaint ¶ 7.

<sup>32</sup> Formal Complaint ¶ 7; EE St. No. 3-SR at 1:10-18; EE St. No. 4 at 10:8-11:7; and PGW St. No. 1 at 5:5-8.

<sup>33</sup> EE St. No. 4 at 10:19-11:7.

<sup>34</sup> EE St. No. 3 at 3:14; and EE St. No. 4 at 8-9.

<sup>35</sup> PGW St. No. 1 at 43:23-4:2.

TE1013 and TE1015.<sup>36</sup>

37. By wrapping TE1019, as well as TE1013 and TE1015 indicators, with steam hoses the internal process temperature/line temperature is masked to be the same as the steam hoses' temperature, thereby disabling the low temperature safety shut downs for the vaporization system.<sup>37</sup>
38. Passyunk Plant management also uses steam hoses/lances to wrap valves and transmitters in the vaporization process "to ensure the system works properly and external components of instruments exposed to ambient temperatures do not freeze in cold ambient temperatures."<sup>38</sup>
39. However, steam hoses/lances are not a part of the LNG vaporization system's engineering or design.<sup>39</sup>
40. These operating practices of wrapping steam lances/hoses around TE1019 indicators where used in 2000, when the line temperature was masked as the steam hoses' temperature, disabling and bypassing low temperature safety shutdown processes, thereby allowing LNG to get into VNG piping setting off an explosion.<sup>40</sup>
41. VNG piping is not engineered to handle the cryogenic temperatures of LNG, which caused the explosion.<sup>41</sup>
42. The need to wrap its LNG vaporization system piping, valves and transmitters indicates dangerous and critically flawed designs, which continue to present safety harm to employees, the public and patrons alike.<sup>42</sup>
43. Alternatives and more modern equipment and processes exists that can make Passyunk Plant's LNG vaporization process safer and more efficient, which PGW has not employed.<sup>43</sup>

**Operations Supervisor Ryan O'Donnell Leaving the Plant Unsupervised and Without Telling Other Essential Personnel**

44. On Tuesday, September 11, 2018, Complainant Ackie was the senior process operator on the Middle Shift from 2:00 p.m. to 10:00 p.m.<sup>44</sup>

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<sup>36</sup> EE St. No. 4-SR at 1:18-2:2.

<sup>37</sup> EE St. No. 3 at 3:14-17; and EE St. No. 3-SR at 1:19-2:1.

<sup>38</sup> PGW St. No. 1 at 3:21-23; *but see* EE St. No. 4-SR at 1:9-15.

<sup>39</sup> EE St. No. 3-SR at 2:7-11.

<sup>40</sup> EE St. No. 3 at 3:20; and EE St. No. 4-SR at 2:3-7.

<sup>41</sup> EE St. No. 3 at 3:17-19.

<sup>42</sup> EE St. No. 3-SR at 1:14-15; and EE St. No. 4 at 11:19-21.

<sup>43</sup> EE St. No. 3\_S\_R at 1:16-18; and EE St. No. 4 at 11:21-12:5.

<sup>44</sup> EE St. No. 1 at 2:18, 17:20-21.

45. Operations Supervisor Ryan O'Donnell worked that day on the B shift from 6:00 a.m. to 6:00 p.m.<sup>45</sup>
46. Mr. Ackie last saw Mr. O'Donnell at 2:15 p.m. in the Central Control Room, and did not see him again the remainder of his shift, which would have been 6:00 p.m.<sup>46</sup>
47. While making his roving rounds at 4:00 p.m., Mr. Ackie noticed the supervisor pick-up truck, a Chevy Colorado, was nowhere on the plant facility.<sup>47</sup>
48. Once he returned to Central Control Room after 5:00 p.m., Mr. Ackie noticed Mr. O'Donnell had not taken any DETEX readings, so he took the 5:00 p.m. reading.<sup>48</sup>
49. At 5:50 p.m., John Walker, Operations Supervisor relieving Mr. O'Donnell from his shift, contacted Mr. Ackie on his cellphone to determine the location of the plant vehicle.<sup>49</sup>
50. Mr. Walker worked B shift, 6:00 p.m. to 6:00 a.m. on September 11, 2018.<sup>50</sup>
51. When Walker arrived in the Central Control Room, where the Supervisor's office is located, he informed Mr. Ackie of Mr. O'Donnell's accident and asked Mr. Ackie when Mr. O'Donnell left the plant.<sup>51</sup>
52. Mr. Ackie responded Mr. O'Donnell had not informed Mr. Ackie he was leaving the Plant.<sup>52</sup>
53. Mr. Walker then called Working Foreman Gary Nelson on speaker phone. Mr. Nelson was in his office in the separate LNG Control Room building. He also want not notified Mr. O'Donnell left the Plant.<sup>53</sup>
54. Mr. Nelson also worked the Middle Shift on September 11, 2018, i.e., 2:00 p.m. to 10:00 p.m.<sup>54</sup>
55. Mr. Martinez, who had left work and was home, went to the accident scene, directed Mr. Walker to go to the accident scene and pick up the company vehicle and bring it back to Passyunk Plant, which Mr. Walker did.<sup>55</sup>

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<sup>45</sup> EE St. No. 1 at 18:23-25.

<sup>46</sup> EE St. No. 1 at 17:25-18:1.

<sup>47</sup> EE St. No. 1 at 18:2-3.

<sup>48</sup> EE St. No. 1 at 18:4-5.

<sup>49</sup> EE St. No. 1 at 18:6-7.

<sup>50</sup> EE St. No. 1 at 18:25

<sup>51</sup> EE St. No. 1 at 18:7-10.

<sup>52</sup> EE St. No. 1 at 18:10.

<sup>53</sup> EE St. No. 1 at 18:10-12.

<sup>54</sup> EE St. No. 1 at 18:20-22.

<sup>55</sup> EE St. No. 1 at 18:15-18.

56. Mr. Martinez did not inform Messrs. Ackie or Nelson the Plant was left unsupervised for a period of time.<sup>56</sup>
57. The September 11, 2018 Automobile Accident Report regarding Mr. O'Donnell and completed by Mr. Martinez alleged the accident occurred at 4:45 p.m. in the 7-Eleven parking lot, although it doesn't identify the address of the accident location.<sup>57</sup>
58. PGW does not provide any testimony as to how Mr. Martinez, who was at home when the accident allegedly occurred, knew Mr. O'Donnell was involved in a car accident.<sup>58</sup>
59. Mr. Ackie testified PGW's corporate policy for any accident in PGW vehicles, employees are not permitted to move the vehicle. Risk management sends someone to pick the vehicle up and the employee involved in the accident is taken for a drug test.<sup>59</sup>
60. There is no testimonial or documentary evidence that Mr. O'Donnell was taken by Risk Management for a drug test.<sup>60</sup>
61. On September 11, 2018, Passyunk Plant was left unsupervised from at least on or about 4:00 p.m. until 5:50 p.m., when Operations Supervisor Walker arrived for his shift.<sup>61</sup>
62. As the only supervisor on shift from at least 3:30 p.m. to 5:50 p.m. on September 11, 2018, Mr. O'Donnell exposed Messrs. Ackie and Nelson to harm, since he was the only one who authorized to make decisions when there is an accident and responsible for making certain other essential operations personnel remained in their areas and at the Plant.<sup>62</sup>
63. A similar incident again happened, this time Mr. O'Donnell left the Plant on Wednesday, September 11, 2019. He was again, the only Operations Supervisor on shift.<sup>63</sup>
64. Mr. O'Donnell left the Plant without notifying the Working Foreman, Complainant Chavarria and the senior process operator Kyre Chapman.<sup>64</sup>
65. During the time the Plant was without management supervision, there are certain emergency procedures that cannot be implemented including, but not limited to, safety systems, first responders, turning on safety equipment, presence and directions, i.e.,

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<sup>56</sup> EE St. No. 1 at 18-19.

<sup>57</sup> EE St. No. 1, Exhibit VI-B

<sup>58</sup> PGW St. No. 3 at 3:19-21. *See also* EE St. No. 1 at 19:16-19.

<sup>59</sup> EE St. No. 1 at 19:1-3.

<sup>60</sup> EE St. No. 1, Exhibit VI-B; and PGW St. No. 3 at 4:5-7.

<sup>61</sup> EE St. No. 1 at 18:2-5, 19:20-25.

<sup>62</sup> EE St. No. 1 at 19:20-25. *See also* Tr. at 146:17-20 and PGW St. No. 1 at 4:7-8

<sup>63</sup> EE St. No. 3 at 5:20-6:22.

<sup>64</sup> EE St. No. 3 at 5:20-6:22

management of the emergency.<sup>65</sup>

66. Though Supervisors are allowed to leave the Plant with notice, by leaving without notifying other essential personnel and leaving his radio, Mr. O'Donnell created a safety violation as he did not give Messrs. Chavarria and Chapman as working foreman and process operator a chance to change their operation standard.<sup>66</sup>
67. PGW provides no credible evidence that Mr. O'Donnell retrieved the radio within 10 minutes of leaving it. Nor is there any competent evidence determining how long Mr. O'Donnell was gone from the Plant before Mr. Chavarria learned the radio was left at Rite Aid.<sup>67</sup>
68. Once again, PGW, through its Passyunk Plant management, leaves a LNG storage plant unsupervised when its Director, Gas Processing states the Plant must have at least the essential 3 personnel present at all time due in large part to the very flammable and danger nature of LNG.<sup>68</sup>

**February 23, 2018 After Hours, Unannounced Return of Plant Manager Brian McGuire**

69. Mr. McGuire appeared afterhours at the Plant at approximately 11:35 p.m. on February 23, 2018.<sup>69</sup>
70. Mr. McGuire he did not have his PGW ID badge, and the security guard did not know who McGuire was.<sup>70</sup>
71. He asked the security guard not to announce his presence at the Plant to the on duty shift Operations Supervisor as is required for "out of hours" or afterhours policies require.<sup>71</sup>
72. The announcement policy applies to everyone seeking to enter the plant after hours.<sup>72</sup>
73. If an employee does not have his/her badge, they are required to sign the security sign-in sheets. On February 23, 2018, even though he did not have his badge, Mr. McGuire did not sign in.<sup>73</sup>

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<sup>65</sup> EE St. No. 3 at 6:14-17.

<sup>66</sup> EE St. No. 3 at 6:17-22.

<sup>67</sup> PGW St. No. 3-SR at 6:22 – 7:6.

<sup>68</sup> EE St. No. 1, Exhibit II (A) at 2.

<sup>69</sup> EE St. No. 1 at 10:22-25, 11:1-21, 15:12-16.

<sup>70</sup> EE St. No. 1 at 12:17-22.

<sup>71</sup> EE St. No. 1 at 12:17-22. EE St. No. 4-SSR at 2:1-4:15.

<sup>72</sup> EE St. No. 1 at 13:7-12. EE St No. 4-SUP at 1:16-21 & Exhibit IV at 138:21-142:22. EE St. No. 4-SSR at 2:1-4:15.

<sup>73</sup> EE St. No. 4-SUP at 2:1-8 & Exhibit V.

74. Mr. McGuire drove a company vehicle in the Plant without highlights, while LNG truck unloading was taking place at Passyunk Plant.<sup>74</sup>
75. Mr. McGuire was in street clothes and not Fire Retardant attire.<sup>75</sup>
76. Mr. McGuire smelled of alcohol and cursed at Mr. Ackie upon entering the area Mr. Ackie was working.<sup>76</sup>
77. PGW policies do not allow an employee to operate company vehicle under the influence of drugs or alcohol.<sup>77</sup>
78. Sovereign Security provides security services at PGW Passyunk Plant, and was subpoenaed to produce for documents, electronically stored information and the like regarding the February 23, 2018 incident. In response to the subpoena, Sovereign Security stated PGW retained all information.<sup>78</sup>

**Plant General Supervisor David Martinez Removal of Two of Three Essential Workers from Plant to Accommodate his Vacation Travels (August 2017)**

79. On or about August 28 and 29, 2017, Passyunk Plant General Supervisor Martinez demanded essential plant employees Operations Supervisor Mr. Walker and Senior Process Operator Mr. Ackie to follow him to Philadelphia International Airport (PHL) and return his empty personal vehicle to PGW employee lot at Passyunk Plant.<sup>79</sup>
80. Messrs. Walker and Ackie were gone from the Plant for about 40 – 45 minutes.<sup>80</sup>
81. Also working at that time was Jose Ortiz, the Working Foreman.
82. Mr. Martinez’s absences detail records for 2017<sup>81</sup> and Passyunk Plant Schedule for August 19, 2017 through September 15, 2017 show Mr. Martinez was on vacation on August 28 and 29, 2017 and the Plant schedule shows Messrs. Walker, Ortiz and Ackie worked the relevant time period.<sup>82</sup>
83. Messrs. Walker and Ackie are “essential” because they make certain gas feed to City of Philadelphia residents are uninterrupted and safe, and the gas process and storage have no problems.<sup>83</sup> If there are problems, they are able to rectify them immediately without

<sup>74</sup> EE St. No. 4 at 7:5-9-24. EE St. No. 1 at 12:7-16.

<sup>75</sup> EE St. No. 1-SR at 4:3-20 (“Plant policy for after hours and weekends. . . “)

<sup>76</sup> EE St. No. 1 at 15:17-16:5 & Exhibit IV.

<sup>77</sup> EE St. No. 4 at 9:7-16.

<sup>78</sup> Response in Opposition to Motion in Limine, Exhibit 6 (October 20, 2020)

<sup>79</sup> Formal Complaint, ¶ 12. EE St. No. 1 at 3:7-5:12 & Ex. I-A, I-B. Tr. at 136:23 – 137:5.

<sup>80</sup> EE St. No. 1 at 3:7-5:12.

<sup>81</sup> EE St. No. 1 at 3:7-5:12.

<sup>82</sup> EE St. No. 1, Ex. I-A and I-B

<sup>83</sup> EE St. No. 1 at 4:7-9.

“catastrophic incident.”<sup>84</sup>

84. Passyunk Plant employees engaged in the practice of leaving their personal vehicles parked at Passyunk’s parking lot when traveling to the airport.<sup>85</sup>
85. August is during non-vaporization season, and the Plant Working Foreman along with remote monitoring by the City’s Gas Control Department (Gas Control”) at 9<sup>th</sup> and Montgomery Streets monitor City gas-pressure.<sup>86</sup>
86. When Gas Control losses remote connection to the monitors and regulators, Passyunk workers are needed immediately to manually control the flow of gas safely going to the City. Hence, the need for quick and sufficient coverage at the plant at all times.<sup>87</sup>
87. PGW’s policy of at least that one Operations Supervisor, one Working Foreman and one Senior Process Operator be scheduled and present at all times does not make a distinction between “non-vaporization” and “vaporization” seasons.<sup>88</sup>
88. The run to DETEX unit to download data performed by the Operations Supervisor occurs once a week and only if there is another Operations Supervisor or above management personnel present.<sup>89</sup>
89. For example, in August 2020 an Operations Supervisor would not leave to get the DETEX unit data download at the M&R station at Penrose because there was no other Operations Supervisor or higher present at the plant.<sup>90</sup>
90. Though August 2017 is a non-vaporization season, it was a peak season when high pressure boilers were on and left unattended.<sup>91</sup>
91. The three essential positions have very individualized job duties, which make all three necessary and distinctive. The Working Foreman has control over the valves . . . remotely from a computer.<sup>92</sup> Without the Working Foreman being present, a Senior Process Operator is not permitted to operate the computer in case of boil off building, *inter alia*.<sup>93</sup>

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<sup>84</sup> EE St. No. 1 at 4:7-9.

<sup>85</sup> PGW St. No. 3 at 4:16-18

<sup>86</sup> PGW St. No. 3 at 4:22 – 5:7.

<sup>87</sup> EE St. No. 3 at 3:3-7.

<sup>88</sup> EE St. No. 1, Exhibit II (A) at 2.

<sup>89</sup> EE St. No. 3-SR at 2:10-22

<sup>90</sup> EE St. No. 3-SR at 2:10-22.

<sup>91</sup> EE St. No. 3-SR 2:20-22.

<sup>92</sup> Tr. at 71:8-73:13. *See also* EE St. No. 3 at 1:22-2:3; EE St. No. 1 at 2:3-7 and EE St. No. 2 at 2:3-5; and EE St. No. 4 at 2:3-8.

<sup>93</sup> Tr. at 71:25 – 72:19.

### **Absence of Working Foreman at Plant for Over Two Hours on Christmas Day 2017**

92. Mr. Goodwin worked on December 25, 2017 beginning at 6:00 p.m.<sup>94</sup>
93. When Mr. Goodwin was clocked in, Working Foreman Michael Tomczak was not present.<sup>95</sup>
94. Mr. Goodwin later learned in February 2018, timekeeping records showed Mr. Tomczak as being clocked in a minute after Mr. Goodwin on December 25, 2017 on the same time clock.<sup>96</sup>
95. Since his desk is across from the time clock, Mr. Goodwin he did not see Mr. Tomczak until 8:30 p.m.<sup>97</sup>
96. Mr. Ortiz was the Working Foreman immediately before Mr. Tomczak's scheduled start time. But instead of waiting until Mr. Tomczak arrived, Mr. Ortiz left, leaving the Plant without a Working Foreman on Christmas Day 2017 for more than 2 hours.<sup>98</sup>
97. Leaving the Passyunk Plant without a Working Foreman for more than 2 hours is inherent dangers most significantly due to the segregation of job duties amongst the Operations Supervisor, Working Foreman and Senior Process Operator.<sup>99</sup>
98. Specifically, the process operator is not trained to perform the functions of a working foreman, that latter of whom is responsible for remote computer control of valves at the Plant. Situations including, but not limited to, boil offs building in the pumps that may require to be reset on the computer if not set on automatic, *inter alia*. If not properly addressed, pressure in the pipe could result in broken pipes or release of inodorous gas into the atmosphere.<sup>100</sup>

### **Promotion and Protection of Unqualified Management Personnel**

99. The majority of the safety and operations violations complained of by Employees center around with 3 management personnel: Plant Manager McGuire, General Supervisor Martinez and Operations Supervisor Ryan O'Donnell as more fully discussed in this proceeding.<sup>101</sup>
100. Based on their resumes and the education and experience qualifications requirements

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<sup>94</sup> EE St. No. 2 at 3:12 – 5:24.

<sup>95</sup> EE St. No. 2 at 3:12 – 5:24.

<sup>96</sup> EE St. No. 2 at 3:12 – 5:24.

<sup>97</sup> EE St. No. 2 at 3:12 – 5:24.

<sup>98</sup> EE St. No. 2 at 3:12 – 5:24.

<sup>99</sup> Tr. at 70:13 – 73:6.

<sup>100</sup> Tr. at 70:13 – 73:6.

<sup>101</sup> Formal Complaint, ¶¶ 9, 10, 11, 12, 13, 15, 17.

- for General Supervisor and Operations Supervisor, Messrs. Martinez and O'Donnell did not meet certain requirements for their respective positions at the time they were promoted.<sup>102</sup>
101. On October 5, 2020, Mr. Martinez left the plant's fire system offline and left for the day without putting it back online, which left the plant vulnerable. Mr. Rauceo found the error, contacted Martinez, who had to contact Plant protection to return to the plant and put the fire system back online.<sup>103</sup>
  102. On October 14, 2020, Passyunk Plant was testing the LNG pumps by a procedure where they packed the LNG pumps heard with LNG. Mr. Martinez forgot to open HCV a valve that needed to be opened to introduce LNG into the header. In this incident, Mr. McGuire intervened, called Martinez on the radio regarding the HCV110 valve not being open.<sup>104</sup> McGuire later contacted the Working Foreman Steve Edwards, reprimanding him for not having "Dave's back."<sup>105</sup>
  103. The job description for a General Supervisor, Gas Processing Operations, education and experience qualifications requires "associates degree in relevant field of study or 3 to 5 years relevant experience working as a Supervisor of Gas Processing, Operations" and "Must have 5-7 years relevant experience working in instrumentation, operations management, gas control or other relevant craft."<sup>106</sup>
  104. Similarly for the position of Supervisor, Gas Processing Operations, the education and experience qualifications require "associates degree in a relevant field of study or 3-5 years experience working as a Shift Supervisor, Gas Processing Operations in PGW Gas Processing Department"<sup>107</sup>
  105. A shift supervisor is a training position to become an operation supervisor.<sup>108</sup>
  106. Neither Mr. Martinez nor Mr. O'Donnell met those requirements for the positions of General Supervisor and Operation Supervisor, respectively, as their resumes showed at the time they were promoted to General Supervisor and Operation Supervisor, respectively.<sup>109</sup>

### **Pattern and Practice of Uncontrolled Release of LNG**

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<sup>102</sup> EE St. No. 4, Exhibit I.

<sup>103</sup> EE St. No. 1-REPLY at 3:19-4:9.

<sup>104</sup> EE St. No. 1-REPLY at 3:19-4:9.

<sup>105</sup> EE St. No. 2 at 3:19-4:9.

<sup>106</sup> EE St. No. 4, Exhibit I.

<sup>107</sup> EE St. No. 4, Exhibit I.

<sup>108</sup> Tr. at 146:23-24.

<sup>109</sup> EE St. No. 4, Exhibit I.

107. On October 15, 2020, Passyunk Plant was stilling testing the LNG pumps.<sup>110</sup>
108. October 15 and 16, 2020 were Thursday and Friday, respectively.<sup>111</sup>
109. Mr. Ackie learned of LNG releasing from a hose at or about 7:20 p.m. on October 15, when he received a call from Operations Supervisor Walker to “secure an outlet valve 1027” and other instructions.<sup>112</sup>
110. At 7:20 p.m., Messrs. McGuire and Martinez have finished their work day, which ends at 3:30 p.m. At that point, Ackie noticed “the truck unloading hose was covered in frost, meaning that LNG had reached all the way from the tank to the – the hose. The hose had a cap on it, but the cap didn’t secure the release of inodorous gas. It kept feeding off into the atmosphere.”<sup>113</sup>
111. Mr. Ackie saw Mr. Walker panicking due to LNG coming from the truck unloading hose, when Mr. Walker stated “I can’t believe that this 1027 valve that has been giving problems for years has not been replaced. This is ridiculous. That’s why we have [ ] problems here.”<sup>114</sup>
112. Mr. Chavarria also affirms the problems with PCV-1027, i.e., its “broken ground safety feature.”<sup>115</sup>
113. Mr. Ackie and Working Foreman Steve Edwards eventually put yellow caution tape around the area where LNG was blowing/releasing into the atmosphere as a warning to security guards and other who may pass that area, since LNG is inodorous gas.<sup>116</sup>
114. Before he left work for the day, Mr. Martinez and Mr. Walker performed a pre-check [checking all the valves on the line of the procedure], which includes valves from truck unloading to the LNG impounding are where the LNG send out pumps are].<sup>117</sup>
115. On their pre-check, Messrs. Martinez and Walker noticed the HCV-1026 bypass valve was opened, and Mr. Ackie was called to close the HCV-1026 valve, which he did.<sup>118</sup>
116. Eventually Messrs. Ackie and Martinez went back into the Central Control Room, and Mr. Walker remained in the field to do a leak check. Martinez eventually radioed Walker regarding the leak check to which Walker confirmed the check was

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<sup>110</sup> Tr. at 20:6-68:13.

<sup>111</sup> Judicial notice.

<sup>112</sup> Tr. at 21:15-18.

<sup>113</sup> Tr. at 21:22-22:7

<sup>114</sup> Tr. at 22:17-22

<sup>115</sup> EE St. No. 3-REPLY at 4:4-17.

<sup>116</sup> Tr. at 23:15-25, 24:15-25:18.

<sup>117</sup> EE St. No. 1-REPLY at 1:7-4:9.

<sup>118</sup> EE St. No. 1-REPLY at 1:7-4:9.

- successful, no leaks and all valves were in their correct positions.<sup>119</sup>
117. Upon arrival at the Plant on October 15, 2020 to relieve Working Foreman, Steve Edwards, Mr. Chavarria he saw the LNG truck unloading area yellow caution taped off. At which point, Mr. Edwards explained to Mr. Chavarria the presence of LNG gas blowing from the truck unloading hose.<sup>120</sup>
  118. The only detectors in the LNG truck unloading area are 40 to 50 feet away inside the Boiloff Compressor building and situated near the ceiling of the building as natural gas is lighter than air and rises, accumulating at the ceiling in enclosed areas. These properties of natural gas make it virtually impossible for gas blowing outside at the truck unloading station to glide along the ground 50 feet, through the closed doors of the Boiloff Compressor building and accumulate in the building. Thus, the gas release/leak outside in the truck unloading area on October 15, 2020 did not set off the detectors inside the Boiloff Compressor building.<sup>121</sup>
  119. Although there were fire sensors near the 1027 valve and the braided stainless steel hose where the LNG was leaking. However, those fire sensors do not have their own natural gas sensors and could not sense the inodorous LNG gas that was leaking into the atmosphere.<sup>122</sup>
  120. Passyunk Plant management's treatment of the October 15, 2020 incident of LNG blowing into the atmosphere was harmless and negligible is similar to their treatment of the uncontrolled release that occurred on March 22, 2016, when PGW misled the public and the City stating the emission of gas was a controlled release, when it was not.<sup>123</sup>
  121. In reality, natural gas that is inodorous blowing/releasing in the atmosphere is extremely dangerous because it does not have an odor.<sup>124</sup>

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<sup>119</sup> EE St. No. 1-REPLY at 1:7-4:9.

<sup>120</sup> EE St. No. 3-REPLY at 1:8-5:3.

<sup>121</sup> EE St. No. 3-REPLY at 2:14-21. Tr. at 105:19-108:13.

<sup>122</sup> Tr. at 107:14-108:13.

<sup>123</sup> EE St. No. 3-REPLY at 4:5-5:10.

<sup>124</sup> Tr. at 101:22 – 105:7.

## II. COUNTER-CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding.<sup>125</sup>
2. Complainants have standing to bring their formal complaint.<sup>126</sup>
3. Complainants have the burden of proof in this case.<sup>127</sup>
4. PGW is a city natural gas distribution operation.<sup>128</sup>
5. The definition of “service” found in 66 Pa.C.S. § 102 states:

Used in its broadest and most inclusive sense, includes any and all acts done, rendered or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public . . .<sup>129</sup>
6. 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.<sup>130</sup>
7. Section 1501 guarantees that “[e]very public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alternations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.”<sup>131</sup>
8. PGW Passyunk Gas Processing Plant (Passyunk Plant) is a facility that provides natural gas service.<sup>132</sup>

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<sup>125</sup> 66 Pa.C.S. §§ 331(a) and 1501.

<sup>126</sup> 66 Pa.C.S. § 701.

<sup>127</sup> 66 Pa.C.S. § 332(a)

<sup>128</sup> 66 Pa.C.S. § 102. 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);

<sup>129</sup> 66 Pa.C.S. § 102.

<sup>130</sup> 66 Pa.C.S. § 102.

<sup>131</sup> 66 Pa.C.S. § 1501.

<sup>132</sup> 66 Pa.C.S. § 102.

9. Based on the documentary and testimonial evidence provided in this proceeding, Complainants have met their burdens of proof and persuasion related to their claims as follows:
- a. PGW fails to maintain a safe, efficient, adequate and reasonable facility at its Passyunk Gas Processing Plant by manipulating the TE1019 temperature indicators and other instrumentality by using steam hoses/lances during its LNG vaporization process. Use of such steam hose/lances devices artificially mask the internal line temperature during the process, which can lead to LNG mixing in with VNG, which has caused a proven exposure to harm, i.e., an explosion.
  - b. PGW fails to maintain a safe, efficient, adequate and reasonable facility at its Passyunk Gas Processing Plant by its policies that allow supervisors to leave the Plant for long periods of time without proper notification to essential personnel, which results in the other essential operations personnel not being supervised and not given notice of the need to implement alternative protocols, procedures and/or operation standards.
  - c. PGW fails to maintain a safe, efficient, adequate and reasonable facility at its Passyunk Gas Processing Plant by abusing timekeeping policies that permitted a Working Foreman to appear at work over 2 hours late, leaving other essential operations workers vulnerable to exposure to harm based on the specific and non-transferrable job duties of essential workers: Operations Supervisor, Working Foreman and Senior Process Operator.
  - d. PGW fails to maintain a safe, efficient, adequate and reasonable facility at its Passyunk Gas Processing Plant by its practice of allowing senior management personnel to use essential workers during their work hours as personal valets and/or personal matters while leaving the Plant not operating at minimal staffing capacity.
  - e. PGW fails to maintain a safe, efficient, adequate and reasonable facility at its Passyunk Gas Processing Plant when Plant Manager returned to work afterhours and failed to follow security and safety protocols including, but not limited to, his failure to announce his presence at the Plant to the on duty supervisor during a time when LNG truck unloading was being performed. Particularly egregious was Mr. McGuire's use of the Plant vehicle, without headlights and while having consumed alcohol before arriving at the Plant.
  - f. PGW fails to maintain a safe, efficient, adequate and reasonable facility at its Passyunk Gas Processing Plant by promoting and protecting persons not fully qualified for the positions of General Supervisor and Operations Supervisor, who have proven to create safety and operations exposure to harm and have indeed caused harm to Plant workers.
  - g. PGW fails to maintain a safe, efficient, adequate and reasonable facility at its Passyunk Gas Processing Plant by its failure to repair known faulty valves and other instrumentality at the Plant that have in the past caused harm and will cause harm again, i.e., release of inodoruous LNG into the atmosphere, if not properly repaired and maintained.

## COUNTER-PROPOSED ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Dwayne Ackie, Miguel J. Chavarria, Jr., Maurice A. Goodwin and Wayne Rauceo filed on October 31, 2019 is SUSTAINED.
2. That Respondent Philadelphia Gas Works is in violation of 66 Pa.C.S. § 1501 as its Passyunk Gas Processing Plant (Passyunk Plant) is unsafe, inadequate, insufficient and unreasonable to accommodate the safety of its employees, patrons and the public.
3. That Philadelphia Gas Works is ordered to make the following permanent repairs and/or replacements within the next 90 days:
  - a. Permanently repair or replace the PCV1027 valve necessary for safe and efficient LNG truck unloading;
  - b. Permanently remove and replace the current LNG vaporization system with a Propylene Glycol system.
4. That Philadelphia Gas Works shall cease the following practices and/or policies of:
  - a. Allowing any person including, but not limited to, PGW executives, managers, plant managers, general supervisors and/or operations personnel from appearing at the plant afterhours without getting proper clearance from security guards/personnel and announcing their appearance at the plant to on duty shift supervisor(s)
  - b. Allowing Operations Supervisor Ryan O'Donnell or any other Operations Supervisor or above to leave the Plant unsupervised without proper notification to all on shift essential personnel including, but not limited to, working foremen and process operators.
  - c. Allowing General Supervisor David Martinez from supervising LNG vaporization and/or truck unloading, repairs and anything related to the running of the Passyunk Plant without monitoring by PUC.
  - d. Allowing any person to operate company vehicles or any other motor vehicle at Passyunk Plant after having consumed alcohol and/or drugs.
  - e. Allowing any person to clock in any other person who is not present for work at the time he/she is clocked in.
  - f. Allowing any person to use PGW Plant personnel for personal use while Plant personnel is working (not including break and lunch times)

5. That Philadelphia Gas Works shall implement a comprehensive training program for Passyunk Plant Operations Department personnel including, but not limited to, Plant Manager, General Supervisor, Operations Supervisors, Process Operators regarding boilers and vaporizers training. Such training program shall include skill set testing without assistance by any person.
6. That Philadelphia Gas Works shall pay a civil penalty of Two Million Dollars (\$2,000,000) by sending a certified check or money order, within 20 days of the Commission's Order to:  
  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265
7. That Philadelphia Gas Works shall cease and desist any further violations of 66 Pa.C.S. § 1501.
8. That this matter shall be marked CLOSED.

Date: \_\_\_\_\_

Darlene Heep

Administrative Law Judge

**Respectfully submitted,**

*/s/ Karin M. Gunter*

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Date: March 5, 2021