



Eckert Seamans Cherin & Mellott, LLC  
213 Market Street  
8<sup>th</sup> Floor  
Harrisburg, PA 17101

TEL: 717 237 6000  
FAX: 717 237 6019

Karen O. Moury  
717.237.6036  
[kmoury@eckertseamans.com](mailto:kmoury@eckertseamans.com)

March 16, 2021

**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' Motion to Strike Portions of Complainants' Reply Brief in this Proceeding. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

*Karen O. Moury*  
Karen O. Moury

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

## CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PGW's Motion to Strike 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 Karin M. Gunter  
85 Old Cedarbrook Road  
Wyncote, PA 19095  
Kgunterlaw2@gmail.com

Dated: March 16, 2021

*/s/ Karen O. Moury*  
Karen O. Moury, Esq.

**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 M. Gunter, Esquire  
Law Office of Karin M. Gunter  
85 Old Cedarbrook Road  
Wyncote, PA 19095  
Kgunterlaw22gmail.com

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

Respectfully submitted,

*Karen O. Moury*

---

Karen O. Moury, Esq.  
Heather R. Olson, Esq.  
Kristine E. Marsilio, Esq.  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8th Floor  
Harrisburg, PA 17101  
717.237.6000; 717.237.6019 (fax)  
[kmoury@eckertseamans.com](mailto:kmoury@eckertseamans.com)  
[holson@eckertseamans.com](mailto:holson@eckertseamans.com)  
[kmarsilio@eckertseamans.com](mailto:kmarsilio@eckertseamans.com)

Of Counsel:  
Graciela Christlieb, Esq.  
Senior Attorney, Legal Department  
Philadelphia Gas Works  
800 W. Montgomery Ave.  
Philadelphia, PA 19122  
Tel (215) 684-6049  
Fax (215) 684-6798  
[Graciela.Christlieb@pgworks.com](mailto:Graciela.Christlieb@pgworks.com)

Dated: March 16, 2021

*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 TO STRIKE**

---

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, Philadelphia Gas Works (“PGW”) submits this Motion to Strike (“Motion”) portions of Complainants’ Reply Brief filed on March 5, 2021. The material that PGW seeks to have stricken includes: (a) requests for relief that Complainants set forth for the first time in Proposed Ordering Paragraphs accompanying the Reply Brief; (b) various portions of the Reply Brief, which are identified below, that either refer to no evidence in the record to support factual averments, refer to extra-record evidence, or misrepresent case law or evidence that is in the record; and (c) the Proposed Findings of Fact, in their entirety. In further support of this Motion, PGW avers as follows.

**I. BACKGROUND**

1. For purposes of brevity, PGW is omitting much of the background from this section and highlighting only the events that are relevant to this Motion.
2. Complainants initiated the proceeding by filing a Formal Complaint against PGW

on October 31, 2019, alleging safety violations at PGW's Passyunk liquefied natural gas ("LNG") Plant. After the parties exchanged several rounds of pre-served testimony, an evidentiary hearing convened on October 21, 2020.

3. During the hearing, Complainants contended that on April 9, 2020, PGW had not provided responsive documents to a discovery request. Administrative Law Judge ("ALJ") Heep directed PGW to provide responsive documents, if any, within two weeks, and noted that Complainants would be given an opportunity to supplement their testimony to address any additional answers provided by PGW. By Order issued on November 24, 2020, ALJ Heep established December 18, 2020 as the due date for this supplemental testimony. The Order also afforded PGW an opportunity to respond to the supplemental testimony, and gave Complainants a date for responding thereto. In addition, the November 24, 2020 Order established the briefing schedule, with Main Briefs due on February 12, 2021 and Reply Briefs due on March 5, 2021.

4. During the hearing, Complainants offered live testimony, raising new claims about an alleged incident that occurred on October 15, 2020. Although ALJ Heep allowed this testimony, over PGW's objection, she indicated that PGW would have at least two weeks after receipt of the transcript to respond. By Order issued on November 30, 2020, ALJ Heep established December 18, 2020 as the due date for this responsive testimony and also set dates for the submission of testimony by Complainants to respond thereto.

5. With respect to the pre-served testimony submitted after the October 21, 2020 evidentiary hearing, the parties waived cross-examination and stipulated to the admission of that testimony, subject to reserving their rights to argue that certain testimony should be excluded from the record or otherwise not be relied upon in making findings.

6. In total, Complainants pre-served twelve pieces of testimony in this proceeding,

and PGW pre-served six pieces of testimony. In addition, the transcript from the evidentiary hearing is 168 pages.

7. In accordance with ALJ Heep’s November 24, 2020 Order, PGW and Complainants filed their Main Briefs on February 12, 2021 and their Reply Briefs on March 5, 2021.

8. PGW files this Motion to respectfully request that portions of Complainants’ Reply Brief be stricken. Those portions include: (a) the Proposed Ordering Paragraphs that make requests for relief for the first time in this proceeding; (b) statements in the Main Brief, which either refer to no evidence in the record to support factual averments, refer to extra-record “evidence,” or misrepresent case law or evidence that is in the record; and (c) the Proposed Findings of Fact, in their entirety.

9. Attached as Exhibit A is a document highlighting the specific statements that PGW seeks to strike from the Complainants’ Reply Brief.

## **II. LEGAL STANDARDS**

### **A. Issues Must Be Completely Addressed in Main Brief And Not Raised for the First Time in Reply Brief.**

10. Under Section 332(a) of the Public Utility Code, Complainants have the burden of proof in this proceeding.<sup>1</sup>

11. The Commission’s regulations governing briefs require the “party with the burden of proof” to “in its main or initial brief, completely address, to the extent possible, every issue raised by the relief sought and the evidence adduced at hearing.”<sup>2</sup> The Commonwealth Court

---

<sup>1</sup> 66 Pa. C.S. § 332(a); *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990).

<sup>2</sup> 52 Pa. Code § 5.501(a)(3) (emphasis added).

imposes the same rule on parties appearing before it.<sup>3</sup>

12. Further, the Commission has held that when parties “have been directed to file briefs and fail to include an issue in their briefs, the unbriefed issue may properly be viewed as being waived.”<sup>4</sup>

13. Additionally, in a Recommended Decision adopted, in pertinent part, by the Commission, ALJ Colwell found that asserting a claim for the first time in a reply brief leaves “the utility with no opportunity to respond – is inflammatory and inappropriate and will be disregarded.”<sup>5</sup> ALJ Colwell also noted that a Motion to Strike is the proper way to address a situation in which a party advances a proposal for the first time in its reply brief.<sup>6</sup>

**B. Due Process Requires that Respondent Be Given Notice and Opportunity to Be Heard.**

14. As an administrative agency of the Commonwealth, the Commission is required to provide due process to the parties appearing before it. Due process is satisfied only when the parties are afforded notice and the opportunity to appear and be heard.<sup>7</sup>

15. When an action seeks to impose civil penalties, a respondent is entitled to full due process rights. What this means is that the respondent must be informed with reasonable

---

<sup>3</sup> *Park v. Chronister*, 617 A.2d 863 (Pa.Cmwlt. 1992) (“A reply brief may not be used by a party as an opportunity to raise new issues which should have been included in the party’s main brief”).

<sup>4</sup> *Pa. Pub. Util. Comm'n. v. Columbia Gas of Pa.*, 2005 Pa. PUC LEXIS 14 at \*165-66 (Order entered Nov. 4, 2005) (citing *Jackson v. Kassab*, 812 A.2d 1233 (Pa.Super. 2002); see also *Browne v. Pa. Dep't. of Transp.*, 843 A.2d 429 (Pa.Cmwlt. 2004); *Borough of Glendon v. Dep't. of Env't. Res.*, 603 A.2d 226 (Pa.Cmwlt. 1992).

<sup>5</sup> *Application of PPL Electric Utilities Corporation Filed Pursuant to 52 Pa. Code Chapter 57, Subchapter G, for Approval of the Siting and Construction of the Pennsylvania Portion of the Proposed Susquehanna-Roseland 500 kV Transmission Line, et al.*, Docket No. A-2009-2082652 (Recommended Decision dated November 12, 2009, at 132-133; adopted, in pertinent part, by Commission Order entered February 12, 2010, at 63-76) (“PPL Siting Application RD”).

<sup>6</sup> *Id.* at 133, FN 38; See also *Pa. PUC v. Philadelphia Gas Works*, Docket No. R-2017-2586783 (Order Granting Motion to Strike dated August 24, 2017) (ALJs struck portions of a Reply Brief when the party had failed to raise the issues in its Main Brief).

<sup>7</sup> *Schneider v. PUC*, 479 A.2d 10, 15 (Pa. Cmwlt. 1984), citing *Fusaro v. PUC*, 382 A.2d 794 (Pa. Cmwlt. 1978).

certainty of the nature of the relief sought.<sup>8</sup>

**C. Briefs Must Contain Sufficient Citations to Record Evidence.**

16. The Commission’s regulations provide that a brief “must” contain, among other things, a “[r]eference to the pages of the record or exhibits where the evidence relied upon by the filing party appears.”<sup>9</sup> Further, ALJ Heep’s November 24, 2020 Order establishing the briefing schedule in this proceeding directed that briefs contain an argument “**with sufficient citations to record evidence.**”<sup>10</sup> This Order also advised the parties “not to include any extra-record evidence in their briefs.”<sup>11</sup>

17. Notably, as ALJ Colwell found in the *PPL Siting Application RD*, which was adopted, in pertinent part by the Commission, an unsubstantiated claim appearing in a party’s brief without supporting evidence in the record cannot support a request for relief. “It is axiomatic that a party may not introduce conjecture in a brief and masquerade it as legitimate fact, just like the Commission may not make up facts which do not appear in the record and then base a decision on them. This would be a flagrant violation of the due process rights of the parties to the case.”<sup>12</sup> Misrepresentations and unsubstantiated claims of this kind should be raised in a Motion to Strike.<sup>13</sup>

---

<sup>8</sup> See *Northview Motors, Inc. v. Commonwealth, Attorney Gen.*, 562 A.2d 977, 980 (Pa. Cmwlth. 1989).

<sup>9</sup> 52 Pa. Code § 5.501 (emphasis added).

<sup>10</sup> November 24, 2020 Order at Ordering Paragraph 8 (emphasis in original).

<sup>11</sup> November 24, 2020 Order at Ordering Paragraph 8.

<sup>12</sup> *PPL Siting Application RD* at 132.

<sup>13</sup> *Id.* at FN 37.

### III. ARGUMENT

#### A. The Requests for Relief in the Proposed Ordering Paragraphs Attached to Complainants' Reply Brief, Which Were Raised for the First Time at this Juncture of the Proceeding, Should Be Stricken.

18. In their Complaint, Complainants requested that the Commission enforce gas safety standards, correct violations of such standards, remove management personnel, become involved in PGW's promotion process, and impose civil penalties on PGW.<sup>14</sup> PGW addressed these requests for relief in its Main Brief ("MB").<sup>15</sup>

19. At no time in their twelve pieces of pre-served testimony did Complainants offer any support for these requests for relief, suggest any other type of relief, or propose a specific civil penalty, using the factors set forth in the Commission's Policy Statement.<sup>16</sup>

20. In their Main Brief, Complainants requested different relief than was sought by the Complaint. The relief Complainants sought in their Main Brief was for the Commission to conduct a further review and inspection of PGW's Passyunk LNG Plant and reserve the right to thereafter impose remedies, including but not limited to civil penalties.<sup>17</sup> PGW addressed these requests in its Reply Brief ("RB").<sup>18</sup>

21. Now, despite the requirement in the Commission's regulations for the party with the burden of proof to "completely address...every issue raised by the relief sought" in the Main Brief,<sup>19</sup> Complainants' Reply Brief, *for the first time*, requests a whole new and different set of very specific relief. Although the Reply Brief includes no discussion or rationale for these

---

<sup>14</sup> Complaint at ¶ 19.

<sup>15</sup> PGW MB at 58-59.

<sup>16</sup> 52 Pa. Code § 69.1201 (factors and standards that are used by the Commission in determining if a fine is warranted for a violating a Commission order regulation or statute is appropriate).

<sup>17</sup> Complainants' MB at 18.

<sup>18</sup> PGW RB at 21-25.

<sup>19</sup> 52 Pa. Code § 501(a)(3).

requests, Complainants' attachment contains "Counter-Proposed Findings of Fact and Conclusions of Law and Counter-Proposed Order," which sets forth a number of Proposed Ordering Paragraphs for the Commission to adopt.<sup>20</sup> The Reply Brief's requests for relief include the following:

- PGW is ordered to make the following permanent repairs and/or replacements within the next 90 days;
  - Permanently repair or replace the PCV1027 valve;
  - Permanently remove and replace the current LNG vaporization system with a Propylene Glycol system;
- PGW shall cease the following practices and/or policies of:
  - Allowing any person including, but not limited to, PGW executives, managers, plant managers, general supervisors and/or operations personnel from appearing at the plant after hours without getting proper clearance from security guards/personnel and announcing their appearance at the Plant to on duty shift supervisor(s);
  - Allowing Operations Supervisors 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;
  - Allowing the General Supervisor to supervise LNG vaporization and/or truck unloading, repairs and anything related to the running of the Plant without monitoring by the PUC;
  - Allowing any person to operate company vehicles or any other motor

---

<sup>20</sup> Complainants' Counter-Proposed Findings of Fact and Conclusions of Law and Counter-Proposed Order at pp. 17-18 of the attachment, Proposed Ordering Paragraphs 3-6.

- vehicle at the Plant after having consumed alcohol and/or drugs;
- Allowing any person to clock in any other person who is not present for work at the time he/she is clocked in; and
- Allowing any person to use PGW Plant personnel for personal use while Plant personnel is working (not including break and lunch times)
- PGW shall implement a comprehensive training program for Plant personnel regarding boilers and vaporizer training, to include skill set testing without assistance by any person; and
- PGW shall pay a civil penalty of \$2,000,000.

22. Although Complainants designate them as “Counter” Proposed Ordering Paragraphs, the Commission’s regulations do not provide for such a filing. Had Complainants fulfilled their obligation under the regulations to completely address their requests for relief in the Main Brief, PGW would have had an opportunity to respond in its Reply Brief. Permitting Complainants to request this relief for the first time in their Reply Brief, to which PGW has no opportunity to respond, is a classic example of denying a party its fundamental rights of due process.

23. Further, to wait until the Reply Brief to assert a litany of requests for relief is nothing other than “sandbagging” that should not be condoned by the Commission. The Commission has not permitted parties to do this in the past and should not sanction this practice now. Indeed, ALJs Pell and Guhl did not permit a party to raise an issue in the Reply Brief when it was not discussed in the Main Brief even though the party had previously addressed it in testimony. Granting the Motion to Strike filed by the Philadelphia Industrial and Commercial Gas Users Group, the ALJs struck portions of the Office of Small Business Advocate’s Reply

Brief because the issues had not been raised in the Main Brief.<sup>21</sup> Similarly, in the *PPL Siting Application RD*, ALJ Colwell rejected attempts by a party to raise issues for the first time in the Reply Brief.<sup>22</sup>

24. Moreover, PGW should have been put on notice even before Complainants' Main Brief, either in the Complaint or through testimony, of what their specific requests for relief in this proceeding are. In that way, PGW would have had an opportunity to provide responsive testimony addressing the requests and explaining, *inter alia*, that they are: (a) unrealistic since the replacement of equipment, which is functioning properly, is costly (with ratepayers being the only source of funds since PGW has no shareholders) and time-consuming (equipment replacements, especially which are not necessary, take far longer than 90 days); (b) moot (the prior practice has been discontinued); (c) redundant (PGW already engages in certain proposed practices); and (d) unwarranted (PGW's ratepayers should not have to pay any civil penalty – let alone one anywhere near this magnitude, especially when nothing happened).

25. Consistent with prior Commission precedent, Complainants' requests for relief, which were raised for the first time in their Reply Brief, should be wholly disregarded.

**B. Complainants' Assertions of Facts Without Citations to Record Evidence and Misrepresentations of a Legal Statement and Facts Should be Stricken.**

**1. Assertion of Facts Must be Supported by Citations to Record Evidence**

26. Throughout their Rely Brief, Complainants assert facts without any citation to record evidence – either without any citation at all, or without a citation to evidence that is part of the evidentiary record in this proceeding. As discussed, the Commission's regulations and

---

<sup>21</sup> *Pa. PUC v. Philadelphia Gas Works*, Docket No. R-2017-2586783 (Order Granting Motion to Strike dated August 24, 2017). This ruling was not disturbed by the Commission's order in this proceeding adopted on November 8, 2017.

<sup>22</sup> *PPL Siting Application RD* at 132-133.

ALJ Heep's November 24, 2020 Order in this proceeding specifically require briefs to contain citations to record evidence. Further, Judge Heep has ordered the parties not to include any extra-record evidence in their briefs. Similar to ALJ Heep's directives, ALJ Colwell found in the *PPL Siting Application RD* that a party may not "introduce conjecture in a brief and masquerade it as legitimate fact."<sup>23</sup> Yet, that is exactly what Complainants have done in their Reply Brief.

27. While not an exhaustive list of situations in which Complainants have failed to cite or rely on record evidence, PGW submits that the below examples are particularly egregious, and ALJ Heep should strike these statements from Complainants' Reply Brief. Alternatively, and to the extent Complainants fail to cite and/or rely on record evidence in any other portion of their Main or Reply Briefs, PGW requests that ALJ Heep afford such statements no weight in issuing her Initial Decision in this proceeding.

28. Complainants state that PGW's assertion that they have not shown any kind of safety violation "was also a tactic used by counsel for PGW in its Answer and Preliminary Objections, when it erroneously alleged Complainants had to allege they 'are customers of PGW' and 'allege an issue with the utility's rates or public utility services.'"<sup>24</sup> PGW's Answer and Preliminary Objections are not part of the evidentiary record in this proceeding and cannot be considered as evidence of a fact.<sup>25</sup> To the extent Complainants are relying on PGW's Answer or Preliminary Objections to prove a fact, such reliance is prohibited under the Commission's regulations. As such, ALJ Heep should strike this sentence which relies entirely on PGW's pleadings in this proceeding.

29. Complainants also assert that a review of the prior testimony filed by PGW

---

<sup>23</sup> *PPL Siting Application RD* at 132.

<sup>24</sup> Complainants' RB at 8, FN 25, *citing* PGW's Prelim. Obj. at 5.

<sup>25</sup> 52 Pa. Code § 5.405 (Pleadings are to be considered as part of the pleadings record, but may not be considered as evidence of a fact unless offered and received into evidence).

witness Mr. Raymond M. Snyder in other proceedings before the Commission “provides what is perhaps a reason for PGW’s dismissive and aggressive attitude in this proceeding based on its financial interest in the P3 project with private partner Passyunk Energy Center, LLC, which includes adding facilities to liquefy natural gas at Passyunk Plant.”<sup>26</sup> The citation provided by Complainants is to Mr. Snyder’s testimony in PGW’s April 2019 filing for the proposed expansion of PGW’s tariffed Liquefied Natural Gas (“LNG”) services. This testimony is not part of the record in this proceeding. Section 5.407 of the Commission’s regulations expressly outlines the proper procedure for relying on a portion of a record in another proceeding and requires the portion of the record in the other proceeding to be offered in evidence and shown to be relevant and material.<sup>27</sup> Complainants did not follow that procedure here. The record in this proceeding does not contain any evidence about the P3 project. As such, ALJ Heep should strike Complainants reference to same.

30. Complainants also make the following statements, which are entirely unsupported by the record in this proceeding:

In response to a subpoena for documents, electronically stored information or objects, Sovereign Security stated PGW retained [security footage from February 23, 2018]. PGW has not produced a copy of the security video, incident or investigation reports or the like, despite being given addition (sic) time to do so. As such, Employees maintain PGW has unclean hands. PGW had exclusive possession and control of the security video and related evidence. Complainants assert PGW cannot argue uncorroborated hearsay evidence based on Jackson or any other ALJ initial decision, when it failed to produce the corroborating evidence that was properly ordered to do so pursuant to a motion to compel and testimony orders.<sup>28</sup>

The referenced Sovereign Security response was given as part of Complainants’ federal lawsuit

---

<sup>26</sup> Complainants’ RB at 8-9, FN 26, *citing* PGW Gas Service Tariff, Docket No. R-2019-3009016 at 23-34 (April 8, 2019).

<sup>27</sup> 52 Pa. Code § 5.407.

<sup>28</sup> Complainants’ RB at 13-14 (internal citations omitted).

and is not part of the evidentiary record in this proceeding. While Complainants attached this response to their October 19, 2020 Opposition to PGW's Motion in Limine, it was never made part of the evidentiary record. As discussed, although pleadings are to be considered part of the pleadings record, they may not be considered as evidence of a fact.<sup>29</sup> As such, ALJ Heep should strike the portion of Complainants' Reply Brief referencing and relying on same.

31. Also, Complainants' assertion that PGW has "unclean hands" for failing to produce the security video is entirely unsupported. These legal issues are questions to be decided by the presiding officer. Complainants could have raised this issue by following the appropriate procedures outlined in Chapter 5 of the Commission's regulations (pertaining to discovery), but they did not. Had Complainants pursued their concerns through the appropriate Chapter 5 mechanisms, PGW would have had an opportunity to respond in full to this completely unwarranted and preposterous allegation. Further, ALJ Heep would have had a complete description of the parties' positions upon which she could make a determination as to PGW's compliance with the discovery process. Since Complainants failed to pursue this issue, and in turn, ALJ Heep never made a decision on the issue, Complainants' claims are entirely unfounded and are, certainly, not based on record evidence. For these reasons, ALJ Heep should strike these statements in Complainants' Reply Brief. It is worth noting that PGW continues to believe that it was fully compliant and responsive to Complainants' discovery requests, including Set III-4 (the question Complainants are referencing in their Reply Brief).

32. The Reply Brief also includes an entire paragraph, wherein Complainants cite and rely exclusively on their Formal Complaint to support facts related to their allegation that PGW

---

<sup>29</sup> 52 Pa. Code § 5.405.

plant personnel have manipulated readings of a temperature indicator (TE1019).<sup>30</sup> Again, while pleadings are to be considered part of the pleadings record, they may not be considered as evidence of a fact.<sup>31</sup> As such, ALJ Heep should strike this entire paragraph.

33. Without any citation, Complainants assert that Ryan O'Donnell "had been gone from the plant leaving it unsupervised for at least two hours until Walker arrived."<sup>32</sup> Since Complainants make this statement without any reference to the record, ALJ Heep should strike this statement from the Reply Brief.

34. The Reply Brief also describes statements allegedly made by Mr. Walker in a "panicking" utterance during the alleged valve incident on October 15, 2020. In support of these assertions, Complainants cite the transcript at page 22, lines 17-22.<sup>33</sup> During the hearing on October 21, 2020 in this proceeding, however, PGW objected to these statements, and ALJ Heep sustained this objection.<sup>34</sup> As such, ALJ Heep should strike this reference to evidence that has been excluded from the evidentiary record.

## **2. Complainants Misrepresent Legal Precedent and Facts**

35. In addition to failing to cite record evidence, Complainants make a number of misrepresentations in their Reply Brief. As discussed, misrepresentations and unsubstantiated claims warrant the filing of a Motion to Strike.<sup>35</sup> While not an exhaustive list of situations in which Complainants have made a misrepresentation, PGW submits that the below examples are particularly egregious, and ALJ Heep should strike these statements from Complainants' Reply

---

<sup>30</sup> See Complainants' RB at 16-17.

<sup>31</sup> 52 Pa. Code § 5.405.

<sup>32</sup> See Complainants' RB at 22.

<sup>33</sup> Complainants' RB at 36, FN 155.

<sup>34</sup> Tr. at 23.

<sup>35</sup> *PPL Siting Application RD* at 132, FN 37.

Brief. Alternatively, and to the extent Complainants make other misrepresentations in their Main or Reply Briefs, PGW requests that ALJ Heep afford such statements no weight in issuing her Initial Decision in this proceeding.

36. Complainants assert: “[T]he Commonwealth Court affirmed the PUC’s ability to prevent harm, which does not require actual harm **and where ‘proven exposure to harm’ does not require its occurrence to be certain or probable.**”<sup>36</sup> This statement, however, is a legal misrepresentation of the Court’s holding in *Povacz v. Pa. PUC*.<sup>37</sup> Importantly, in *Povacz*, the Court never held that “proven exposure to harm” does not require its occurrence to be certain or probable. In fact, the Court reaches the opposite conclusion. In *Povacz*, the Court acknowledged that in the appeal, the Commission had argued that proven exposure to harm does not require its occurrence to be certain or probable. In addressing the Commission’s argument, the Court noted that the exact issue was addressed by the Court in *Naperville Smart Meter Awareness v City of Naperville*,<sup>38</sup> wherein the complainants in that proceeding argued that smart meter devices and other radio frequency electromagnetic energy (RF) emissions have the **potential** to be harmful. In *Naperville I*, the Court concluded that while the smart meters **may** pose health risks, the allegation of harm was insufficient to raise a claim for relief that is more than speculative.<sup>39</sup> Based on this analysis, the *Povacz* Court concluded: “The reasoning of *Naperville I* concerning the applicable burden of proof is persuasive. We therefore affirm the burden applied by the PUC concerning proof of harm from RF emissions.” As such, Complainants’ assertion that proven exposure to harm does not require its occurrence to be

---

<sup>36</sup> Complainants’ RB at 7 (emphasis added).

<sup>37</sup> *Povacz v. Pa. PUC*, 241 A.3d 481 (Pa. Cmwlth. 2020) (“*Povacz*”).

<sup>38</sup> *Naperville Smart Meter Awareness v City of Naperville*,<sup>38</sup> 2013 U.S. Dist. LEXIS 40432 (N.D. Ill., No. 11 C 9299, filed Mar. 22, 2013 (“*Naperville I*”),

<sup>39</sup> *Povacz*, 241 A.3d at 493-94.

certain or probable is a misrepresentation of the Commonwealth Court’s holding in *Povacz*. Especially since the burden required to prove harm is pertinent to the adjudication of this proceeding, PGW respectfully requests that ALJ Heep strike this blatant misrepresentation so that it cannot be considered or afforded any weight in this proceeding.

37. In their Reply Brief, Complainants also assert: “Complainants do, however, agree with one thing PGW states, the human error of unqualified personnel David Martinez and Ryan O’Donnell consistently contribute to the unsafe operations and conditions at the Plant, inter alia.”<sup>40</sup> Complainants appear to be referring to PGW witness Brian McGuire’s Surrebuttal Testimony, in which he describes the alleged October 15, 2020 valve incident as “harmless human error” by one of the Complainants.<sup>41</sup> To be clear, PGW, certainly, never made the claim that David Martinez and Ryan O’Donnell are unqualified or have contributed in any way to any alleged unsafe operations or conditions at the Passyunk Plant. PGW also never associated these specific individuals with any “human error” at the Plant. As such, Complainants’ assertion is a complete misrepresentation of PGW’s position and entirely unsupported by the record. For these reasons, ALJ Heep should strike this statement from Complainants’ Reply Brief.

38. Complainants aver that PGW has violated Section 1501 of the Public Utility Code, and state: “In fact Mr. Rauceo stated ‘Now, because of dangerous practices and unqualified personnel in supervisory positions at PGW Passyunk LNG Facility, I have decided to file a formal complaint to resolve these problems before another disaster occurs.’” In support of this allegation, Complainants cite the Direct Testimony of Wayne Rauceo.<sup>42</sup> The sentence, however, is extremely misleading in the context in which it is provided. The disaster to which

---

<sup>40</sup> Complainants’ RB at 11.

<sup>41</sup> PGW St. No. 3-SUR (Surrebuttal) at 5.

<sup>42</sup> Complainants’ RB at 34.

Mr. Rauceo referred was the explosion at Philadelphia Energy Solutions, not a “disaster” that occurred at the Passyunk Plant or is a subject of this Formal Complaint, as Complainants seem to imply in their Reply Brief.<sup>43</sup> As this statement is extremely misleading, PGW respectfully requests that ALJ Heep strike it.

39. Finally, the Reply Brief states: “Mr. Chavarria also affirms the problems with the PCV-1027 valve, i.e., its ‘broken ground safety feature.’” Complainants cite the Reply testimony of Complainant Miguel J. Chavarria.<sup>44</sup> Mr. Chavarria’s testimony, however, does not indicate that the ground safety feature of the valve was broken, as Complainants suggest. Rather, Mr. Chavarria testified that the bypass line for PCV-1027 has been used for unloading LNG trailers, “thereby nullifying the broken ground safety feature on PCV-1027.”<sup>45</sup> Mr. Chavarria explained that “PCV-1027 is an emergency shut down valve that stays open as long as a positive electrical ground is achieved” and that if “the electrical ground is broken, the valve will shut.”<sup>46</sup> He was in no way suggesting that a safety feature on PCV-1027 is “broken” as the Reply Brief states. As this statement is extremely misleading, PGW respectfully requests that ALJ Heep strike it.

**C. The Proposed Findings of Fact in Complainants’ Reply Brief Should Be Stricken in Their Entirety.**

40. Despite the requirement in the Commission’s regulations for the party with the burden of proof to address all evidence adduced at the hearing in the Main Brief,<sup>47</sup> Complainants’ Reply Brief contains 121 Proposed Findings of Fact that span pages 2-14 of the

---

<sup>43</sup> EE St. No. 4 (Direct) at 4.

<sup>44</sup> Complainants’ RB at 36.

<sup>45</sup> EE St. No. 3-Reply at 4.

<sup>46</sup> *Id.*

<sup>47</sup> 52 Pa. Code § 5.501(a)(3).

attachment. This is compared to 11 Proposed Findings of Fact spanning less than two pages of the Main Brief, starting at the bottom of page 18 and ending at the top of page 20. Even without comparing the two sets of proposals, it is obvious that the Proposed Findings of Fact in the Main Brief does not address all of the evidence adduced at the hearing. A quick comparison reveals that the Reply Brief's Proposed Findings of Fact include numerous topics, including the vaporization process, adequate staffing, promotions, the "valve incident" and others, which were omitted from the proposals set forth in the Main Brief.

41. By waiting until the Reply Brief to include a complete set of Proposed Findings of Fact, Complainants have deprived PGW of the opportunity to point out those that are flawed. Although Complainants call them "Counter" Proposed Findings of Fact, the Commission's regulations do not provide for such a filing. As with the inclusion of Proposed Ordering Paragraphs in the Reply Brief, making a whole new set of requests for relief, the vast majority of the Proposed Findings of Fact are being offered for the first time in the Reply Brief. If they are not stricken, it will be what ALJ Colwell referred to as "inflammatory and inappropriate," and as such should be disregarded.<sup>48</sup>

42. Complainants committed an egregious violation of the Commission's procedural regulations by including well over 100 brand new Proposed Findings of Fact *for the first time* in their Reply Brief, to which PGW has no opportunity to respond. The onus should not be on PGW to expend the significant resources that would be required to undergo the cumbersome process of fact-checking each of the proposals. For that reason, and those described above, the Proposed Findings of Fact attached to the Reply Brief should be stricken in their entirety. In the event they are not stricken in their entirety, the Proposed Findings of Fact that are based on

---

<sup>48</sup> PPL Siting Application RD at 133.

statements that are unsupported by a citation to the evidentiary record or misrepresent the evidence, as discussed in Part B. of Section II. of this Motion, should be stricken so that they cannot be relied upon during the adjudication of the Complaint.

### **III. CONCLUSION**

For the reasons set forth above, PGW respectfully requests that ALJ Heep issue an Order striking the portions of Complainants' Reply Brief identified by this Motion. Alternatively, and to the extent the Complainants make similar misrepresentations or unsupported statements in their Main or Reply Briefs as described herein, ALJ Heep should afford these statements no weight in issuing her Recommended Decision in this proceeding.

Respectfully submitted,

Date: March 16, 2021

*Karen O. Moury*

---

Karen O. Moury, Esq. (PA ID #36879)  
Heather R. Olson, Esq. (PA ID # 92073)  
Kristine E. Marsilio, Esq. (PA ID #316479)  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8<sup>th</sup> Floor  
Harrisburg, PA 17101  
717.237.6000

Graciela Christlieb, Esq. (PA ID # 200760)  
Philadelphia Gas Works  
800 W. Montgomery Ave.  
Philadelphia, PA 19122  
215.684.6164

## VERIFICATION

I, Karen O. Moury, state that I am an attorney for Philadelphia Gas Works and that I am authorized to make this verification on its behalf. I hereby state the facts contained in the foregoing Motion are true and correct to the best of my knowledge information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Dated: March 16, 2021

/s/ Karen O. Moury  
Karen O. Moury, Esq.

# EXHIBIT A

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dwayne Ackie, Miguel J. Chavarria, Jr.,	:	
Maurice A. Goodwin and Wayne Rauceo	:	
	:	
v.	:	C-2019-3013933
	:	
Philadelphia Gas Works	:	

**REPLY BRIEF OF COMPLAINANTS  
DWAYNE ACKIE, MIGUEL J. CHAVARRIA, JR., MAURICE A GOODWIN  
AND WAYNE RAUCEO**

Karin M. Gunter, Esquire  
Law Office of Karin M. Gunter  
85 Old Cedarbrook Road  
Wyncote, PA 19095  
(215) 548-9992  
Kgunterlaw2@gmail.com  
Counsel for Complainants

Date: March 5, 2021

## TABLE OF CONTENT

	Page
Table of Authorities	3
I. Introduction	4
II. Procedural History	8
III. Summary of Argument	9
IV. Argument	11
A. Applicable Legal Standards	11
B. Complainants Provide Competent, Credible Documentary and Testimonial Evidence in Support of Finding Section 1501 Violations	14
1. Manipulation of Temperature Indicator (TE1019)	15
2. Structural Cracks in LNG Tanks	18
3. Operations Supervisor Ryan O'Donnell Leaving Plant Unsupervised and Without Telling Other Essential Operations Personnel	18
4. February 23, 2018 After Hours, Unannounced Return of Plant Manager Brian McGuire	22
5. Plant General Supervisor David Martinez's Removal of Two of Three Essential Workers from Plant to Accommodate his Vacation Travels (August 2017)	24
6. Absence of Working Foreman at Plant for Over Two Hours on Christmas Day 2017	28
7. Promotion and Protection of Unqualified Management Personnel	30
8. Pattern and Practice of Uncontrolled Release of LNG	35
9. Re-pressurization and New Plant Truck Rule	36
V. Conclusion	37
VI. Proposed Findings of Facts and Conclusions of Law	

attorney-client privilege, Mr. McGuire incorrectly states “even if true, [Complainants’ statements and allegations in their direct testimony] do not show any kind of safety violations or concerns with the way the Plant was being operated.”<sup>16</sup> Plant manager McGuire seems to make a tenuous distinction between “safety” and “security” violations that falls flat.<sup>17</sup>

PGW fails to see a “link between events [complained of] and any harmful incident or proven exposure to harm.”<sup>18</sup> However, “the proper focus of an inquiry regarding the safety of a utility facility or service is whether the preponderance of the evidence demonstrates that a utility facility or service *caused or will cause harm to the public.*”<sup>19</sup> (emphasis added) Specifically, the Commonwealth Court affirmed the PUC’s ability to prevent harm, **which does not require actual harm and where “proven exposure to harm” does not require its occurrence to be certain or probable.**<sup>20</sup>

The Code provides the Commission with the ability to make a determination as to whether service or facilities of a public utility “are unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, or otherwise in violation” of the Code.<sup>21</sup> Based on the Complainants’ averments of a pattern and practice of safety and operations violations, they have demonstrated by the preponderance of the evidence PGW’s Passyunk Plant caused or will cause

---

<sup>16</sup> PGW St. No. 3 at 2:8-13, 6:22-7:2

<sup>17</sup> EE St. No.4-SUP at Ex. VI (proprietary version).

<sup>18</sup> PGW Main Br. at 1.

<sup>19</sup> Randall v. PECO, Docket No. C-2016-253766, Opinion and Order at 31 (May 9, 2019), *appeal docketed*, No. 607 CD 2019 (Pa. Commw. May 22, 2019)

<sup>20</sup> Povacz v. Pa. PUC, 241 A.3d 481, 493 (Pa. Commw. 2020)(utility’s conduct creating “a proven exposure to harm” that need not be probable or certain)

<sup>21</sup> 66 Pa.C.S. § 1505(a). Operations violations that cause an unsafe, inadequate facility due to unmanned equipment and insufficient essential personnel being on duty, *inter alia* are well within the Commission’s purview. See Povacz, 241 A.3d at 491 (disjunctive burden of proof required for violations)

harm to the public do to “faulty override valves, dangerously unmanned plant apparatus, abandonment of work areas, manipulation of temperature indicators and uncontrolled, unsafe gas mitigation,” *inter alia*.<sup>22</sup>

In the remainder of the Introduction section of its Main Brief, PGW cites the “engineering backgrounds and lengthy careers” of its witnesses as the basis for refuting all Complainants’ “inconsequential and frivolous claims” in this matter.<sup>23</sup> PGW provided witness testimony of Raymond M. Snyder, PE (“Snyder”), Daniel J. Cassidy (“Cassidy”) and Passyunk plant manager McGuire.<sup>24</sup> However, none of these witnesses were presented as subject matter experts in this proceeding with regards to safety and operations of facilities as contemplated by 66 Pa.C.S. § 1501, *et seq.* and averred.<sup>25</sup> Only Mr. Snyder has ever testified before the Commission in the past, and that testimony related to “computation annual purchased gas costs,” “establish the availability, rates, and terms of service for eligible customers under a proposed Negotiated Liquefied Natural Gas Service.”<sup>26</sup> Moreover, Mr. Cassidy left PGW in January 2003, not

---

<sup>22</sup> EEs’ Main Br. at 4-5. *See also* Formal Complaint, ¶16; Tr. at 20:10-67:25; 81:24-108:13 and EE St. No. 3 at 3:24-25, 4:7-5:10.

<sup>23</sup> PGW Main Br. at 2.

<sup>24</sup> Snyder provides testimony as PGW St. No. 1 with respect to vaporization process; and Cassidy as PGW St. No. 2 with respect to staffing and safety/security protocols at the Plant. McGuire provided testimony regarding various topic as PGW St. No. 3.

<sup>25</sup> All three PGW witnesses state the same conclusory refrain/mantra “Complainants allegations do not show any kind of safety violations, including any violations of the Public Utility Code” perhaps with a hope that repetition and not facts will produce a desired result. **This was also a tactic used by counsel for PGW in its Answer and Preliminary Objections, when it erroneously alleged Complainants had to allege they “are customers of PGW” and “allege an issue with the utility’s rates or public utility services.” Prelim. Obj. at 5.** Employees hope facts, truth, proof, legal precedent and their desire for a safe workplace will outweigh legal gimmicks.

<sup>26</sup> PGW St. No. 1 at 18-22. Snyder retired in 2019. *Id.* at 1:4. **A review of that earlier testimony shows he has provided other rate related testimony. It also provides what is perhaps a reason for PGW’s dismissive and aggressive attitude in this proceeding based on its financial interest in the P3 project with private partner Passyunk Energy Center, LLC, which includes adding facilities to liquefy natural gas at**

returning until September 2019, well after the majority of the incidents that form the basis of this Complaint.<sup>27</sup> Neither he nor Mr. Snyder provided rebuttal testimony regarding the October 15-16, 2020 valve incident.<sup>28</sup> Mr. Cassidy makes bald assertions such as “Mr. McGuire is known by everyone working at the Plant, including the security guards, and there is no one who works at the Plant from whom he would need to obtain permission before entering the Plant,” without providing any corroborating evidence as support.<sup>29</sup> Such testimony requires neither an engineering degree nor a lengthy career.

Ironically, Messrs. McGuire, Martinez and Operations Supervisor Ryan O’Donnell (“O’Donnell”), persons in Operations management positions at the Plant and the subjects of much of the formal complaint, do not have engineering backgrounds.<sup>30</sup> Complainants, McGuire, Martinez and O’Donnell are the persons who actually have first-hand knowledge of the practices, protocols and patterns at the Plant on a daily basis. Further, Messrs. Martinez and O’Donnell are specifically shown to not meet the qualifications of their positions when promoted, which Messrs. Snyder nor Cassidy addressed.<sup>31</sup> However, matters of frivolity, evidentiary weight, credibility and sufficiency of evidence are best left for the Commission to determine. And finally, as argued consistently throughout the numerous motions in limine filed by PGW, the competent

---

**Passyunk Plant. (PGW Gas Service Tariff, Docket No. R-2019-3009016 at 23-34 (April 8, 2019))**

<sup>27</sup> PGW St. No. 2 at 1:7, 15-17. Cassidy also testified his last visit to the Plant occurred on March 2020. Tr. at 118:7-11.

<sup>28</sup> PGW St. No. 1 (Snyder – Vaporization Process); PGW St. No. 2 and 2-SR (Cassidy – Staffing, Admission Policy).

<sup>29</sup> PGW St. No. 2-SR at 3:9-11. *But see* EE St. No. 1 at 12:19-13:2.

<sup>30</sup> EE St. No.4-SR at 5:13-19 (noting retired PGW witness Snyder, witness Cassidy not in the chain of command in cases of Passyunk plant emergencies). *See also* EE St. No. 3-REPLY at 4:13-17 (discussing strict gas release protocol); and EE St. No.4-SSR at 2:4-11 (noting PGW maintains 0-30 station on PES property).

<sup>31</sup> EE St. No. 4 at 4:8-6:23, Ex. I; *but see* PGW St. No. 1 and No. 2.

unannounced, driving plant vehicle without headlights on and smelling of alcohol are just some of the safety and operations concerns raised by Complainants,<sup>39</sup> *inter alia*. Passyunk plant is a natural gas distribution, LNG storage and vaporization facility, and LNG is an inodorous gas whose “vapors are potentially flammable and dangerous” consisting primarily of methane (CH<sub>4</sub>).<sup>40</sup> LNG’s “handling and processing . . . requires great care in order to ensure public safety.”<sup>41</sup>

Under these circumstances, Employees assert section 1501 of the Code affords the Commission with the power to make certain PGW “maintain adequate, efficient, safe and reasonable” facility at the Passyunk plant for their safety and that of the public in general.<sup>42</sup> Though PGW attempts to argue Plant Manager McGuire “writes the protocols for ensuring the safe operation of the Passyunk Plant, and he takes those responsibilities seriously,”<sup>43</sup> the documentary and testimonial evidence shows otherwise.<sup>44</sup> **Complainants do, however, agree with one thing PGW states, the human error of unqualified personnel David Martinez and Ryan O’Donnell consistently contribute to the unsafe operations and conditions at the Plant, *inter alia*.**<sup>45</sup>

#### IV. ARGUMENT

---

<sup>39</sup> EE St. No. 1 at 8:21-22, 10:20-17:11 & Exhibits II, IV, IV-A, IV-B, V; EE St. No. 1-SR at 4:3:4-20 (“Plant policy for after hours. . .”).

<sup>40</sup> EE St. No. 1, Exhibit II (A) – PGW Director of Gas Processing, Curt Malkemes 10/22/18 St, at 1-2.

<sup>41</sup> *Id.*

<sup>42</sup> 66 Pa.C.S. § 1501

<sup>43</sup> PGW Main Br. at 7 (another bald assertion not supported by the evidence).

<sup>44</sup> EE St. No. 4-SUP, Exhibit VI (proprietary version); EE St. No. 4-SSR at 1:19- 4:8; EE St. No. 4-SUP at 1:3-8 (“. . .February 23, 2018.”), 1:16-21, 2:1-8 & Exhibit IV; EE St. No. 4-SR at 3:23-5:12; EE St. No. 4 at 6:24-9:21; EE St. No. 1 at 10:20-16:2 & Exhibit IV; EE St. No. 1-SR at 3:18-4:20.

<sup>45</sup> *See generally* Formal Complaint ¶¶ 9, 10, 12, 13, 15, 17; EE St. No. 1-REPLY at 3:19-4:9; EE St. No.

Complainants find this analysis has gaping holes beyond PGW’s normally slanted review. As previously discussed in their Response in Opposition to PGW’s Motion in Limine filed on October 20, 2020 (“Response to Initial Motion in Limine”), courts have admitted hearsay evidence “not inconsistent with undisputed facts” in cases where circumstantial evidence is used to establish the case.<sup>51</sup> As in their initial October 19, 2020 motion in limine, PGW again acknowledges relaxed evidentiary rules in administrative proceedings and raises the argument of prohibition against crucial findings of facts based “solely on hearsay evidence.”<sup>52</sup> In both instances, PGW cites an initial ALJ decision finding respondent/company’s witness testimony of the contents of a call as uncorroborated hearsay, since the company failed to produce the call and failed to produce business records of notations of the call.<sup>53</sup> These facts are distinguishable from the instant matter.

In the instant matter, for example, Mr. Rauceo testified he viewed the security video showing the movements of Mr. McGuire on the evening of February 23, 2018.<sup>54</sup> In response to a subpoena for documents, electronically stored information or objects, Sovereign Security stated PGW retained those items.<sup>55</sup> PGW has not produced a copy of the security video, incident or investigation reports or the like, despite being given addition time to do so.<sup>56</sup> As such, Employees maintain PGW has unclean hands. PGW had exclusive possession and control of the

---

<sup>51</sup> Bleilevens v. State Civil Serv. Comm., 312 A.2d 109, 111 (Pa. Commw. 1973)

<sup>52</sup> Ackie, et al v. PGW, Docket No. C-2019-3013933 at 5 (Mot. in Limine October 19, 2020)(citations omitted) and PGW Main Br. at 13.

<sup>53</sup> Jackson v. PECO Energy Co., Docket No. F-2013-2351046 at 8 (Initial Decision July 12, 2013).

<sup>54</sup> EE St. No. 4 at 7:5-9:6.

<sup>55</sup> Response in Opposition to Motion in Limine, ¶¶ 16, 22, October 20, 2020 (non-proprietary), Exhibit 6 (response to subpoena seeking security logs, incident reports, investigation reports, *inter alia.*)

<sup>56</sup> Tr. at 7:13-9:12. PGW only produced security logs encompassing February 23, 2018. (EE St. No. 4-

security video and related evidence.<sup>57</sup> Complainants assert PGW cannot now argue uncorroborated hearsay evidence based on Jackson or any other ALJ initial decision, when it failed to produce the corroborating evidence that was properly ordered to do so pursuant to a motion to compel and testimony orders.<sup>58</sup>

Finally, PGW fails to acknowledge competent hearsay exceptions relevant to matters in this proceeding. For example, Rule 803(1), (2) and (6) provide for the admission of hearsay evidence, whether or not the declarant is available. Thus, hearsay evidence providing “present sense impressions”, “excited utterance,”<sup>59</sup> and “records of regularly conducted activity” are admissible, and thus corroborated. Employees apply these exceptions to Mr. Ackie’s and Mr. Chavarria’s testimony regarding the October 15-16, 2020 valve incident and Mr. Ackie’s testimony and contemporaneous notes regarding the February 23, 2018 incident, *inter alia*.<sup>60</sup> Due process in these matters identified above and elsewhere is not implicated, since the hearsay statements where the exceptions apply are from employees of Passyunk Plant, who PGW has direct access to, interviewed and/or have control over or verified/certified statements from its own high level Gas Processing management personnel. The latter being admissions.

**B. Complainants Provide Competent Documentary and Testimonial Evidence in Support of Finding Section 1501 Violations**

---

(SUP at 2:1-3, Ex. V)

<sup>57</sup> EE St. No. 4 at 8:19-23.

<sup>58</sup> *Id.* and March 19, 2020 Order granting in part and denying in part Complainants’ Motion to Compel Answers and Dismiss Objections to First Request for Production of Documents Nos. 3-8.

<sup>59</sup> Rule 803(2) is narrowing applied to an event or condition that is “startling” and not putting a “set time interval” limit on passage of time when the event/condition occurred and the utterance made. Pa.R.E. 803(2) *Comments*. See also Commonwealth v. Gore, 262 Pa.Super. 540, 547, 396 A.2d 1302, 1305 (1978).

<sup>60</sup> Tr. at 20-68, 81-108; and EE St. No. 1-REPLY at 1:7-3:7, 3:19-4:9. See also EE St. No. 1 at 10:22-16:5 & Exhibits II(E), IV, V

Tomczak.”<sup>66</sup> He also stated he was retaliated against for doing so. Did Plant management personnel self-report any of these incidents to the Safety Committee? Did Mr. Martinez or Mr. McGuire report the removal 2 of 3 essential personnel from the Plant for nearly an hour for personal use and not PGW business, or the clocking in of an essential worker by management more than 2 hours *before* he arrived? The answers to all of these questions are “No”. So, Mr. Snyder’s testimony that there were no reports of safety violations is a bit self-serving in light of the bad behavior and questionable qualifications of Plant management. Moreover, though Mr. Rauceo specifically acknowledges Mr. Snyder’s comment on his duty to report, he further states that the white “in” group prioritizing protecting themselves over “the safety of front line plant workers and the City of Philadelphia.”<sup>67</sup> Further, when Complainants did make reports of safety and operations concerns, they were and are met with what they have experienced in this proceeding, that is, belittling, besmirching, denial that the matters are safety and/or operations related and dismissal of their averments as “inconsequential and frivolous.”

Moving to the substance of the averments and responses, Employees state during past winter vaporization seasons, which happens between November through March, “plant personnel have manipulated that readings of a temperature indicator (TE1019) to reduce the frequency of alarms and avoid the labor of insuring that the vaporization operation is safe.”<sup>68</sup> They describe in detail the vaporization process of converting 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), which after

---

<sup>66</sup> EE St. No. 2 at 3:6-10 (incident with Tomczak refers to the December 25, 2017 incident discussed in detail below).

<sup>67</sup> EE St. No. 4-SR at 2:12-19.

<sup>68</sup> Formal Complaint, ¶ 7.

reducing pressure that gas is sent to the end user, i.e., the consumer.<sup>69</sup> TE1019 is located “downstream” from the VNG common header to “insure . . . the line is free of unwanted elements.”<sup>70</sup> Further, during winter operations TE1019 “may give a low temperature alarm due to external coldness.” Plant personnel are require to check the area where the TE1019 is to insure “the alert is due to external temperatures and not the presence of volatile LNG.”<sup>71</sup>

Messrs. Chavarria and Rauceo give extensive testimony on how Passyunk plant practices include wrapping or “jerry-rigging” a steam lance around TE1019, since 2000 and continuing to this day and are unsafe.<sup>72</sup> Specifically, they each refute Mr. Snyder’s testimony, the latter of which focuses more on Mr. Rauceo’s statements and not Mr. Chavarria’s. For his part, Mr. Chavarria testified the current practice of jerry rigging a steam lance/hose around the LNG vaporizer piping masks the “line temperature . . . to be the same as the steam hoses’ temperature.” This in turn disables the “low temperature safety shutdowns for the vaporization system. By doing so, in 2000, this allowed LNG to get into the VNG piping, “which is not engineered to handle LNG’s cryogenic temperatures, setting off an explosion. The same operations condition is still being used today at PGY Passyunk Plant.”<sup>73</sup> Mr. Chavarria as a Working Foreman operates the “vaporizers and auxiliary equipment associated with the LNG vaporization at Passyunk Plant” and as such has firsthand knowledge of the “design of Passyunk Plant’s Vaporization System,” which he describes as “dangerous and critically flawed and should

---

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> EE St. No. 3 at 3:9-20 and EE St. No. 3-SR at 1:10-2:2. *See also* EE St. No. 4 at 10:1-12:13 and EE St. No. 4-SR at 1:9-2:9.

<sup>73</sup> EE St. No. 3 at 3:12-20.

corporate policies, protocols and procedures.<sup>92</sup>

The most important fact of all, however, is the fact that the Plant remained unsupervised without notification of the other essential plant personnel.<sup>93</sup> Neither the Working Foreman nor Senior Process Operator have the ability to make management decisions, since as Mr. McGuire states the “Operation Supervisor is the acting boss out of hours of plant operations and safety”.<sup>94</sup> Mr. Snyder also testified “[i]t is the Operations Supervisor’s responsibility to ensure that the operators remain in their area or at the Plant.”<sup>95</sup> Similar to the discussions later in this Brief, the proven exposure to harm exists when even 1 of the 3 essential personnel is not at the Plant, and even more so in this matter since O’Donnell is the Operations Supervisor tasked with managing operations and had been gone from the plant leaving it unsupervised for at least 2 hours until Walker arrived.

A similar situation exists again, when O’Donnell left the Plant on September 11, 2019. Once again, O’Donnell was the Operations Supervisor on shift. From prior credible testimony, Messrs. McGuire and Martinez do not work shifts. For judicial notice sake, September 11, 2019 was a Wednesday. He left the Plant without notifying the Working Foreman, Complainant Chavarria and the senior process operator Kyre Chapman.<sup>96</sup> Mr. Chavarria testified without plant management supervision, there are certain emergency procedures that cannot be implemented including, but not limited to, safety systems, first

---

<sup>92</sup> See EE St. No. 4-SUP, Ex. VI (proprietary version)

<sup>93</sup> *Id.* at 19:22-25.

<sup>94</sup> Tr. at 146:17-20.

<sup>95</sup> PGW St. No. 1 at 4:7-8. Which begs the question, whose responsibility is it to ensure the Operations Supervisor, in this case, Mr. O’Donnell remains in his area and at the Plant out of hours?

<sup>96</sup> EE St. No. 3 at 5:20 – 6:22

patrons, employees, and the public.”<sup>144</sup> The instant matter is distinguishable. Based on these powers and provisions afforded the Commission, Employees maintain in this proceeding PGW is violating section 1501 because of its promotions of unqualified Passyunk Plant Operations management personnel Martinez and O’Donnell, safety and operations at the plant violate the Code. **In fact, Mr. Rauceo stated “Now, because of dangerous practices and unqualified personnel in supervisory positions at PGW Passyunk LNG Facility, I have decided to file a formal complaint to resolve these problems before another disaster occurs.”**<sup>145</sup>

PGW once again by Mr. McGuire justifies its promotion of Martinez and O’Donnell simply stating that guidelines are irrelevant and instead one’s subjective determination of who is qualified dominates.<sup>146</sup> For the second time in this Reply, Employees state, “What?”<sup>147</sup> Mr. McGuire’s responses sounds a lot like rules apply to everyone but him and who he deems they don’t apply to. Doesn’t the Commission set forth guidelines and rules for public utilities, *inter alia*? Putting aside lack of logic in that response, McGuire is used to state this on behalf of PGW “Mr. Rauceo did not ‘offer a single example of how either promotion resulted in the unsafe operation of the Plant or even placed safety in jeopardy.’”<sup>148</sup>

Mr. McGuire testified at the October 21, 2020 hearing “a shift supervisor is a training position to become an operation supervisor.”<sup>149</sup> The job description for a General

---

<sup>144</sup> 66 Pa.C.S. § 1501

<sup>145</sup> **EE St. No. 4 at 4:3-7.**

<sup>146</sup> PGW Main Br. at 42-43. By way of further response, the job description states “education & experience qualifications”. And further it says “Must have. . . .” and not “If you feel like considering it..”

<sup>147</sup> See n.1, *supra*

<sup>148</sup> PGW Main Br. at 43.

<sup>149</sup> Tr. at 146:23-24.

Operations Supervisor Walker to “secure an outlet valve 1027” and other instructions.<sup>153</sup> 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>154</sup> Mr. Ackie went on to describe the remainder of events that included Mr. Walker’s “panicking” utterance due to the contemporaneously occurring events “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>155</sup> Mr. Chavarria also affirms the problems with PCV-1027, i.e., its “broken ground safety feature.”<sup>156</sup> Both Messrs. Ackie and Chavarria go into great detail explaining the actual events of October 15 and 16, 2020 in their October 21, 2020 direct and cross examination testimony as well as their written replies to Mr. McGuire’s surrebuttal testimony.<sup>157</sup> Both Employees cite Mr. McGuire’s pattern and practice of covering and protecting Mr. Martinez’s ineptitude.

Complainants also aver the actions of October 15 and 16, 2020 are consistent with a pattern and practice of gas releases at Passyunk Plant under Mr. McGuire. Specifically, they cite the incident that occurred in March 2016.<sup>158</sup> Mr. Chavarria, who has been an employee of PGW for nearly 30 year entirely in its Gas Processing Department with the majority of that time at Passyunk Plant, testified Plant management lied to the “public, news media and others regarding

---

<sup>153</sup> Tr. at 21:15-18.

<sup>154</sup> *Id.* at 21:22-22:7

<sup>155</sup> *Id.* at 22:17-22

<sup>156</sup> EE St. No. 3-REPLY at 4:4-17.

<sup>157</sup> *Id.* at 1:10-5:3; EE St. No. 1-REPLY at 1:7-3:22 and Tr. at 20-68, 81-108.

<sup>158</sup> Mr. McGuire became Plant Manager in May 2015, while Mr. Martinez became General Supervisor as

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

v.

Philadelphia Gas Works

:  
:  
:  
:  
:  
:

C-2019-3013933

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

Karin M. Gunter, Esquire  
Law Office of Karin M. Gunter  
85 Old Cedarbrook Road  
Wyncote, PA 19095  
(215) 548-9992  
Kgunterlaw2@gmail.com  
Counsel for Complainants

Date: March 5, 2021

## **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

---

<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

---

<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>

---

<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\_SR 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>

---

<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.,

---

<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>

---

<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>

---

<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

---

<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**

---

<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

---

<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>

---

<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.

## 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