

**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	:	

INITIAL DECISION

Before
Darlene D. Heep
Administrative Law Judge

INTRODUCTION

Complainants are employees of Philadelphia Gas Works (PGW) who in their Complaint alleged "safety violations and other concerns including, but not limited to, persistent, insidious race, color and/or national origin discrimination"¹ at the PGW Passyunk Plant. Complainants seek, *inter alia*, enforcement of gas safety standards and correction of safety and operation standards. Complainants' discrimination claims and time-barred claims were dismissed on Preliminary Objections. Relief on the remaining claims is granted, in part, and denied, in part.

This decision finds two PGW practices unsafe and in violation 66 Pa.C.S. § 1501. They are: 1) the bypass of a safety sensor and alarm at the Plant and 2) inadequately repairing and not replacing a known faulty valve involving odorless gas. As will be discussed below, the imposition of a total \$11,000 civil penalty is appropriate in this case.

¹ Complaint, p. 1.

This decision also finds that the other issues raised in the Complaint are not within the jurisdiction of the Commission or there was insufficient evidence presented to support a finding that other operations related claims and certain personnel and hiring decisions rose to the level of violations of the Public Utility Code, regulations or a Commission Order.

HISTORY OF THE PROCEEDINGS

On October 31, 2019, PGW employees Dwayne Ackie, Miguel J. Chavarria, Jr., Maurice A. Goodwin and Wayne Rauceo (“Complainants”) filed a Complaint against PGW with the Pennsylvania Public Utility Commission (“Commission”) alleging safety infractions and other violations in the operation of PGW’s Passyunk Liquefied Natural Gas Plant (“Passyunk Plant” or “Plant”). Among the concerns alleged were manipulation of equipment temperature indicators, structural gas tank cracks that are not properly repaired, dangerously unmanned plant apparatus, employees handling equipment under the influence, abandonment of work areas, faulty override valves and uncontrolled, unsafe gas migration. The Complainants also alleged racial discrimination in the operation of the plant.

On November 20, 2019, PGW filed an Answer, denying all material allegations, along with Preliminary Objections seeking to dismiss the Complaint. The Preliminary Objections were assigned for disposition to the undersigned administrative law judge on December 18, 2019.

On January 3, 2020, an Order Granting in Part and Denying in Part PGW’s Preliminary Objections (“*January 3, 2020 Order*”) was issued. It sustained PGW’s Preliminary Objections regarding the claims of “persistent, insidious race, color and/or national origin discrimination” for lack of jurisdiction.

The January 3, 2020 order also dismissed Complainants’ allegations in Complaint paragraph No. 14 -that in the summer of 2016, there was an auto accident at the Plant and actions to cover it up - and in Complaint paragraph No. 16 - that on March 22, 2016, there was

unsafe release of gas. These claims were dismissed because the claims were not within the three-year statute of limitations set out in Section 3314(a) of the Public Utility Code.

On February 6, 2020, a Prehearing Conference was held at which a litigation schedule and procedures, including service of written testimony, were discussed.

On February 11, 2020, a Prehearing Order was issued. Due to COVID-19 restrictions and various requests of the parties, the procedures set forth in the Prehearing Order were modified for these proceedings.

On October 19, 2020, PGW filed a Motion in Limine (*Motion in Limine I*) contesting certain portions of Complainants' pre-served Direct and Surrebuttal Testimony.

On October 20, 2020, Complainants filed a Response in Opposition to the *Motion in Limine I*.

The evidentiary hearing convened on October 21, 2020. Complainants were represented by Karin M. Gunter, Esquire, and PGW was represented by Graciela Christlieb, Esquire and Karen O. Moury, Esquire.

Prior to taking testimony, I ruled on PGW's *Motion in Limine I*. I granted it in part and excluded from evidence lines two through three on page four of Mr. Ackie's Surrebuttal Testimony.² The remainder of PGW's Motion in *Limine I* was denied. PGW was also directed to provide additional responses to the Complainants' discovery Sets III-IV no later than November 4, 2020.

Attorney Gunter presented the testimony of the Complainants and the following Complainants exhibits were admitted into the record:

² EE Statement No. 1-SR (Surrebuttal); Tr. at 6-7.

EE ST-1 (Ackie - Direct, with Exhibits 7 through 11)
EE ST-1-SR (Ackie - Surrebuttal)
EE ST-2 (Goodwin - Direct)
EE ST-3 (Chavarria - Amended 12 Direct)
EE ST-3-SR (Chavarria - Surrebuttal)
EE ST-4 (Rauceo - Direct, with 15 Exhibits 1 through 3A)
EE ST-4-SR (Rauceo - Surrebuttal)

Attorneys Moury and Christlieb presented the testimony of former PGW Senior Vice President of Gas Management Raymond M. Snyder and PGW employees Daniel J. Cassidy and Brian McGuire. They also presented the following PGW exhibits that were admitted into the record:

PGW ST-1 (Snyder)
PGW ST-2 (Cassidy)
PGW ST-3 (McGuire)
PGW ST-3-SR (McGuire)

Also during the evidentiary hearing on October 21, 2020, Complainants raised new allegations regarding an incident which had occurred at the plant on October 15, 2020. Presentation of evidence regarding the recent incident was allowed and PGW was informed that it would be given the opportunity to respond to allegations concerning this event. Accordingly, PGW provided supplemental responses by November 4, 2020.

On November 24, 2020, an order was issued setting deadlines for responses to the supplemental discovery responses, to file supplementary testimony and for briefs. Main Briefs were due on February 12, 2021, and Reply Briefs were due on March 5, 2021. By order dated November 30, 2020, PGW and the Complainants were given deadlines to submit written testimony and rebuttal regarding the October 15, 2020 incident.

On January 8, 2021, regarding Mr. Rauceo’s Supplemental Direct Testimony, PGW filed a Motion in Limine (“*Motion in Limine IP*”), contending that Complainants were improperly using testimony to address a discovery dispute. PGW also sought to exclude two proffered exhibits as being beyond the permissible scope pursuant to the November 24, 2020 Order. On January 12, 2021, Complainants filed a Response in Opposition to PGW’s *Motion in Limine II*. By Order dated February 9, 2021, PGW’s *Motion in Limine II* was granted regarding the testimony but denied as to the request to exclude the exhibits.

On January 19, 2021, PGW filed a third Motion in Limine (“*Motion in Limine IIP*”). Complainants filed a Response in Opposition to this Motion on January 22, 2021. By Order dated February 9, 2021, *Motion in Limine III* was denied.

On February 12, 2021, PGW and Complainants filed Main Briefs, and on March 5, 2021, they filed Reply Briefs.

On March 16, 2021, PGW filed a Motion to Strike Portions of the Complainants’ Reply Brief. Complainants filed an Opposition to the PGW Motion to Strike on April 7, 2021.

On May 24, 2021, the parties filed a Joint Motion for Admission of Testimony and Exhibits into Record. On May 25, 2021, an Order was issued admitting post evidentiary hearing testimony and exhibits into the record. The May 25, 2021 Order also closed the record.

The record consists of a 169-page transcript and the following Testimony and Exhibits admitted into the record during the hearing or by the post-hearing order. They are:

Complainants’ Exhibits

EE ST-1 (Ackie - Direct, with 8 Exhibits 7 through 11)

EE ST-1-SR (Ackie - Surrebuttal)

EE ST-2 (Goodwin - Direct)

ST-3 (Chavarria - Amended 12 Direct)

EE ST-3-SR (Chavarria - Surrebuttal)

EE ST-4 (Rauceo - Direct, with Exhibits 1 through 3A)

EE ST-4-SR (Rauceo - Surrebuttal)

EE St. No. 4-SUP (Wayne Rauceo Proprietary and Non-Proprietary Versions with Exhibits IV, V and Confidential VI)

EE St. No. 1-REPLY (Ackie)

EE St. No. 3-REPLY (Chavarria)

EE St. No. 4-SSR (Rauceo Proprietary and Non-Proprietary Versions)

PGW Exhibits

PGW ST-1 (Snyder - Rebuttal)

PGW ST-2 (Cassidy - Rebuttal)

PGW ST-3 (McGuire - Rebuttal)

PGW ST-3-SR (McGuire - Surrebuttal)

PGW St. No. 3-SUR (McGuire)

PGW St. No. 2-SR (Cassidy with Exhibit DCJ-1 with Confidential Exhibit A)

This matter is now ready for a decision.

FINDINGS OF FACT

1. The Complainants are Dwayne Ackie, Miquel J. Chavarria, Jr.; Maurice Goodwin and Wayne Rauceo, all employees of the Philadelphia Gas Works' liquefied natural gas Passyunk Gas Processing Plant ("Passyunk Plant" or "Plant") and residents of Philadelphia.

2. The Respondent is Philadelphia Gas Works ("PGW"), which is a collection of real and personal assets used for distributing natural gas to retail gas customers owned by the City of Philadelphia ("City") and operated under the jurisdiction of the Commission.

3. Mr. Ackie and Mr. Goodwin are Senior Process Operators for PGW.³

³ EE St. No. 1 at 1:10; EE St. No. 2 at 1:10r

4. Mr. Chavarria is a Working Foreman for the Respondent.⁴
5. Mr. Rauceo is an Operations Supervisor for PGW.⁵
6. Raymond M. Snyder is the former Senior Vice President of Gas Management.⁶
7. Daniel J. Cassidy is the Vice President of Technical Operations.⁷
8. Brian McGuire is the Passyunk Plant Manager.⁸
9. Respondent operates the Passyunk Gas Processing Plant located at 3100 Passyunk Avenue in South Philadelphia.⁹
10. The Passyunk Plant handles liquefied natural gas (LNG).¹⁰
11. The handling and processing of LNG requires great care in order to ensure public safety because LNG is not odorized.¹¹
12. If odorless LNG is dispersed into the atmosphere, it can cause vapor clouds that with a single spark can cause an explosion.¹²
13. Since 2000 to the present, Passyunk Plant management has bypassed the low temperature sensors (TE1019 indicators) on the LNG vaporizers piping by wrapping the piping within steam hoses/lances.¹³

⁴ EE St. No. 3 at 1:19.

⁵ EE St. No. 4 at 1:10.

⁶ PGW Statement No. 1 (Rebuttal).

⁷ PGW Statement No. 2 (Rebuttal).

⁸ PGW Statement No. 3 (Rebuttal).

⁹ PGW St. No. 3 at 1:4-5.

¹⁰ EE St. No. 1 at 12

¹¹ Tr. at 102.

¹² Tr. 27.

¹³ EE St. No. 3 at 3:14; and EE St. No. 4 at 10

14. TE1019 is a temperature indicator located on the vapor natural gas header that senses the temperature within the header and sends a temperature reading to the LNG control room.¹⁴

15. By using a bypass, low temperature safety shutdowns are disabled.¹⁵

16. Disabling any low temperature safety shutdowns for the vaporization system can allow liquified natural gas to get into vaporized natural gas piping, which can lead to an explosion.¹⁶

17. A faulty valve can lead to the release of odorless LNG gas into the atmosphere.¹⁷

18. Valve “1027,” has been broken for years and not replaced.¹⁸

19. A release of odorless gas on October 15, 2020 is related to the faulty valve.¹⁹

20. With respect to a leak associated with Valve 1027, the only viable detectors that would sound alarms and warn of the presence of the dangerous gas are too far away, 40 to 50 feet inside of a building.²⁰

21. Residences are located within 200 yards of the Plant.²¹

22. Periodically, there is not a full supervisory staff at the Plant.²²

¹⁴ EE St. No. 4 at 10-12; EE St. 3 at 3.

¹⁵ *Id.*

¹⁶ EE St. No. 3 at 3:17-19.

¹⁷ Tr. 72, 22-23. .

¹⁸ Tr. 46, 94.

¹⁹ Tr. 21-22, 56, 94.

²⁰ EE St. No. 3-REPLY at 2:14-21. Tr. at 105:19-108:13

²¹ EE St 3-SR at 2.

²² PGW Statement No. 3 (Rebuttal) at 6; EE St. No. 1 at 18; EE St. No. 3-SR at 2:10-22; EE St. No. 2 at 3:12 – 5:24; Tr. at 70:13 – 73:6.

23. On September 11, 2018, the Plant was without a full supervisory staff for several hours.²³

24. On September 11, 2018, the Plant did not have a full complement of Supervisory staff due to an accident with a PGW vehicle.²⁴

25. Plant security protocols are to prevent unauthorized persons from entering the Plant.²⁵

DISCUSSION

Motion to Strike Portions of the Complainants' Reply Brief

PGW filed a Motion to Strike pursuant to 52 Pa. Code § 5.103. Particularly, PGW seeks to have stricken from the Complainants' Reply Brief what it alleges are: (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 PGW contends are unsupported by record evidence, refer to extra-record evidence, or misrepresent case law or evidence that is in the record; and (c) the Proposed Findings of Fact in the Reply Brief, in their entirety, because they include proposed findings not included in the Complainants' Main Brief. The essence of the Respondent's argument is that the Reply Brief deprives PGW of the opportunity to be heard regarding issues, requests for relief and arguments raised for the first time in the Reply Brief.

Complainants filed a Response in Opposition to Respondent's Motion to Strike. The Complainants assert that the Motion to Strike did not include the proper Notice to Plead, pursuant to 52 Pa. Code §§ 5.103(b) and (c), that what can be included in Reply Briefs is not as

²³ EE St. No. 1 at 17-18.

²⁴ EE St. No. 1 at 18.

²⁵ PGW Statement No. 2-SR (Supp. Rebuttal) at 3.

restrictive as that asserted by the Respondent and that the Reply Brief does not raise new issues or matters beyond the scope of the hearing or evidence and pleadings of record.

The Rules of Procedure do not provide for the filing of responses to Reply Briefs.²⁶ Notwithstanding the rules, the Motion to Strike filed here has provided the Respondent with a means to file a Response to the Reply Brief of the Complainants. In the Opposition to the Motion to Strike, the Complainants have had an additional opportunity to address issues raised by the Respondent in its Reply Brief.

Post-hearing briefs are instruments of persuasion, not evidence. Only evidence admitted into the record will be considered or can form a basis for a decision in matters before the Commission.²⁷ Arguments made in post hearing briefs are just that - arguments. They will be given the proper consideration and weight.

A review of the pleadings shows that the issues addressed in the Complainants' Reply Brief are in response to matters raised and proposals presented by PGW in its Main Brief. No issues or requests for relief that are not apparent or raised during the hearing or written testimony were presented.

The PGW Motion to Strike Portions of Complainant's Reply Brief is denied.

Contested Issues in the Complaint

The Complainants, Dwayne Ackie, Miguel J. Chavarria, Jr., Maurice A. Goodwin and Wayne Rauceo, allege that the PGW Passyunk Plant operations are unsafe. The Complainants bring extensive experience and knowledge of the PGW operations to these proceedings, summarized in the Complainants' Main Brief, as follows:

²⁶ See 52 Pa. Code §§ 5.501, 5.502.

²⁷ See 66 Pa. C.S. § 332(d).

Messrs. Ackie and Goodwin are senior process operators.²⁸ As senior process operators, on a daily basis, their job duties include “Operate all primary equipment and control auxiliary equipment related to all plant processes by regulating pressure, flow, level etc. Record all operating data [measurement, pressure, temperature, etc.]. Operate and interpret combustible gas indicator and oxygen analyzers. Look for unusual/abnormal conditions around the plant and report to supervisor. Perform safety checks in the plant.”²⁹ Further, their daily duties require them to “operate valves around the plant, operate the boilers and water pumps throughout the plant. Run generators throughout the plant. Escort people and firewatch certain jobs done around the plant, and assistant maintenance shops.”³⁰

Mr. Chavarria is a Working Foreman of Operations, who previously worked as a process operator.³¹ His daily job duties as a working foreman are to “monitor temperatures, pressures of natural gas and stored liquefied natural gas. . . also operate different equipment for the Plant’s operations. Equipment includes vaporizers, boilers, pumps, valves and compressors.”³²

And finally, Mr. Rauceo, the only management level complainant, is an Operations Supervisor at Passyunk plant who was formerly a Shift Supervisor at the plant.³³ His daily duties are to “supervise[] the start up operation and shut down of natural gas, LNG and vaporization facilities. Monitor[] the safe operation of associated equipment. Participate[] in the training of senior process operator and working foreman in all facets of operations, oversee the day to day operation at Passyunk Plant.”³⁴

Complainants’ Main Brief at 11-12. (footnotes in original; however, reference numbers within original changed but citations to record in original remains the same).

The Complainants filed this matter out of concern for the safety of Philadelphia residents, including employees at the Plant.³⁵

As the proponents of a rule or order, the Complainants bear the burden of proof pursuant to Section 332(a) of the Code. 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainants must demonstrate by a preponderance of the evidence that the Respondent was

²⁸ EE St. No. 1 at 1:10 and EE St. No. 2 at 1:10.

²⁹ EE St. No. 1 at 2:2-7.

³⁰ EE St. No. 2 at 2:2-5.

³¹ EE St. No. 3 at 1:18-21, 2:10-12.

³² *Id.* at 2:1-3.

³³ EE St. No. 4 at 1:9-18.

³⁴ *Id.* at 2:3-8.

³⁵ EE St. 1 at 3; EE. St. 4-SSR at 1.

responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission.

Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by the Complainants of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainants shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight to the evidence presented by the Complainants, the Complainants have not satisfied their burden of proof. The Complainants would then be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

The Complainants are essentially alleging that PGW violates 66 Pa.C.S. § 1501 in the operation of the Passyunk Plant, particularly with respect to safety. This section provides:

1501. Character of service and facilities.

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes,

alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service. Any public utility service being furnished or rendered by a municipal corporation beyond its corporate limits shall be subject to regulation and control by the commission as to service and extensions, with the same force and in like manner as if such service were rendered by a public utility. The commission shall have sole and exclusive jurisdiction to promulgate rules and regulations for the allocation of natural or artificial gas supply by a public utility.

66 Pa.C.S. § 1501.

At issue here is whether the preponderance of the evidence demonstrates that PGW is in violation of Section 1501. As the Commission has noted, its enforcement authority under Sections 1501 is “not limited to review of claims only involving harm or injury already occurred. Our broad authority under Sections 1501 . . . also clearly includes our ability to hear and adjudicate claims that seek to prevent harm.”³⁶ The Complainants raise concerns about the operation of the PGW’s Passyunk Plant. It is located in South Philadelphia with residential homes within 200 yards from the Plant’s process area and LNG tank.³⁷

Specifically, the Complainants contend that the use of faulty valves, the release of odorless natural gas at the Passyunk plant and the operation of its equipment, as well as the promotion and protection of employees who violate safety protocols and who are not competent for their positions, make the Passyunk Plant unsafe.³⁸ They further allege that PGW has tried to cover up the operation of the Passyunk Plant that exhibits a pattern and the continuous nature of

³⁶ See *Povacz v. PECO Energy Co.*, Docket No. C-2015-2475023 (Opinion and Order entered March 28, 2019) at 30, *rev’d in part on other grounds*, 241 A.3d (Pa. Cmwlth. 2020), *app. granted*, 619 MAL 2020 (Pa. May 12, 2021).

³⁷ PGW St. No. 3 at 1:4-5 and EE St. No. 3-SR at 2:2-3.

³⁸ Tr. at 20:10 – 67:25; EE St. No. 1-REPLY at 1:7 – 4:9; and Tr. at 81:24 – 108:12; EE St. No. 3-REPLY at 1:10- 5:3. EE St. No. 4 at 4:8-6:23 & Exhibit I; EE St. No.4-SR at 4:12-5:19.

ongoing safety violations, which have caused and will cause harm to the public as well as Passyunk plant personnel, including the Complainants.³⁹

PGW contends that the Complainants are seeking to portray a careless approach to safety on the part of PGW management but have failed to present evidence in support of its allegations. The company avers that the Complainants have supplied only personal opinions and have failed to point to any harmful consequences that resulted from any of their allegations. PGW further contends that the Complainants have presented no evidence to show that any PGW practice caused harm, created a proven exposure to harm or violated any provision of the Public Utility Code, the Commission’s regulations, or Commission orders. PGW further contends that the information presented by the Complainants is largely based on “uncorroborated hearsay and bald assertions of ‘safety violations’ made by unreliable witnesses who lack the requisite experience and expertise to make such determinations.”⁴⁰

The extensive testimony raised several incidents bringing into question the safety of the Passyunk Plant and its operations. Some of the issues presented involved personnel matters and conceivably questionable employment incidents that are not before the Commission for adjudication. However, others involved plant operations – some that do not rise to the level of a violation and others that may be considered violations of a utility’s obligations under Section 1501 to “furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.” 66 Pa.C.S. § 1501. These matters are discussed below.

A. Bypass of equipment temperature indicators

Complainants Chavarria and Rauceo testified that since 2000, Passyunk Plant Managers have utilized a system that bypasses the low temperature sensors, or TE1019

³⁹ Complainants’ Main Brief at 14.

⁴⁰ PGW Main Brief at 7.

indicators, on the LNG vaporizing piping by wrapping the sensors in steam hoses.⁴¹ According to their credible testimony, this presents a safety issue.⁴²

Mr. Chavarria and Mr. Rauceo testified that continued operation in this manner is not safe. Mr. Rauceo testified that a steam lance has been placed around the TE1019 to prevent an alarm from occurring in the LNG control room. He explained that the TE1019 is a temperature indicator located on the vapor natural gas header that senses the temperature within the header and sends a temperature reading to the LNG control room. He further explained that during the LNG vaporization process, the average vapor natural gas reading is between 40 and 60 degrees. With use of the steam lance, there is a constant temperature and if the temperature in reality is above or below the average level, an alarm will not sound indicating that there is a problem.⁴³

Mr. Chavarria testified that 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 steam hoses/lances.⁴⁴ He further stated that disabling any low temperature safety shutdowns for the vaporization system can allow LNG to get into vaporized natural gas (VNG) piping, which can lead to an explosion.⁴⁵

TE1019 functions as a fail-safe, backup shutdown feature to TE1013 and TE1015.⁴⁶ 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 shutdowns for the vaporization system.⁴⁷

⁴¹ EE St. No. 3 at 3:14; and EE St. No. 4 at 10-11.

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

⁴³ EE St. No. 4 at 10-12.

⁴⁴ EE St. No. 3 at 3

⁴⁵ EE St. 3 at 3.

⁴⁶ EE St. No 4-SR at 1:18-2:2.

⁴⁷ EE St. No. 3-SR at 2:7-11 EE St. No. 3 at 3:20; and EE St. No. 4-SR at 2:3-7.

Steam hoses/lances are not a part of the LNG vaporization system's engineering or design.⁴⁸ According to Mr. Rauceo and Mr. Chavarria, the practice of wrapping steam lances/hoses around TE1019 indicators began in 2000, when the line temperature was masked as the steam hoses' temperature, disabling and bypassing low temperature safety shutdown processes allowing LNG to get into VNG piping which may set off an explosion.⁴⁹ Mr. Chavarria also noted that VNG piping is not engineered to handle the cryogenic temperatures of LNG, which caused an explosion in the past at PGW facilities.⁵⁰ Thus, the Complainants established a *prima facie* case on this issue.

In rebuttal, PGW presented witness Snyder, who downplayed any danger of the bypass described, stating that the Passyunk Plant has redundant safety shutdown systems. He stated that the TE1013 and TE1015 are upstream and would be the initial shutdowns, while the TE1019 is a third safety device downstream of both vaporizers that can sense low process temperature. He maintained that the valve at issue is not the primary safety device that would initiate a shutdown in the event of low process temperature.⁵¹

PGW witness McGuire also testified on this issue. He stated that the vaporization process control system and safety shutdowns were completely redesigned (from 2000-2001); thus, there is no basis for comparison between current operating conditions and those in 2000. Mr. McGuire further testified that PGW also updated its procedures in October 2017 and June 2019 as part of its continuous effort to improve the LNG vaporization process.⁵²

The rebuttal evidence presented by PGW does not overcome the Complainants' *prima facie* case. The testimony of the employees on the ground in the daily operation of the plant and the handling of the equipment at issue is given more weight than that of Mr. Snyder who was a high-level Vice President in the company before his retirement. Also, Mr. McGuire's testimony was not that the unsafe practice described by Mr. Chavarria and Mr. Rauceo was no

⁴⁸ EE St. No. 3-SR at 2:7-11.

⁴⁹ EE St. No. 3-SR at 2:7-11 EE St. No. 3 at 3:20; and EE St. No. 4-SR at 2:3-7.

⁵⁰ EE St. No. 3 at 3:17-19.

⁵¹ PGW Statement No. 1 (Rebuttal) at 3-4.

⁵² PGW Statement No. 3-SR (Supp. Rebuttal) at 4.

longer utilized but that the Plant had generally updated its operations. Further, Mr. Ackie testified that by bypassing the indicator, the internal electrical element is obstructed, preventing accurate readings, warnings/alarms and fail-safe systems and ultimately “sabotaging engineered and designed components” of the Plant’s vaporization system.⁵³

The Commission has rejected a “potential for harm” or “capable of causing harm” standard “because it allows the mere demonstration by a preponderance of the evidence that a hazard exists in utility service to be sufficient to prevail under Section 1501.”⁵⁴ The concerns raised here are beyond a “mere showing” that the Passyunk Plant is “inherently dangerous.”⁵⁵ The evidence showed that PGW intentionally employs a process that bypasses a safety measure. It was the credible testimony that the bypass has been utilized since 2000 to the date of the hearing. That it may be considered a redundant safety measure does not negate that to render it useless is unsafe given the volatility of the product handled at the Plant and its proximity to residences.

The evidence supports a finding of a violation of Section 1501 with respect to the bypass addressed here.

B. Unsupervised Plant and Unmanned plant apparatus

The Complainants also presented undisputed testimony that on September 11, 2018, the Plant was without a full supervisory staff for several hours.⁵⁶ Mr. Chavarria testified that the absence of a Plant supervisor makes implementation of certain emergency procedures, such as safety system tasks, contact with first responders and management of an emergency, more difficult.⁵⁷

⁵³ EE St. 3-SR at 1. Mr. Chavarria also implied that TE-1013 and TE-1014 were also wrapped. *Id.*

⁵⁴ *Povacz* at 30 (Commission Opinion and Order entered March 28, 2019).

⁵⁵ *Id.*

⁵⁶ EE St. No. 1 at 18.

⁵⁷ EE St No. 3 at 6.

The testimony also showed, however, that on the day in question, there was an accident involving one of the PGW trucks that resulted in a lengthy absence of a supervisor.⁵⁸ This supports a finding that this event was an aberrant circumstance and therefore it does not rise to the level of a violation of the Code, regulations, or Commission Order.⁵⁹

Another incident occurred on February 23, 2018. Mr. Ackie testified that contrary to Plant policies, Mr. McGuire was allowed to enter the Plant without a security badge and without proper protective equipment.⁶⁰

In response, Mr. McGuire testified that there was no threat to safety by his entry and that he had returned after his shift to retrieve personal belongings.⁶¹ PGW witness Cassidy, Vice President of Technical Operations, testified that the security protocols are to prevent unauthorized persons from entering the Plant and that Mr. McGuire, as the Plant Manager, is always authorized to enter the Plant.⁶²

The Complainants have not established that these incidents created a safety problem or constitute a violation of the regulations, the Public Utility Code or a Commission Order. The Complainants cannot prevail here.

C. Personnel Management and Staffing

The Complainants presented testimony regarding three matters questioning personnel and staffing decisions and assignments made by Plant management that the Complainants averred made the Plant unsafe. The first instance was in August of 2017, when Operations Supervisor, Mr. Walker, and Senior Process Operator, Mr. Ackie, were absent from the Plant for about 40-45 minutes when Passyunk Plant General Supervisor, Mr. Martinez, asked them to accompany him to the Philadelphia International Airport. Complainants testified that the

⁵⁸ EE St. No. 1 at 18-19.

⁵⁹ EE Statement No. 1 (Direct) at 17-19.

⁶⁰ EE St. No. 1 at 12:17-25.

⁶¹ PGW Statement No. 3 (Rebuttal) at 6-7.

⁶² PGW Statement No. 2-SR (Supp. Rebuttal) at 3.

absence of Mr. Walker and Mr. Ackie rendered the plant unsafe because they were unavailable to address problems that may arise at the plant.⁶³ As examples, the Complainants contended that a short staff negatively affects the ability of the employees to monitor and respond to City pressure issues or to attend to high pressure boilers.⁶⁴

In response, PGW Plant Manager McGuire testified that this incident did not create a safety violation and that the Plant was adequately staffed. He testified that as it was August, it was non-vaporization season, and therefore the staff present at the Plant was sufficient because at that time, City pressure is controlled with monitors and downstream regulators, remotely by the City's Gas Control Department, not by operators at the Plant.⁶⁵

In a second incident, a Working Foreman was absent from the Plant for over two hours on December 25, 2017. Mr. Goodwin testified that this was inherently dangerous because a Working Foreman handles boil-offs building in the pumps that may require resetting 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 odorless gas into the atmosphere.⁶⁶

In response, Plant Manager McGuire testified that if a Working Foreman leaves his/her station for whatever reason, the Supervisor on shift "has the same visuals and capabilities from his/her office computer to operate remotely (if need be) as a Working Foreman does."⁶⁷ He further noted that it is "not uncommon for a Working Foreman to briefly leave their stations" and cited examples, including: (i) transporting paperwork; (ii) picking up lunch; (iii) retrieving items from vehicles; and (iv) undergoing random drug tests.⁶⁸ Finally, Mr. McGuire indicated that at any given time, the LNG Plant can and does operate safely and adequately without being fully staffed, since at various times throughout a day, one or more essential worker may be away from the Plant for any number of reasons.⁶⁹

⁶³ EE St. No. 1 at 3:7-5:12 & Ex. I-A, I-B. Tr. at 136:23 – 137:5; EE St. No. 1, Ex. I-A and I-B.

⁶⁴ EE St. No. 3-SR at 2:10-22.

⁶⁵ EE St. No. 3-SR at 2:10-22.

⁶⁶ EE St. No. 2 at 3:12 – 5:24; Tr. at 70:13 – 73:6.

⁶⁷ PGW Statement No. 3 (Rebuttal) at 5.

⁶⁸ PGW Statement No. 3 (Rebuttal) at 5-6.

⁶⁹ PGW Statement No. 3 (Rebuttal) at 6.

PGW also presented the testimony of Daniel Cassidy, Vice President Technical Operations for PGW, and an engineer, to refute Complainants' claims on this issue. He testified that the LNG Plant "is staffed at all times as necessary for PGW to fulfill its obligations under the Public Utility Code, Commission regulations, and Commission orders."⁷⁰ Mr. Cassidy further noted that no policy, rule, law, or regulations exists that establishes staffing levels for the Plant or that prevents the Plant from operating unless a specific number of individuals are present.⁷¹ Disputing Mr. Ackie's claims regarding alleged understaffing, Mr. Cassidy emphasized that Mr. Ackie's accounts did not amount to a safety violation or otherwise pose "a threat of any kind to the public."⁷²

The Complainants also raised a third issue, testifying that unqualified employees are favored or promoted at the Plant. The Complainants testified and presented evidence regarding the official job descriptions and qualifications and contended that certain personnel at the Plant received promotions but did not meet the requirements or possess the qualifications for the jobs.⁷³

Mr. McGuire responded on behalf of PGW, testifying that the job descriptions referenced by the Complainants were guidelines. He also contended that PGW hired the most qualified person for the position.⁷⁴

The above instances in essence involved staffing decisions and personnel management. The Commission has recognized that its authority to interfere in the internal management of a utility company is limited.⁷⁵ The Commission is not empowered to act as a super board of directors for the public utility companies.⁷⁶ The Commission may intervene only

⁷⁰ PGW Statement No. 2 (Rebuttal) at 3.

⁷¹ PGW Statement No. 2 (Rebuttal) at 3.

⁷² PGW Statement No. 2 (Rebuttal) at 3.

⁷³ EE St. No. 1-REPLY at 3:19-4:9; EE St. No. 2 at 3:19-4:9; EE St. No. 4, Exhibit I; Tr. at 146:23-24.

⁷⁴ PGW Statement No. 3 (Rebuttal) at 8; *See also* EE St. No 1 Exhibit VII and EE St. No 1 Exhibit VIII.

⁷⁵ *See, e.g., Bell Tel. Co. of Pa. v. Driscoll*, 343 Pa. 109, 21 A.2d 912 (1941); *N. Pa. Power Co. v. Pa. Pub. Util. Comm'n*, 333 Pa. 265, 5 A.2d 133 (1939); *Coplay Cement Mfr. Co. v. Pub. Serv. Comm'n*, 271 Pa. 58, 114 A. 649 (1921).

⁷⁶ *N. Pa. Power Co., supra*.

where the evidence demonstrates an abuse of managerial discretion, and the public interest has been adversely affected.⁷⁷

In these three instances, there was not substantial evidence presented to support a determination that the actions or events caused or created unsafe conditions that rise to the level of violations of Section 1501. The record does not support a finding that these incidents resulted in violations of the Code, regulations, or a Commission Order.

Additionally, as PGW points out in its brief, some of the testimony submitted regarding these matters treads closely to the discrimination claims in the original complaint that were dismissed for lack of jurisdiction.⁷⁸ As stated in the *January 3, 2020 Order*, it is a long-held rule that the Commission has jurisdiction only over matters designated to it by the legislature. The Commission cannot exceed its jurisdiction.⁷⁹

The Commonwealth Court determined in *N.A.A.C.P. v. Pa. Pub. Util. Comm'n*, 5 Pa. Commw. 312, 290 A.2d 704 (1972), that employment discrimination matters are beyond the jurisdiction of the Commission. It held:

We find nothing in the Public Utility Law which explicitly or by implication gives the PUC the power here suggested, accepting as we do the urgency of the public's purpose in eliminating racial discrimination. That some courts have in the interest of implementing public policy accommodated their construction of other statutes to this end, provides no warrant for us to depart from a long and well established rule of the courts of this State that agencies of State government have only those powers granted by clear expression of the Legislature.

Id. at 325, 290 A.2d at 711.

⁷⁷ See *Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority – Stage 1*, Docket Number M-2018-2640802 (Opinion Adopted March 26, 2020), where the Commission determined that utility's employee residency requirements had a negative effect upon the service provided by the utility.

⁷⁸ PGW Main Brief at 42.

⁷⁹ See *Collins v. Pa.-Am. Water Co.*, 2019 PA. PUC LEXIS 265 (Pa. P.U.C. August 29, 2019).

Whether these staffing and personnel management decisions were proper, nondiscriminatory, unbiased or fair or placed undue burden upon certain other employees is not to be determined here. That is beyond the jurisdiction of the Commission. However, the Complainants are not precluded from pursuing such claims in another forum.⁸⁰

D. Faulty Valve and release of LNG

Mr. Ackie's testified that there is a faulty valve at the Plant that can result in the release of odorless LNG gas into the atmosphere.⁸¹ According to Mr. Ackie, the valve, which he referred to as a "1027," has been broken for years and not replaced.⁸² Mr. Ackie learned of a release of LNG gas from the valve on October 15, 2020, when a supervisor directed him to secure an outlet valve.⁸³

Mr. Chavarria also testified that the valve has a "broken ground safety feature" and that it presents a dangerous situation.⁸⁴ According to Mr. Ackie, the valve is supposed to block the flow of gas and it is not functioning.⁸⁵ Mr. Chavarria testified that the only viable detectors that would sound alarms and warn of the presence of the dangerous gas are too far away, 40 to 50 feet inside of a building.⁸⁶ This established a *prima facie* case.

In rebuttal, PGW presented the testimony of Mr. McGuire, who stated that valve functions as designed.⁸⁷ According to Mr. McGuire, the release of gas on October 15, 2020, involved a different valve, GLV-114. He also testified that the incident was not a dangerous situation and that "a negligible and harmless amount of gas was emitted into an open-air area."⁸⁸

⁸⁰ The Complainants also questioned management's decisions and handling in response to the incidents described in Section B, *supra*, suggesting uneven application of work rules. EE St. No. 1 at 19:1-3. Again, such issues are not within the jurisdiction of the Commission and may be presented in another forum.

⁸¹ Tr. 21-23.

⁸² Tr. 47.

⁸³ Tr. at 21:15-18.

⁸⁴ EE St. No. 3-REPLY at 4:4-17.

⁸⁵ Tr. at 57.

⁸⁶ EE St. No. 3-REPLY at 2:14-21. Tr. at 105:19-108:13

⁸⁷ PGW Statement No. 3-SUR (Surrebuttal) at 6-7.

⁸⁸ PGW Statement No. 3-SUR (Surrebuttal) at 3.

According to Mr. McGuire, the amount of gas emitted was not sufficient to set off an alarm. He further stated that the situation was ultimately rectified by Mr. Goodwin, who closed GLV-114.⁸⁹

However, additional testimony supports the Complainants' claim. Mr. Chavarria credibly testified that the line was frosted on the day in question. He stated that this is an automatic sign that liquified natural gas was in the line because it is at a temperature of minus 265 degrees and will cause any moisture around it to freeze. He also took a reading that day that showed "100 percent" odorless gas blowing out of the line.⁹⁰ Mr. Ackie also testified that the line was frosted.⁹¹

Additionally, Mr. Chavarria and Mr. Ackie testified that the valve has been malfunctioning for years and that is known by management.⁹² Attesting to the danger of the situation, Mr. Ackie and another employee put cones and caution tape around the area where the gas was escaping to alert the security guards patrolling the plant.⁹³ Mr. Ackie closed valves before and after 1027 to alleviate the situation.⁹⁴

Plants involve moving parts operated by humans. They cannot and are not expected to operate perfectly all the time. However, there should be correction of known problems that may cause a dangerous situation. The continued disrepair of the valve led to and can lead to a dangerous situation and creates an unsafe condition in violation of Section 1501. The Complainants prevail on this claim.

⁸⁹ PGW Statement No. 3-SUR (Surrebuttal) at 3-7.

⁹⁰ Tr. 86-87.

⁹¹ Tr. 22.

⁹² Tr. 94, 56.

⁹³ Tr. 25

⁹⁴ Tr. 60.

Penalties

Where there are violations of the Public Utility Code and Commission regulations, civil penalties as provided for by 66 Pa.C.S. § 3301 may be appropriate. § 3301 also provides up to \$1,000 for “each and every day’s continuance” of the violation.⁹⁵

Two violations of Section 1501 violation were found here: Bypass of equipment temperature indicators and failure to repair a faulty valve leading to release of gas.

As the Commission stated in *Povacz v. PECO Energy Company*, “[P]ublic utility operations are not, as a general matter, hazard-free. As part of ensuring the safe operation of facilities and the safe provision of service, public utilities are, on a near continual basis, tasked with properly identifying, handling and reducing physical and health hazards to avoid danger to its employees, its customers and the general public.”⁹⁶ Here, the PGW Passyunk Plant bypass and disrepair of a valve have been found unsafe in violation of 66 Pa.C.S. § 1501. The bypass and the malfunctioning valve employed by PGW are contrary to the directive to *reduce* hazards or *avoid* dangers.

Bypass of Safety Measure

The testimony was that the Plant has utilized this system that bypasses a safety measure and has used it since 2000.⁹⁷ For the reasons discussed below, the penalty that will be imposed here is \$500 per year for each of the twenty years PGW violated Section 1501, for a total civil penalty of \$10,000.

⁹⁵ 66 Pa.C.S. § 3301(b)

⁹⁶ Docket No. C-2015-2475023 (Opinion and Order entered on March 28, 2019) at 30.

⁹⁷ EE St. 3 at 3.

The ten factors that the Commission will consider when evaluating whether a civil penalty for violating a Commission order, regulation or statute is appropriate was set forth by the Commission in a promulgated Policy Statement at 52 Pa. Code § 69.1201.⁹⁸

The first factor is whether the conduct at issue is of a serious nature.⁹⁹ "When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty."¹⁰⁰ Knowingly bypassing a safety sensor that would shut down the system when the temperature of volatile gas product is at a dangerous level for over 20 years is conduct of a serious nature.

The second factor is whether the resulting consequences of the conduct are of a serious nature.¹⁰¹ Given that the Plant is close to a residential area, and that the bypass places both local residents and onsite employees at risk, the consequences of bypassing a sensor that could warn of a dangerous temperature could have serious consequences.

The third factor is whether the conduct is deemed negligent or intentional, with intentional acts warranting a higher penalty.¹⁰² The testimony was that the Plant has employed this bypass since 2000, more than suggesting that it is intentional. There was also testimony that the bypass is used to bypass a safety feature and to allow use of malfunctioning and unsafe equipment.¹⁰³ This supports a higher penalty.

The fourth factor is whether PGW made efforts to change its practices and procedures to prevent similar conduct in the future.¹⁰⁴ This factor weighs in favor of a significant penalty given the testimony that PGW has employed this bypass since 2000 and has made no effort to change this practice.

⁹⁸ See also *Rosi v. Bell Atl.-Pa., Inc.*, Docket No. C-00992409 (Order entered March 16, 2000), 2000 WL 1407936 (Pa. P.U.C.).

⁹⁹ 52 Pa. Code § 69.1201(c)(1).

¹⁰⁰ *Id.*

¹⁰¹ 52 Pa. Code § 69.1201(c)(2)

¹⁰² 52 Pa. Code § 69.1201(c)(3).

¹⁰³ EE St. 3 at 3.

¹⁰⁴ 52 Pa. Code § 69.1201(c)(4).

The fifth factor is the number of customers affected and the duration of the violations.¹⁰⁵ Nearby residents as well as employees are affected by what may arise from the bypass. As previously noted, the bypass is of a safety sensor and has been employed by the Plant since 2000. Therefore, a higher penalty is warranted.

The sixth factor is the compliance history of the regulated entity.¹⁰⁶ Similar violations by PGW were not found, supporting a lower penalty.

The seventh factor is whether the regulated entity cooperated with the Commission's investigation.¹⁰⁷ This factor is inapplicable here.

The eighth and ninth factors call for a measured look at the amount of the civil penalty necessary to deter future violations¹⁰⁸ and past Commission decisions in similar situations.¹⁰⁹ Given the unique nature of the violation, future violations are unlikely; therefore, factors 8 and 9 are not relevant.

The tenth factor is any other "relevant factors."¹¹⁰ The penalty should be such as to encourage PGW to use whatever safety measures are available to the fullest extent possible.

The bypass has been intentionally employed by PGW for many years. Considering the danger that bypassing a safety sensor that provides an alarm to warn of a dangerous situation and that allows the continued use of malfunctioning equipment poses to nearby residents and the employees of the Plant, a penalty of \$500 per year for each of the 20 years PGW violated Section 1501, for a total civil penalty of \$10,000, is appropriate.

¹⁰⁵ 52 Pa. Code § 69.1201(c)(5).
¹⁰⁶ 52 Pa. Code § 69.1201(c)(6).
¹⁰⁷ 52 Pa. Code § 69.1201(c)(7).
¹⁰⁸ 52 Pa. Code § 69.1201(c)(8).
¹⁰⁹ 52 Pa. Code § 69.1201(c)(9).
¹¹⁰ 52 Pa. Code § 69.1201(c)(10).

Faulty Valve

The same factors are considered with respect to this violation. The presence of a known faulty valve led to a release of odorless gas, creating a dangerous situation where cones and caution tape were set up to alert employees passing to avoid exposure to the area of release. There was testimony that the valve was inoperable for years and known to management. These facts suggest a higher penalty under factors 1, 2, and 3.

With respect to Factor 4, whether changes were made, and Factor 5, duration of the violation, there is no definitive testimony. Mr. Ackie testified that the valve had been broken for at least five years.¹¹¹ Mr. Chavarria, who has worked at the plant longer, testified that the valve has been malfunctioning for at least ten years.¹¹² Mr. Chavarria also testified that there have been efforts to repair the valve that failed, however.¹¹³ Mr. McGuire's testimony suggested that the valve had since been repaired.¹¹⁴ Factors 6-10 are not directly applicable here

A lower penalty is appropriate here, given efforts by PGW, although unsuccessful, to repair the valve. Therefore, a penalty of \$100 per year for each of the 10 years that the malfunctioning valve was not effectively repaired or replaced, for a total of \$1000, will be imposed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa. C.S. § 701.

2. The burden of proof is on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

¹¹¹ Tr. at 46.

¹¹² Tr. at 94.

¹¹³ Tr. 103.

¹¹⁴ PGW Statement No. 3-SUR (Surrebuttal) at 6-7.

3. While the burden of persuasion may shift back and forth during a proceeding, the burden of proof always remains on the party seeking affirmative relief from the Commission, here, the Complainants. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

4. The Complainants prevail on an issue where a preponderance of the evidence demonstrates that a utility facility or service caused or will cause harm to the public. *Povacz v. PECO Energy Company*, Docket No. C-2015-2475023 (Opinion and Order entered March 28, 2019) at 29, *rev'd in part on other grounds*, 241 A.3d (Pa. Cmwlth. 2020), *app. granted*, 619 MAL 2020 (Pa. May 12, 2021).

5. The term “service” in 66 Pa.C.S. § 1501 is to be broadly construed and includes any and all acts done, rendered, or performed as well as acts of omission of the utility. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa. Cmwlth. 1995).

6. Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. 66 Pa.C.S. § 1501.

7. Although a public utility may have reasonable rules and regulations governing the conditions under which it renders service, it remains subject to the provisions of the Public Utility Code and the regulations or orders of the Commission. 66 Pa.C.S. § 1501.

8. As part of ensuring the safe operation of facilities and the safe provision of service, PGW is tasked with properly identifying, handling and reducing physical and health hazards to avoid danger to its employees, its customers and the general public. *Povacz v PECO Energy Company*, Docket No. C-2015-2475023, Opinion and Order at 30 (March 28, 2019) at

30-31, *rev'd in part on other grounds*, 241 A.3d (Pa. Cmwlth. 2020), *app. granted*, 619 MAL 2020 (Pa. May 12, 2021).

9. The Commission must act within and cannot exceed its authority. *Shedlosky v. Pa. Elec. Co.*, Docket No. C-20066937 (Order entered May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

10. Employment discrimination matters are beyond the jurisdiction of the Commission. *N.A.A.C.P. v. Pa. Pub. Util. Comm'n*, 5 Pa. Commw. 312, 290 A.2d 704 (1972).

11. The Complainants have met their burden of proof as to their claims that Philadelphia Gas Works violated 66 Pa.C.S. § 1501 by its practice of bypassing a safety sensor and not repairing or replacing a faulty valve.

12. Where, as here, there is a violation of the Public Utility Code and Commission regulations, civil penalties as provided for by 66 Pa.C.S. § 3301 are appropriate.

13. Applying the factors and standards that must be considered when evaluating the imposition of a penalty set forth in 52 Pa. Code § 69.1201 and *Rosi v. Bell Atl.-Pa., Inc.*, Docket No. C-00992409 (Order entered March 16, 2000), 2000 WL 1407936 (Pa. P.U.C.), the evidence presented in this proceeding warrants a civil penalty of \$10,000 for the bypass violation and \$1,000 for the faulty valve violation.

ORDER

THEREFORE,

IT IS ORDERED

1. That the Philadelphia Gas Works' Motion to Strike Portions of the Complainants' Reply Brief is denied.
2. That the Complaint filed by Complainants Dwayne Ackie, Miguel J. Chavarria, Jr., Maurice A. Goodwin and Wayne Rauceo against Respondent Philadelphia Gas Works at C-2019-3013933 is granted in part and dismissed in part.
3. That the claims that Respondent Philadelphia Gas Works violated 66 Pa.C.S. § 1501 by use of the bypass of a safety sensor and failure to repair a faulty valve are granted.
4. That the Respondent, Philadelphia Gas Works, shall pay a total civil penalty of ten-thousand dollars (\$11,000.00) as provided for in Section 3301 of the Public Utility Code, 66 Pa.C.S. § 3301, by sending a certified check or money order payable to the Commonwealth of Pennsylvania, within twenty (20) days from entry of the Final Commission Order to:

Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120
5. That a copy of this decision be forwarded to the Commission's Bureau of Investigation and Enforcement, Gas Safety Division to review and to assist any inspection it may conduct to determine whether the bypass and valve issues have been addressed by PGW.

