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September 20, 2021

**VIA ELECTRONIC FILING**

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

RE: Ackie, et al v. Philadelphia Gas Works  
In Re: C-2019-3013933  
Complainants' Reply Exceptions

Dear Secretary Chiavetta:

Enclosed please find the Complainants Dwayne Ackie, Miguel Chavarria, Jr, Maurice Goodwin and Wayne Rauceo's Reply Exceptions to Philadelphia Gas Works' ("PGW") Exceptions to the Initial Decision dated August 13, 2021 of Administrative Law Judge Darlene D. Heep pursuant to 52 Pa. Code § 5.535 and the September 9, 2021 Grant of Extension of Time to File, efiled today along with Certificate of Service in the above captioned matter.

Thank you.

Yours truly,

*/s/ Karin M. Gunter*

Enclosures

cc: Certificate of Service w/ encl. (via email only)  
Hon. Darlene Heep w/ encl. (via email only)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I do hereby certify that service of a true and correct copy of herein Complainants' Reply Exceptions to Respondent Philadelphia Gas Works' Exceptions to the Initial Decision dated August 13, 2021 of Administrative Law Judge Darlene D. Heep are made on the Presiding Officer and below counsel for Philadelphia Gas Works via electronic service:

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Date: September 20, 2021

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

v.

Philadelphia Gas Works

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C-2019-3013933

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

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Date: September 20, 2021

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## I. INTRODUCTION

PGW seeks to have the Commission disregard the sound, measured and balanced Initial Decision dated August 13, 2021 of Administrative Law Judge (“ALJ”) Darlene D. Heep determining PGW used of steam lance as a bypass measure during its LNG vaporization process and it failed to repair a faulty valve leading to the release of odorless LNG both of which violated Section 1501. Instead, PGW asks the Commission to consider for the first time arguments and facts not presented in the closed record which includes the previously filed briefs.<sup>1</sup> Complainants Dwayne Ackie (“Ackie”), Maurice Goodwin (“Goodwin”), Miguel Chavarria (“Chavarria”) and Wayne Rauceo (“Rauceo”) (collectively “Complainants”) urge the Commission to reject PGW’s Exceptions and adopt as final the Initial Decision of August 13, 2021.

PGW filed timely Exceptions on September 2, 2021 to the Initial Decision of August 13, 2021 (“Exceptions”). On September 3, 2021, Complainants requested an extension of time to reply. Thereafter, on September 9, 2021, the Commission approved an extension of time pursuant to 52 Pa. Code §1.15. Accordingly, pursuant to 52 Pa. Code § 5.535, Complainants submits their herein Reply Exceptions.

## II. REPLY TO EXCEPTIONS<sup>2</sup>

### A. **Reply to PGW’s Exception One and related Exception Three: The Initial Decision properly applies the Commission’s legal standards in finding PGW’s practice of employing temperature sensors bypass measures during its LNG Vaporization Process violates Section 1501.**

This Exception amounts to an attack on the ALJ’s credibility determinations of the

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<sup>11</sup> Initial Decision at 5 (noting record closed by order on May 25, 2021).

<sup>2</sup> Citations, alternations and internal quotations are omitted unless otherwise provided.

witness testimony, and not her improper application of Section 1501 legal standards. PGW agrees with Complainants that “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>3</sup> PGW further agrees with Complainants and the ALJ that the Commission’s enforcement authority under Section 1501 includes prevention of harm.<sup>4</sup> In exercising this prevention of harm enforcement authority, PGW argues the Commission is required to find “proven exposure to harm” as a basis for deeming a facility or service unsafe, which PGW alleges the Commission cannot do in this matter.<sup>5</sup>

Complainants argued in their main and reply briefs that Passyunk Plant continues a practice since 2000 of “‘jerry rigging’ a steam lance around TE1019,” thereby causing “the internal electrical element [to be] obstructed preventing accurate readings, warning/alarms and fail safe systems” which “ultimately sabotaging engineered and designed components of the Plant’s vaporization system.”<sup>6</sup> Complainants further credibly testified this same process resulted in the 2000 explosion at the Passyunk Plant.<sup>7</sup> PGW never argued in its main brief, reply brief or the herein Exceptions that the 2000 exposure did not occur. It coyly states “what

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<sup>3</sup> See Complainants Main Brief at 9-10. Accord PGW Exceptions at 5 (noting prevention of harm enforcement authority of Commission).

<sup>4</sup> Initial Decision at 13 (citing “broad authority under Section 1501 . . . to hear and adjudicate claims that seek to prevent harm”); Complainants Reply Brief at 7 (preventing harm authority’s “proven exposure of harm” does not require certain or probable occurrence). Accord PGW Exceptions at 5-6.

<sup>5</sup> PGW Exceptions at 5. See also PGW Main Brief at 1, 15-20; PGW Reply Brief at 16-18. *But see Povacz v. PUC*, 241 A.3d 481 (Pa. Cmwlth. 2020), *app. granted* 253 A.3d 220 (Pa. 2021)(per curiam)(granting appeal on issue of interpretation of section 1501 “proven certainty of harm”).

<sup>6</sup> Complainants Reply Brief at 17; Complainants Main Brief at 16.

<sup>7</sup> Complainants Reply Brief at 17.

may or may not have been happening in 2000. . .”<sup>8</sup> Furthermore, Complainants also credibly testified regarding the flammable and dangerous nature of LNG, an odorless gas; their individual job duties as Senior Process Operators, Working Foreman and Operations Supervisor at PGW’s Passyunk Plant; the “critical and extremely safety sensitive nature of Plant operations” requiring 24 hours, 7 days a week operations; and the Plant’s close proximity to neighboring residential community, *inter alia*.<sup>9</sup>

For the first time ever in these Exceptions, however, PGW presents implicit argument that Section 3314 prevents the (a) use of the 2000 explosion as a proven harm and/or proven exposure to harm and (b) consideration of PGW’s continued bypass practices before October 19, 2016 related to Exception One.<sup>10</sup> PGW does not challenge the credible testimony of the complainants regarding their job titles and duties, the inherent nature of LNG odorless gas or the 24 hours, 7 days a week operations of Passyunk Plant, *inter alia*. Rather, PGW blindly states “a complainant would be able to prevail by presenting a preponderance of evidence that a hazard exists, without considering whether the utility has taken steps to reduce exposure to the hazard.”<sup>11</sup> Then PGW presents collaborated testimony that it in fact employs a “steam lance . . . a connection to a steam source . . . to ensure the *internal* system works properly by ensuring the *external* components instruments exposed to ambient temperatures do not freeze in cold ambient weather.”<sup>12</sup>

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<sup>8</sup> PGW Main Brief at 18 (citing testimony of Brian McGuire).

<sup>9</sup> Complainants Main Brief at 11-14; Complainants Reply Brief at 16-18.

<sup>10</sup> PGW Exceptions at 21-22.

<sup>11</sup> PGW Main Brief at 11-12. 14.

<sup>12</sup> PGW Main Brief at 17 (citing testimony of Raymond Snyder).

Next, Complainants credibly testified due to the volatile nature of LNG, “during winter operations TE1019 may give a low temperature alarm due to external coldness” requiring manual checking of the TE019 to insure the “alert is due to external temperatures and not the presence of LNG.”<sup>13</sup> PGW then attempts to discredit the impact of the steam lance on the internal temperature of the VNG piping by baldly alleging “the steam has no effect on the process temperature inside the pipe or the sensor inside the pipe; just the opposite, it allows the process temperatures to be accurately transmitted to the control system by preventing the external instrument from freezing in cold ambient temperatures, or by warming up an instrument that may have frozen.”<sup>14</sup> PGW fails to provide any corroborating evidence use of a steam lance is an industry practice or that external heating of pipes does not impact internal temperatures.<sup>15</sup> Further, PGW alleges “the vaporization process control system and safety shutdowns were completely redesigned (from 2000-2001)” without stating the nature, type or extent of such redesigns undertaken, or what the prior designs and then current redesigns were.<sup>16</sup> PGW’s lay witness testimony neither acknowledged a hazard occurred in 2000 nor acknowledged what redesigns occurred in 2000-2001 that “may or may not” have addresses any incident that “may or may not” have happened in 2000. The lay witness testimony in this matter is wholly unpersuasive.

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<sup>13</sup> Complainants Reply Brief at 17 (also noting the VNG piping is not engineered to handle the cryogenic temperatures of LNG “setting off an explosion”)

<sup>14</sup> PGW Main Brief at 17

<sup>15</sup> Complainants Reply Brief at 18 (noting lay opinion of PGW witnesses who were not certified as experts).

<sup>16</sup> *Id.* at 18.

Unlike the facts in Bentley v. Bureau of Professional and Occupational Affairs, PGW failed to provide any collaborating evidence, whether certified or not, of industry practice.<sup>17</sup> PGW instead argues for the first time the Commission’s “Bureau of Investigation and Enforcement [ ], has not identified PGW’s use of steam lance during the LNG vaporization process as creating any concerns about the safe operation of the Plant.”<sup>18</sup> That argument amounts to facts not in the certified record before the Commission, since none of PGW’s lay witnesses proffered that testimony at any point in this matter. As such, Complainants objects to PGW use of these arguments/issued being untimely and inappropriately raised, and request they be stricken.

PGW would have the Commission use Bentley and related cited cases for the proposition that it produced “strong critical evidence” contradicting Complainants’ testimony, amounting to “competent testimony and evidence which one of ordinary intelligence could not possibly have avoided reaching a result.”<sup>19</sup> It did not. Instead, PGW spent most of its time and energies in this entire matter taking a dismissive almost mockingly superior attitude towards Complainants and their charges. For example, PGW characterized Complainants as “disgruntled employees . . . [who] cobbled together a laundry list of petty grievances against PGW in apparent preparation for their federal litigation.”<sup>20</sup> Again, PGW described Complainants as “seek[ing] to rely merely on personal ‘opinions’ of four disgruntled employees . . . “ and minimize their collective hands-on work experience, while failing to provide any

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<sup>17</sup> 179 A.3d 1196, 1198 (Pa. Cmwlth. 2018).

<sup>18</sup> PGW Exceptions at 6 & n14.

<sup>19</sup> Bentley, 179 A.3d at 1200. *See also* PGW Exceptions at 7-8.

<sup>20</sup> PGW Main Brief at 1.

expert testimony of its own to contradict them.<sup>21</sup> Instead, PGW relied on the job titles of its witnesses' scant, unpersuasive testimony to discredit Complainants' charges and testimony.<sup>22</sup>

Keeping with its overall dismissive, superior attitude, PGW next attacks the ALJ's reasoned weighing of testimony and credibility in her decisions in this matter. It states "[t]he flawed factual characterizing of PGW's practice as a bypass of a safety measure cannot support a legal conclusion that PGW's use of steam lance" violates Section 1501.<sup>23</sup> However, PGW failed to provide competent evidence that countered Complainants' more convincing, extensive substantial evidence that PGW's Passyunk Plant's TE1019 bypass measures are unsafe. As such, the Initial Decision includes a thorough analysis of the evidence of record, based on appropriate weighing and credibility determinations.<sup>24</sup>

Finally, PGW never raised an argument of subject matter jurisdiction in its main brief, reply brief or Exception One beyond the legal standards of Section 1501. Once again, for the first time in these Exceptions, PGW raises subject matter jurisdiction related to the civil penalties that implicitly applies its continued bypass practices prior to October 19, 2016.<sup>25</sup> However, the Commission's regulations permit imposition of cumulative penalties on a continuing violations basis. 66 Pa.C.S. § 3314(b).

Complainants respectfully request the Commission reject PGW's flawed and inappropriate attempts to raise argument and evidence not of record to challenge the competent

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<sup>21</sup> PGW Reply Brief at 1-2 (deriding Complainants' collective 60 years of gas processing work at PGW while simultaneously failing to certify any of its lay witnesses as experts).

<sup>22</sup> Complainants Main Brief at 8-9; Complainants Reply Brief at 18. PGW Main Brief at 14-15.

<sup>23</sup> PGW Exceptions at 1, 6-7.

<sup>24</sup> Initial Decision at 10-17.

<sup>25</sup> Complainants Reply Brief at 18.

Initial Decision of August 13, 2021 based on the substantial evidence of record and legal standards promulgated by it.

**B. Reply to PGW’s Exception Two and Related Exception Three: The Initial Decision properly sustained averments of the faulty PCV-1027 Valve.**

Complainants offered extensive oral testimony subject to cross examination and preserved testimony of the incident that occurred on October 15, 2020 involving the release of odorous LNG gas into the atmosphere due to a defective PCV-1027, which has been defective for years.<sup>26</sup> Only PGW’s lay witness Brian McGuire provides any rebuttal to that testimony.<sup>27</sup> Once again, PGW makes bald assertions, not support by competent evidence of record to attack the Initial Decision findings and determination.<sup>28</sup> Instead, PGW presents this Exception, like the first one, picking and choosing when the Initial Decision is “correct” (when it agrees with PGW) and when it is “flawed” (when it disagrees with PGW). This type of reasoning on the part of PGW is exactly why, one would surmise, there is the need for regulatory oversight. This Exception like the first is an attack on the weighing and credibility determination of evidence of record, and not an attack on any violation of the Commission’s legal standard under Section 1501.

Complainants present an abundance of substantial evidence that odorless LNG is a flammable and dangerous gas.<sup>29</sup> Complainants further provide an abundance of credible testimony related to the events of October 15-16, 2020, due to the faulty PCV-1027 valve

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<sup>26</sup> Tr. at 20:5-70:10 (oral examination of Ackie); 81:17-108:19 (oral examination of Chavarria). *See also* Complainants Main Brief at 7.

<sup>27</sup> Complainants Reply Brief at 8. *See also* PGW Main Brief at 43-49.

<sup>28</sup> PGW Exceptions at 12 (bald assertion with no cited reference “What the ID fails to recognize is that the PCV-1027 valve is not faulty, has not been broken for years, and had nothing to do with the emission of a negligible and harmless amount of gas into the atmosphere on October 15, 2020.”)

releasing LNG into the atmosphere causing Passyunk Plant personnel to put caution tape out to warn plant personnel of the existence of the gas and to prevent a further unsafe condition.<sup>30</sup> Complainants Ackie and Chavarria were present on the days in question, PGW lay witness McGuire was not.<sup>31</sup> Instead of providing eyewitness testimony of the events from other employees present at the time, PGW offers pre-served testimony of its plant manager, who makes a tenuous distinction between safety and security violations, *inter alia*. Such testimony is unimpressive and does not rise to the level to counter Complainants' substantial evidence satisfying their preponderance of evidence burden.

Finally, PGW once again, attempts to introduce for the first time in these Exceptions arguments not previously made in its main or reply briefs. For example, it once again alleges the Commission's Bureau of Investigation and Enforcement's failure to identify the PVC-1027 valve as "posing any concerns about the safe operation of the Plant."<sup>32</sup> PGW failed to make this argument or raise this issue in its main or reply briefs, or before the close of the record. Complainants object to this and all other untimely arguments/issues untimely raised by PGW in these Exceptions, and ask that they be stricken.

With respect to civil penalties, due process requires the Commission to give PGW a "meaningful opportunity to be heard."<sup>33</sup> By filing these Exceptions, PGW has been afforded such an opportunity.

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<sup>29</sup> Complainants Main Brief at 13-14.

<sup>30</sup> Complainants Main Brief at 14-15; Complainants Reply Brief at 6-7, 9, 14, 35-37.

<sup>31</sup> *Id.*

<sup>32</sup> PGW Exceptions at 15.

<sup>33</sup> Snyder Bros. v. PUC, No. 1043 C.D. 2015, 2020 Pa. Commw. Unpub. LEXIS 91, at \*12 (citing Morrissey v. Brewer, 408 U.S. 471, 481 (1972)).

### III. CONCLUSION

For the reasons set forth above, the Commissions should reject in toto PGW's Exceptions to the Initial Decision of ALJ Darlene D. Heep dated August 13, 2021, and impose the civil penalties are presented therein based on PGW's violations of Section 1501 and creation of unsafe facility/services at the Passyunk Plant.

**Respectfully submitted,**

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