



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

June 18, 2024

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement v.
PECO Energy Company
Docket No. C-2024-
Formal Complaint (Non-Proprietary and Proprietary Version)

Dear Secretary Chiavetta:

Enclosed for electronic filing is the **Non-Proprietary** version of the **Formal Complaint** of the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission in the above-referenced matter. The **Proprietary** version has been submitted to the Secretary’s Bureau via their ShareFile.

Copies have been served on the parties of record in accordance with the Certificate of Service. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads 'Garrett Rine'.

Garrett A. Rine
Prosecutor
Bureau of Investigation & Enforcement
PA Attorney ID No. 327921
(717) 787-6150
garrine@pa.gov

GAR/ac
Enclosures

cc: Per Certificate of Service
Michael L. Swindler, Deputy Chief Prosecutor (via email - mwindler@pa.gov)
Robert Horensky, Manager, Safety Division (via email - rhorensky@pa.gov)
Terri C. Cooper Smith, Supervisor, Fixed Utility Valuation Engineer Supervisor
(via email - tcsmith@pa.gov)
Scott Orr, Fixed Utility Valuation Engineer III (via email - scoorr@pa.gov)

NOTICE

A. You must file an Answer within 20 days of the date of service of this Complaint.

The date of service is the mailing date as indicated at the top of the Secretarial Letter. *See* 52 Pa. Code § 1.56(a). The Answer must raise all factual and legal arguments that you wish to claim in your defense, include the docket number of this Complaint, and be verified. The Answer must be submitted by efileing with the Secretary of the Commission by opening an efileing account through the Commission's website and accepting eservice at <http://www.puc.state.pa.us/efiling/default.aspx>. If your filing contains confidential material, you are required to file by overnight delivery to ensure the timely filing of your submission to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

If your Answer is 250 pages or less, you are not required to file a paper copy. If your Answer exceeds 250 pages, you must file a paper copy with the Secretary's Bureau.

Additionally, please electronically serve a copy on:

Garrett A. Rine, Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
garrine@pa.gov

B. If you fail to Answer this Complaint within 20 days, the Bureau of Investigation and Enforcement will request that the Commission issue an Order imposing the requested relief.

C. You may elect not to contest this Complaint by paying the civil penalty and performing the requested relief within 20 days. Send only a certified check or money order made payable to the "Commonwealth of Pennsylvania," with the docket number indicated, and mailed to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

D. If you file an Answer which either admits or fails to deny the allegations of the Complaint, the Bureau of Investigation and Enforcement will request that the Commission issue an Order imposing the requested relief set forth in this Complaint.

E. If you file an Answer which contests the Complaint, the matter will be assigned to an Administrative Law Judge for hearing and decision. The Judge is not bound by the penalty set forth in the Complaint and may impose additional and/or alternative penalties as appropriate.

F. If you are a corporation, you must be represented by legal counsel. *See* 52 Pa. Code § 1.21.

G. Alternative formats of this material are available for persons with disabilities by contacting the Commission's ADA Coordinator at 717-787-8714.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2024-
	:	
PECO Energy Company,	:	
Respondent	:	

**FORMAL COMPLAINT
(NON-PROPRIETARY VERSION)**

NOW COMES the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission, by its prosecuting attorneys, pursuant to Section 701 of the Public Utility Code, 66 Pa.C.S. § 701, and files this Formal Complaint (“Complaint”) against PECO Energy Company (“PECO” or “Respondent”) alleging violations of the Public Utility Code, Pennsylvania Code, and Code of Federal Regulations in connection with an incident and injury that occurred on June 25, 2021, at 2936 Susquehanna Avenue, Abington Township, Montgomery County, Pennsylvania. In support of its Complaint, I&E respectfully avers as follows:

I. COMMISSION JURISDICTION AND AUTHORITY

1. The Pennsylvania Public Utility Commission (“Commission” or “PUC”), with a mailing address of the Commonwealth Keystone Building, 400 North Street, Harrisburg, PA 17120, is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth pursuant to the Public Utility Code, 66 Pa.C.S. §§ 101, *et seq.* (“Code”).

2. Complainant is the Commission's Bureau of Investigation and Enforcement, which is the bureau established to take enforcement actions against public utilities and other entities subject to the Commission's jurisdiction pursuant to 66 Pa.C.S. § 308.2(a)(11); *See also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (August 11, 2011) (delegating authority to initiate proceedings that are prosecutory in nature to I&E).

3. Complainant's prosecuting attorneys are as follows:

Garrett A. Rine
Prosecutor
garrine@pa.gov
(717) 787-6150

Michael L. Swindler
Deputy Chief Prosecutor
mwindler@pa.gov

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

4. Respondent, formerly the Philadelphia Electric Company, is an energy company founded in 1881 and incorporated in 1929.

5. Respondent is owned by the Exelon Corporation, with headquarters located at 2301 Market Street, Philadelphia, PA

6. Section 501(a) of the Code, 66 Pa. C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code.

7. Section 701 of the Code, 66 Pa. C.S. § 701, authorizes the Commission, *inter alia*, to hear and determine complaints against public utilities for violations of any law or regulation that the Commission has jurisdiction to administer or enforce.

8. Section 3301(c) of the Code, 66 Pa.C.S. § 3301(c), which is specific to gas pipeline safety violations, authorizes the Commission to impose civil penalties on any person or corporation, defined as a public utility, who violates any provisions of the Code or any regulation or order issued thereunder governing the safety of pipeline or conduit facilities in the transportation of natural gas, flammable gas, or gas which is toxic or corrosive. Section 3301(c) further provides that a civil penalty of up to Two Hundred Thousand Dollars (\$200,000) per violation for each day that the violation persists may be imposed, except that for any related series of violations, the maximum civil penalty shall not exceed Two Million Dollars (\$2,000,000) or the penalty amount provided under Federal pipeline safety laws, whichever is greater.

9. Civil penalties for violations of Federal pipeline safety laws and regulations are adjusted annually to account for changes in inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, § 701, 129 Stat. 599, 28 U.S.C. § 2461 note (Nov. 2, 2015) (amending the Federal Civil Penalties Inflation Adjustment Act of 1990). The applicable adjustment made by the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration ("PHMSA") occurred on December 28, 2023 and revised the maximum civil penalty to Two Hundred Sixty-Six Thousand, Fifteen Dollars (\$266,015.00) for each violation for each day the violation continues, with a maximum penalty not to exceed Two Million, Six Hundred Sixty Thousand, One Hundred Thirty-Five Dollars (\$2,660,135.00) for a related series of violations. 88 Fed. Reg. 89560 (Dec. 28, 2023).

10. Pursuant to Section 59.33(b) of the Commission's regulations, 52 Pa. Code § 59.33(b), I&E's Pipeline Safety Division has the authority to enforce Federal pipeline safety laws and regulations set forth in 49 U.S.C.A. §§ 60101-60503 and as implemented at 49 CFR Parts 191-193, 195 and 199. The Federal pipeline safety laws and regulations prescribe the

minimum safety standards for all natural gas and hazardous liquid public utilities in the Commonwealth.

11. Respondent is a “public utility” as that term is defined at 66 Pa.C.S. § 102,¹ as it is engaged in providing public utility service as a natural gas distribution company (“NGDC”) to the public for compensation.

12. Respondent, in providing natural gas distribution service to the public for compensation, is subject to the power and authority of this Commission pursuant to Section 501(c) of the Code, 66 Pa.C.S. § 501(c), which requires a public utility to comply with Commission regulations and orders, including Federal pipeline safety laws and regulations.

13. Pursuant to the provisions of the applicable Commonwealth and Federal statutes and regulations, the Commission has jurisdiction over the subject matter and the actions of Respondent related thereto.

II. BACKGROUND

14. Respondent, formerly the Philadelphia Electric Company, is an energy company founded in 1881 and incorporated in 1929.

15. Respondent is owned by the Exelon Corporation, with headquarters located at 2301 Market Street, Philadelphia, PA.

16. As of May 01, 2024, Respondent serves approximately 1.6 million electric and over 511,000 natural gas customers and is the largest combination utility in Pennsylvania.

¹ “Public utility” is defined as:

(1) Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for:

(i) Producing, generating, transmitting, distributing or furnishing natural or artificial gas, electricity, or steam for the production of light, heat, or power to or for the public for compensation.

66 Pa.C.S. § 102.

17. Respondent has a franchise utility service area of 2,100 square miles, with a population of 3.8 million people.

18. Respondent's natural gas service area covers all of Delaware County; most of Bucks, Chester, and Montgomery counties; and a small portion of eastern Lancaster County.

19. On or about June 25, 2021, two Henkels and McCoy crew members ("H&M" or "subcontractor"), a subcontractor for PECO, were working on an Accelerated Gas Infrastructure Modernization Program gas project on Susquehanna Avenue in Abington Township (hereinafter referred to as the "Abington Township Project"), Montgomery County, Pennsylvania.²

20. The H&M laborers were performing a tie in to an 80-foot section of a new 8-inch plastic gas main.

21. The H&M crew members performing the tie in at 2936 Susquehanna Avenue were a Foreman ***START CONFIDENTIAL*** [REDACTED] ***END CONFIDENTIAL*** ("Foreman") and a Basic Mechanic ***START CONFIDENTIAL*** [REDACTED] ***END CONFIDENTIAL*** ("Basic Mechanic").

22. Foreman was removing debris from the area prior to bottom screening the trench where the 80-foot section of 8-inch plastic main was to be installed.

23. Basic Mechanic was using a plastic rotary cutter to cut off the end cap in preparation for installation of an electrofusion coupling.

24. At approximately 11:50 AM, as Basic Mechanic made the cut through the main while it was still under 80 psig of air pressure, the end cap abruptly released, resulting in injuries to both Foreman and Basic Mechanic.

² The specific address of the accident was identified as 2936 Susquehanna Avenue, Abington Township, Montgomery County, Pennsylvania.

25. Basic Mechanic failed to verify if the overnight test pressure had been removed from the main prior to making a cut.

26. Foreman failed to verify with Basic Mechanic that the main was still under 80 psig of pressure from the previous day prior to performing any work action on the main.

27. Failing to verify whether the main was still under test pressure prior to making any cut to the main is a violation of Respondent's procedure at GO-PE-1024. **See attached I&E Exhibit 1. (Confidential).**

28. GO-PE-1024 was not reviewed with H&M's crew members prior to beginning work on the Abington Township project on June 25, 2021.

29. Other H&M crew members working down the street heard the release and responded immediately.

30. Upon arrival they administered first aid and called 911.

31. H&M management notified PECO's Management immediately concerning the accident.

32. The injured H&M crew members were transported to Abington Hospital.

33. Foreman was released with minor, non-life-threatening injuries.

34. Basic Mechanic sustained more serious injuries and was hospitalized.

35. As a result of the incident, H&M conducted a Root Cause Analysis ("RCA"). **See attached I&E Exhibit 2. (Confidential).**

36. Following H&M's investigation it was determined that the Root Cause of the incident leading to the injuries of Foreman and Basic Mechanic were due to a failure to follow PECO's guidelines contained in GO-PE-1024 and the cutting of pipe that was not outlined as a critical task in the job brief.

III. PECO GAS PROCEDURES

37. During the entirety of the Abington Township Project, including at the time of the accident and incident to the H&M crew members, Respondent used *GAS MAIN INSTALLATION GENERAL SPECIFICATIONS*, G-2005, procedures for the installation of gas mains, *GAS MAIN PRESSURE TESTING SPECIFICATIONS*, G-2008, to dictate the appropriate amount of test pressure in a new gas main, and *Gas Main and Service Line Pressure Tests*, *PECO Administrative Procedure*, GO-PE-1024 to provide guidelines for performing, documenting, and communicating results of pressure tests done on gas mains and service lines.

START CONFIDENTIAL

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

END CONFIDENTIAL

IV. ALLEGED VIOLATIONS

41. All allegations in paragraphs 1 through 40 are incorporated as if fully set forth herein.

42. Respondent's subcontractor H&M cut into an 80-foot section of new 8-inch gas main that was under 80 psig of air pressure from the previous night causing serious injury to Basic Mechanic who was performing the cut and to Foreman who was in the trench at the time of the cut.

43. H&M employees failed to follow Respondent's procedures as defined within GO-PE-1024 in that the contractor employees failed to verify the test pressure in the main had been released prior to making a cut.

44. Basic Mechanic failed to verify the overnight air test, and failed to remove the 80 psig of air pressure from the 8-inch main prior to cutting the end cap.

45. H&M's crew failed to communicate that the overnight pressure in the line from the previous day had not been removed prior to working on the main.

46. The cutting of the pipe was not outlined as a critical task in the written job brief.

47. Basic Mechanic failed to communicate with Foreman prior to making the cut.

COUNT ONE

48. All allegations in paragraphs 1 through 47 are incorporated as if fully set forth herein. Respondent and its contractors did not take adequate precautions or follow Respondent's procedures to prevent serious injury to the Henkels and McCoy Foreman and Basic Mechanic

while cutting the end cap off of the main pipeline that was still under air pressure. The procedure to verify there was no pressure on the main line was not followed. If proven, this is a violation of 52 Pa. Code § 59.33(a) (Safety).

COUNT TWO

49. All allegations in paragraphs 1 through 48 are incorporated as if fully set forth herein. Respondent and its contractor employees did not follow *PECO PROCEDURE GO-PE-1024, Gas Main and Service Line Pressure Tests*. The Henkels and McCoy Foreman and Basic Mechanic unknowingly removed a fitting from a pipeline under test pressure. They proceeded to cut the end cap off the main which resulted in serious injuries to both employees. They failed to verify that the main they were working on was still under test pressure. If proven, this is a violation of 49 C.F.R § 192.13(c).

COUNTS THREE AND FOUR

50. All allegations in paragraphs 1 through 49 are incorporated as if fully set forth herein. Respondent and its contractor employees did not follow *PECO PROCEDURE GO-PE-1024, Gas Main and Service Line Pressure Tests*. The Henkels and McCoy Foreman and Basic Mechanic unknowingly removed a fitting from a pipeline under test pressure. They proceeded to cut the end cap off the main which resulted in serious injuries to both employees. They failed to verify that the main they were working on was still under test pressure. If proven, this is a violation of 49 C.F.R § 192.605(a) and 49 C.F.R § 192.605(b)(8).

V. REQUEST FOR RELIEF

51. Due to Respondent and its contractor employee's failure to properly follow its procedures, which resulted in severe injuries to two H&M employees, I&E proposes that Respondent pay a total civil penalty of One Hundred Thousand dollars (\$100,000.00). The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26

U.S.C.S. § 162(f) or passed through as an additional charge to PECO Gas customers in Pennsylvania.

52. In addition to the civil penalty, I&E proposes the following corrective actions:
 - a. PECO may not recover the costs associated with the below identified corrective actions from ratepayers.
 - b. PECO shall require signed verification on an inspection form to ensure all pressure is reduced to near zero prior to removing an end cap or cutting into a main. This would require an addition to the daily construction inspection by incorporating a Job Hazard Analysis form.
 - c. As soon as practicable, PECO shall retrain all personnel involved in gas main construction, both employees of the company and subcontractors, on any alterations or addition to the procedure, and issue a notification to complete this training as soon as procedures are approved. PECO shall issue intermediate steps to be followed while this process and procedures are under review.
 - d. PECO shall continue to add Job Safety briefings (tailgates sessions) to the new procedure. PECO must apply these briefings to PECO employees and 2nd party contractors on a continual on-going basis and document these training procedures. The documentation should include a list of employees and contractors that participated in the training.
 - e. Develop a “lesson learned” and close call module to incorporate into PECO/Contractor training with a physical component during the training to demonstrate the verification process of relieving pressure from the main prior to making a cut or removing the end cap from the main. PECO shall

document these training procedures. The documentation should include a list of employees and contractors that participated in the training.

- f. Develop a hands-on training module to be given to all PECO/Contactor personnel onboarding for new employees, for continued training, and/or during annual training. The documentation should include a list of employees and contractors that participated in the training.
- g. Develop more stringent span of control and job duties standards for Inspectors. PECO must implement measures to address risks by establishing a Quality Assurance/Quality Control (“QA/QC”) Oversight program staffed by inspectors. Create a program similar to the existing electric QA/QC program implemented by PECO and include performance metrics.
- h. PECO shall establish a program for inspection of all construction projects to ensure compliance with the Federal Code and State Regulations.
- i. Consider implementing a Quality Assurance/Quality Control program following Pipeline Safety Management Systems (PSMS) for construction projects. Consider implementation to apply to SCC qualified/covered tasks.
- j. PECO shall require an internal review process following any event involving injuries (Pa. Code § 59.11(b)(1-2)) to PECO employees or their subcontractors related to construction, operation, and maintenance. The internal review of the event shall be followed by a written report and implementation actions to prevent reoccurrence based on that review. Complete documentation of the training to include who attended, training

materials, course length and date and time shall be kept.

- k. All Root Cause Analysis (RCA) investigations involving PECO assets that result in any event as described in the previous paragraph related to construction, operation, and maintenance shall be conducted by PECO or an independent third party of PECO's choice. If the RCA is not conducted by PECO or its independent third party, then PECO shall, in writing, adopt the RCA in its entirety.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement hereby requests that the Commission: (1) find PECO to be in violation of the Public Utility Code, Commission regulations, and/or Code of Federal Regulations for each of the four (4) counts set forth herein; (2) impose a cumulative civil penalty upon PECO Energy in the amount of One Hundred Thousand Dollars (\$100,000.00); (3) direct PECO Energy to perform each of the corrective actions detailed in this Complaint; and (4) order such other remedies as the Commission may deem to be appropriate.

Respectfully submitted,



Garrett A. Rine
Prosecutor
PA Attorney ID No. 327921

Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Dated: June 18, 2024

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2024-
	:	
PECO Energy Company,	:	
Respondent	:	

VERIFICATION

I, Scott Orr, Fixed Utility Valuation Engineer, hereby state that the facts above set forth are true and correct to the best of my knowledge, information, and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: June 18, 2024



Scott Orr
Fixed Utility Valuation Engineer III
Pipeline Safety Division
Bureau of Investigation and Enforcement

I&E

Exhibit 1

CONFIDENTIAL

I&E

Exhibit 2

CONFIDENTIAL

I&E

Exhibit 3

CONFIDENTIAL

I&E

Exhibit 4

CONFIDENTIAL

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2024-
	:	
PECO Energy Company,	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Formal Complaint (Non-Proprietary and Proprietary Version)** dated June 18, 2024 upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Service by Certified Mail, Return Receipt, and Electronic Mail

Jack R. Garfinkle, Esq.
Associate General Counsel
PECO Energy Company
2301 Market Street
Philadelphia, PA 19103
(856) 912.4738
jack.garfinkle@exeloncorp.com



Garrett A. Rine
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