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AUG 4 2010

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

August 4, 2010

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

RE: LBPS V. Peoples Natural Gas Company LLC d/b/a/ Dominion Peoples  
Docket No. C-2009-2027991

Dear Secretary Chiavetta:

Peoples Natural Gas Company LLC (formerly known as Dominion Peoples) ("Peoples") respectfully files this letter in response to your request dated June 21, 2010 seeking additional information regarding the Proposed Settlement Agreement entered into between the parties in the above-captioned action. As you requested, I have attached a copy of Peoples' SOP 090 referred to in paragraph 33B of the proposed Settlement in Count 2. Please accept this letter and its attachments as the Company's position as to whether the failure of Peoples to follow the SOP before the excavation contributed to the explosion or whether compliance with the SOP provision could have prevented the explosion.

It must first be stated that it is Peoples' firm conviction that no violation of SOP 090 occurred. The NTSB thoroughly investigated the incident and did not find a violation.

Peoples signed the settlement agreement in the spirit of all settlements agreements – to resolve the parties' differences of opinion without incurring the expense and uncertainty of litigation. It was not intended and does not intend to reflect any admission of liability, especially as to whether or not Peoples violated SOP 090. The Commission should not read Peoples' acquiescence in joining in the settlement proposal as an admission that any SOP was violated, including SOP 090. The Settlement Agreement emphasizes the very nature of a negotiated settlement document, using language such as:

"There has been no fact-finding before any tribunal and no sworn testimony has been taken. Dominion Peoples does not admit any liability, but enters into this agreement for the sole purpose of resolving this matter amicably." p. 1

"Had the matter been litigated, Dominion would have denied all the above allegations and defended against the same allegations." Para. 34, p. 9

"There has been no fact-finding before any tribunal and no sworn testimony taken." Para. 35, p. 10.

"In this case, the result of Dominion's alleged conduct was not the proximate cause of damage to its facilities or to any customers' properties or person." Para. 42, p.10

"A settlement avoids the necessity for the prosecuting agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty." Para. 50, p. 14

"None of the provisions of the Settlement Agreement or statements herein shall be considered an admission of any fact or culpability." Para. 52, p. 15

"The parties agree that the underlying allegations were not the subject of any hearing or formal procedure and that there has been no order or findings of fact rendered in this matter." Para. 53, p. 15

Accordingly, Peoples is not able to provide a direct answer to the first question you present in your letter of June 21, 2010: We did not violate the SOP and so cannot speculate as to whether a potential violation of SOP 090 would have contributed to the explosion. As to the second part of the query, ("whether compliance with the SOP could have prevented the explosion") we state that we followed the SOP, yet the explosion still occurred due to a third party's violation of the prudent practices (hand-digging) and self-reporting provisions of the Pa. One-Call Act.

SOP 090 is Peoples' Damage Prevention Program, designed to prevent damages to buried pipeline facilities and the facilities of others. (Exhibit 1) The Law Bureau, in Paragraph 33B of the Agreement, alleges a violation of SOP 090-Section III (F) (2) and (3), "with reference to inspection of the site of the original work performed by contractors Ley/Higgins at the time of the excavation and replacement work on the sewer lateral **both before and after the excavation.**" (Emp. Added.) Peoples' duty to inspect the site before the excavation amounted to receiving the one-call ticket, identifying the proposed site and sending a line locator out to mark the pipeline. This was done and no violation as regards marking as been alleged by any party in this matter. As for any duty to inspect the site **after** the excavation, Peoples respectfully asserts that neither SOP 090 nor 49 CFR 192 created such a duty under the fact situation.

Peoples' duty to inspect post-excavation is found at SOP 090 (F):

F. Facility Inspections – During and After Excavation Activities

1. Inspections shall be conducted when there is reason to believe the facility could be damaged by excavation activities. The inspections shall be completed as frequently as necessary during and after activities to verify the integrity of the pipeline. The following factors should be considered for determining the need for and extent of inspections:
  - a. The type and duration of excavation activities.
  - b. The proximity to facilities and the type of excavation equipment involved.
  - c. The importance of the facilities.
  - d. The type of area in which the excavation is being performed.
  - e. The potential for a serious incident should damage occur.
  - f. *The past experience of the excavator.*
  - g. The potential for damage occurring which may not be easily recognized by the excavator such as improper support during excavation and backfill.
  - h. The potential for facility markings to become obscured.

Peoples did not send an inspector out in October 2003 when a sewer line was being renewed, either during or after the work had been completed, because no inspector was warranted under (F)(1) and the Law Bureau apparently agreed, since no allegation of a violation of (F)(1) was made. However, the Law Bureau alleged that Peoples should have inspected the exposed pipe, per (F)(2) and (3). Peoples respectfully denies this allegation.

The one-call ticket that the contractor placed on October 8, 2003, was routine; he stated that he would start excavating for a new sewer line on or about October 14. The ticket does not state that the gas line would be exposed. (Ex. 2) This Pa. One Call was one of 9,396 one-call locate tickets Peoples received just during that October. **For the year 2003, Peoples received over 102,800 locate requests.** No utility can send inspectors to 102,800 sites a year in the off chance that a contractor will expose a line. It is simply impractical – from both a logistical and resource perspective.

SOP 090 (F)(2) requires the utility pay 'particular attention' to the possibility of joint leaks and breaks due to settlement, especially in threaded-coupled steel and mechanical compression joints. This 2" was mill-wrapped and the break was not at a joint. It was thoroughly and effectively cathodically protected and found 'in good condition,' according to the NTSB report. 'Settlement' was not found to be a cause of the line's failure. Accordingly, Peoples does not believe the facts support finding a violation of (F)(2).

SOP 090 (F) (3) requires exposed pipelines be inspected. SOP (F) (3) restates 49 CFR Section 192.459 which provides: "Whenever an operator has knowledge that any portion of a buried pipeline is exposed, the exposed portion must be examined..." **But Peoples did not know, was not told and had no way to know, that its pipeline had been exposed at 171 Mardi Gras Drive.**

The Code does not contemplate utilities put guards 24/7 on its facilities to see who, in its vast service territories, might be exposing its pipes. This was clarified in a letter interpreting Section 192.459 from the Acting Director for Pipeline Safety

Regulation of the Materials Transportation Bureau, DOT (formerly Office of Pipeline Safety), dated October 27, 1981, by stating,

"This section requires operators to visually inspect a pipeline for corrosion whenever the operator has knowledge that the pipeline is exposed. In most cases, the information that an operator receives under a "one-call" system about a proposed excavation would not give the operator knowledge that a pipeline is or will be exposed by the excavation. Under these circumstances, an inspection to detect corrosion would not be required by Section 192.459."

Recognizing this fact, the PA One-Call puts the onus on the excavators to notify the utility if they strike a facility. This excavator never notified Peoples and the opportunity to repair and re-wrap the line was lost.

The events of March 2008 were tragic and Peoples deeply empathizes with the victims. The company has agreed to several action items outlined in the Settlement Agreement that should help make its system even safer. But none of them, or any of the current SOPs, could have prevented this explosion. Contractors need to adhere to the Pa. One-Call Act, to use prudent digging methods over buried pipelines and to self-report if they damage underground facilities.

Notwithstanding our firm conviction that Peoples did not violate any of its SOPs, the company agreed to enter into the Settlement Agreement simply to avoid the time, expense and uncertainty of litigation. The Company respects the men and women of the Safety Division and of the Law Bureau and appreciates that people, all of whom are committed to the highest safety standards, may differ from time to time in how they perceive the same set of facts. It is our experience that cooperating with the various agencies and bureaus dedicated to pipeline integrity and safety can provide the surest, most expeditious path to system safety and customer satisfaction improvements. It was in that spirit that Peoples acquiesced to the Settlement Agreement, and certainly not due to a belief that the company violated any provisions of 49 CFR or its own SOPs.

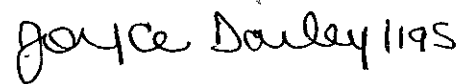
Rosemary Chiavetta, Secretary

August 4, 2010

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I very much appreciate this opportunity to explain the company's position. Entering into settlement agreements is always a difficult decision for a company but we are convinced that this Agreement is fair and reasonable and in the public interest.

Yours truly,

A handwritten signature in black ink that reads "Joyce Dailey 1195". The signature is written in a cursive style.

Joyce C. Dailey  
Vice-President, Legal

Enclosures

cc: Ken Johnston

Frank Milfeit

James Mélia, Esq.

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## Standard Operating Procedure

SECTION: 090 / Damage Prevention  
SOP: 01 / Damage Prevention Program

EFFECTIVE DATE: 04/01/2000  
REVISION DATE: 10/01/2003  
PREVIOUS REVIEW DATE: 10/01/2003

### I. SCOPE

This procedure outlines the Company's "Damage Prevention Program" for preventing damage to its buried pipeline facilities and the facilities of others.

### II. GENERAL

- A. The Company's "Damage Prevention Program" includes procedures for preventing damage to its buried pipeline facilities and the facilities of others by "excavation activities." "Excavation activities" include blasting, boring, tunneling, backfilling, the removal of aboveground structures by either explosive or mechanical means, or other earth-moving activities. The objective of the "Damage Prevention Program" is to:
1. Reduce underground damages;
  2. Minimize service interruptions;
  3. Promote public safety; and
  4. Protect the environment.
- B. When blasting or mining is involved, Gas Delivery Engineering should be notified immediately. Depending upon the scope of the operation, it may necessary for Gas Delivery Engineering to:
1. View the site with operations personnel and recommend steps to control or prevent damage.
  2. Solicit information from the mining or blasting operator.

3. Solicit an encroachment plan for any proposed blasting. Upon receipt of the plan, forward a letter to the blaster and appropriate operations personnel outlining steps to correct or prevent damage to Company facilities.
4. Conduct follow-up investigations, provide assistance, or prepare reports as requested.

**NOTE: For Ohio, see Exceptions area.**

- C. When pipelines are initially installed in a political subdivision, notification should be provided immediately to Gas Delivery Engineering. Gas Delivery Engineering is responsible for notifying the state "one-call" system.
- D. As permitted by Pipeline Safety Regulations, several aspects of the Company's "Damage Prevention Program" are performed by the state's "one-call" system. However, participation in a "one-call" system does not relieve the Company of responsibility for compliance with the program.
- E. A "Damage Prevention Program" is not required for pipeline facilities to which access is physically controlled by the Company.

### **III. DAMAGE PREVENTION PROGRAM**

#### **A. State "One-Call" System**

1. The following aspects of the Company's "Damage Prevention Program" are primarily performed by the state's "one-call" system and, in addition, may be supplemented on an as-needed basis by the Company or outside companies:
  - a. Identifying, on a current basis, persons that normally engage in excavation activities in the area of the Company's buried pipeline facilities.
  - b. Receiving and recording notification of planned excavations and exposure of Company pipeline facilities.
  - c. Providing general notification of the public in the vicinity of Company pipeline facilities and actual notification of persons that normally engage in excavation activities of the program's existence and purpose and how to learn the location of buried pipeline facilities before excavation activities begin.
  - d. If the Company has buried facilities in the area of proposed excavation, provide for actual notification of excavators of the type of temporary marking to be provided and how to identify the markings.

B. Responding to Excavation Notifications

1. Notices of excavation are received and processed by the state “one-call” system. When Company personnel receive notices of excavation directly from the excavator, the excavator should be instructed to call the state “one-call” system.
2. Notices of excavation from the state “one-call” system may be received by Company personnel or its contractor. All notices of excavation shall be responded to within two (2) working days, providing the request is made no less than two (2) nor more than ten (10) working days prior to the planned excavation. If the required two- (2) day notice is not provided, a reasonable effort should be made to notify the excavator.

**NOTE: For Pennsylvania, see Exceptions area.**

3. Response to emergency pipeline location requests shall be as soon as practical following receipt of the emergency notification.
4. Upon receipt of notification reporting contact, damage, or possible impending failure of the Company's facility, the Company should immediately conduct an inspection of the facility and make necessary repairs or the excavator should be advised that work may proceed. Such repairs may be performed by Company personnel or others authorized by the Company, including the excavator. If a steel pipeline is exposed, a pipe inspection report shall also be completed in accordance with **Corrosion Control SOP 70-05 Examination of Buried Metallic Pipelines.**
5. Upon receipt of notification that an unknown facility has been discovered during excavation work, the Company should immediately determine whether the facility is owned by the Company. The excavator should be advised whether or not the facility is owned by the Company and how to proceed with the excavation, including any special requirements the Company deems necessary.
6. When facility markings are provided by a contractor, the contract employees shall notify the Company, each day, of the status of the "work due." If any "work due" needs immediate attention, it shall be reported to the Company. The Company shall determine the appropriate action to be taken to ensure the safety of the public and Company facilities.

C. Placing Excavation Notifications

1. Notices of planned excavations by Company personnel or its contractors shall be made no less than two (2) nor more than ten (10) working days prior to planned excavations.



**NOTE: For Pennsylvania, see Exceptions area.**

2. Emergency excavations do not require pre-excavation notification; however, a notice shall be given to the state "one-call" system as crews are being assembled. An *"emergency"* is defined as a condition constituting a clear and present danger to life or property by reason of escaping gas or other breaks or defects in a pipeline.

D. Determining Facility Involvement

1. Facility involvement should be determined from maps, records, field investigations or any other means deemed necessary.
2. When directional drilling or other trenchless technology is encountered, it may be necessary for the excavation contractor to conduct additional measures to determine the depth of gas facilities. Therefore, upon notification of trenchless technology operations, the following precautionary measures should be considered:
  - a. A thorough site survey to locate potential conflicts with buried pipelines facilities.
  - b. Instruct the excavation contractor to use barring techniques or test holes to determine the exact depth of the facilities, particularly when there have been changes in surface contours due to agricultural activities, landscaping, grading or road building. These techniques may be necessary prior to and during trenchless operations.
  - c. The presence of Company or contract personnel at the site when trenchless operations are anticipated near high-pressure buried pipeline facilities.

**NOTE: The performance of these measures will vary depending upon the scope of the trenchless operation.**

E. Temporary Marking of Facilities

1. Upon determination of facility involvement, temporary marking shall be made within 48 hours of notification, excluding weekends and legal holidays. If the required two- (2) day notification is not provided, a reasonable attempt should be made to contact the excavator and request the start time be changed. If the excavator cannot change the start time, the excavator should be informed there are facilities in the area and personnel will be dispatched as soon as possible.
2. The type and extent of temporary markings will depend on the nature and extent of the proposed excavation.

**NOTE: The planned excavation area is normally defined on the notification ticket. The locator should not make any assumptions regarding the extent of the excavation area. However, the area in which facilities are located may be altered upon receipt of information directly from the excavator regarding specific boundaries of the excavation area. Receipt of this information should be documented on the notification notice.**

3. Temporary line markers should consist of paint, wooden stakes or flags and should be installed at intervals that will adequately identify underground facility location.
4. When the surface over the buried facility is planned to be destroyed, supplemental offset markings noting the direction and actual distance to the facility may be added.
5. All markings shall be done in accordance with the American Public Works - Utility Location Coordination Council (APWA-ULCC) uniform color code for marking underground facilities. The color "YELLOW" shall be used to indicate gas facilities.
6. The horizontal location of the pipeline shall be determined using an electronic pipeline locator or other means necessary.

**NOTE: See Exceptions area.**

F. Facility Inspections - During and After Excavation Activities

1. Inspections shall be conducted when there is reason to believe the facility could be damaged by excavation activities. The inspections shall be completed as frequently as necessary during and after activities to verify the integrity of the pipeline. The following factors should be considered for determining the need for and extent of inspections:
  - a. The type and duration of excavation activities.
  - b. The proximity to facilities and the type of excavating equipment involved.
  - c. The importance of the facilities.
  - d. The type of area in which the excavation activity is being performed.
  - e. The potential for a serious incident should damage occur.
  - f. The past experience of the excavator.



- B. Responses to excavation notifications should be documented on the appropriate form and retained for five (5) years.

### **Exceptions:**

All notices of excavation shall be responded to, providing the request is made no less than three (3) nor more than ten (10) working days prior to the excavation.

**(This exception applies to Section III.B.2.)**

Notices of planned excavations by Company personnel or its contractors shall be made no less than three (3) nor more than ten (10) working days prior to planned excavations.

**(This exception applies to Section III.C.1.)**

Design requests shall be placed no less than ten (10) nor more than 90 days before final design is completed.

**(This exception applies to Section III.C.1.)**

Pipelines shall be marked within 18 inches horizontally from the pipeline's outside wall.

**(This exception applies to Section III.E.6.)**

### **Environmental**

#### **Safety**

360-19 Personal Protective Equipment

#### **Work Procedures**

#### **Chart / Graphs / Drawings / Lists**

## Forms

## Regulations

DOT 49 CFR 192.614

PA Underground Utility Line Protection Law - Act 187 of 1996

**Terms and Definitions**

**Design and Construction Manual**

**OPS Regulations**

CDC 00000 POCs MM/DD/YY TT:TT:TT 2817370-000 NEW XCAV RTN

=====PENNSYLVANIA UNDERGROUND UTILITY LINE PROTECTION REQUEST=====

Serial Number--[2817370]-[000] Channel#--[1855006][0193]

Message Type--[NEW][EXCAVATION][ROUTINE]

County--[ALLEGHENY] Municipality--[PLUM BORO]

Work Site--[171 MARDI GRAS DR]

Nearest Intersection--[HAVANNA DR]

Second Intersection--[ ]

Subdivision--[ ]

Site Marked in White--[Y]

Location Information--

[WORKING IN THE FRONT OF THE PROPERTY.]

Caller Lat/Lon--[ ]

Mapped Type--[P] Mapped Lat/Lon--

[40.488137/-79.711351,40.48674/-79.713188,40.484005/-79.708227

40.483526/-79.70576,40.484703/-79.70513]

Type of Work--[REPLACE SEWER]

Depth--[8FT]

Extent of Excavation--[3FT X 50FT]

Method of Excavation--[BH]

Street--[ ] Sidewalk--[ ] Pub Prop--[ ] Pvt Prop--[X] Other--[ ]

Owner/Work Being Done for--[PORTER]

Lawful Start Dates--[14-OCT-03] Through [23-OCT-03]

Proposed Dig Date--[14-OCT-03] Dig Time--[0830] Duration--[2 DAYS]

Contractor--[HIGGINS PLUMBING]

Homeowner/Business--[B]

Address--[718 STEWART DR]

City--[APOLLO]

State--[PA] Zip--[15613]

Caller--[KEVIN HIGGINS]

Phone--[724-727-2089] Ext--[ ]

FAX--[724-727-2870] Email--[none]

Person to Contact--[KEVIN HIGGINS]

Phone--[724-727-2089] Ext--[ ]

Best Time to Call--[ANYTIME]

Prepared--[08-OCT-03] at [1855] by [Michael C Mihalko]

Remarks--

[PLUMB BORO WATER AND SEWER IS ALREADY MARKED.]

ACD0	ACD=ADELPHIA CABLE	BD 0	BD =VERIZON PA INC-	DC 0	DC =DUQ LIGHT PGH
DY 0	DY =PLUM BMA	EBN0	EBN=EQUITABLE GAS	IC 0	IC =BUCKEYE PL CRPL
IQ 0	IQ =PLUM B	JB 0	JB =DOMINION TRANSM	LB 0	LB =DOMINION LHBG
MN 0	MN =ALLTEL COMM	NK 0	NK =NEW KEN CMA	PEC0	PEC=PENNECO PIPELIN
PG10	PG1=DOMINION POCs	VD 0	JUL=ALLEG PWR VDGT	WP 0	WP =TW PHILLIPS

Serial Number--[2817370]-[000]

=====  
Copyright (c) 2003 by Pennsylvania One Call System, Inc. =====

"Exhibit 2"

## Interpretation 192.459 1 of 1

October 27, 1981

Mr. Cody Stuart  
Manager, Gas & Service Safety  
Public Service Commission  
P.O. Box C-400  
Markham & Victory Streets  
Little Rock, Arkansas 72203

Dear Mr. Stuart:

Your letter of August 21, 1981, proposing a change in 49 CFR 192.459 has been forwarded by Mr. Aubry for our response.

We share your concern that operators participating in "one-call" systems should not be required in every instance to continually monitor a contractor during all phases of construction. This issue, or the extent to which an operator should have to monitor a contractor's activity to prevent or check for damage to a pipeline, is under consideration in our current rulemaking proceeding on damage prevention programs (Docket PS-59, 44 FR 65792). We expect that a final rule on this matter will be issued soon.

The interpretation to which you refer is not consistent with the meaning of section 192.459. This section requires operators to visually inspect a pipeline for corrosion whenever the operator has knowledge that the pipeline is exposed. In most cases, the information an operator receives under a "one-call" system about a proposed excavation would not give the operator knowledge that a pipeline is or will be exposed by the excavation. Under these circumstances, an inspection to detect corrosion would not be required by section 192.459.

At the same time, even if an operator were to learn through participation in a "one-call" system that a buried pipeline is or will be exposed, the operator's obligation under section 192.459 is only to inspect for external corrosion and take any remedial actions required, not to continually check the pipeline for equipment damage.

Since the operator to which you refer has misinterpreted the provisions of section 192.459 and the issue of monitoring for damage prevention purposes will be decided in Docket PS-59, we do not believe there is a need to amend section 192.459 as you have suggested.

Sincerely,

Melvin A. Judah  
Acting Associate Director for  
Pipeline Safety Regulation  
Materials Transportation Division

From: Origin ID: LBEA (412) 473-3916  
Linda Stewart  
1201 Pitt Street  
Pittsburgh, PA 15221



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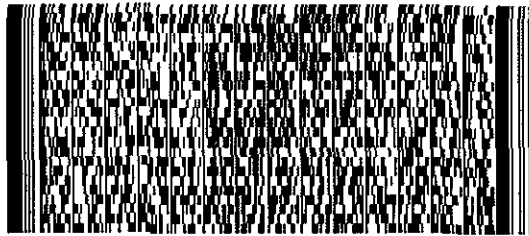


Ref # LBPS v. Peoples  
Invoice #  
PO #  
Dept #

SHIP TO: (717) 787-8147 BILL SENDER  
**Rosemary Chiavetta**  
**PA Public Utility Commission**  
**400 NORTH ST**  
**COMMONWEALTH KEYSTONE BUILDING**  
**HARRISBURG, PA 17120**

THU - 05 AUG A1  
STANDARD OVERNIGHT

TRK# 7989 1441 0376  
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17120  
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**NR MDTA**



6663/BEA/9A24

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