

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>MARIO URLINI,</b>	)	
	)	No.: C-2014-2458557
Complainant,	)	
	)	The Honorable Susan D. Colwell, ALJ
v.	)	
	)	ELECTRONICALLY FILED:
<b>PEOPLES NATURAL GAS CO., LLC</b>	)	<b>COMPLAINANT'S MOTION TO</b>
	)	<b>COMPEL DISCOVERY</b>
Respondent.	)	

**COMPLAINANT'S MOTION TO COMPEL DISCOVERY**

AND NOW comes MARIO URLINI, by and through his attorney, Ryan H. James, Esquire, and avers the following in support of the within Motion to Compel:

1. This administrative proceeding was commenced by the filing of a formal complaint, *pro se*, initiated by Complainant's daughter and son-in-law, operating under a lawful power of attorney.
2. The gist of the formal complaint avers negligence on the part of the Respondent, more specifically negligence in controlling, supervising, and directing the work of Respondent's independent contractor, M. O'Herron and Company.
3. Specifically, the formal complaint sets forth facts that Respondent's contractor damaged and improperly repaired a common sewer line leading to Complainant's residence during the course of excavation to expose Respondent's gas pipeline.
4. To support the formal complaint, Complainant's representatives propounded upon Respondent discovery requests as follows:

**1) Peoples Natural Gas Company Policy(s) concerning the oversight and monitoring of 3rd party contractors**

***performing work under contract for Peoples Natural Gas Company.***

- 2) In Carl Orangis, Manager—Restoration at PNG email to me sent Tuesday, July 29, 2014 @1:36PM, he stated that M. O'Herron Company was the contractor on record and that M. O'Herron Company indemnify PNG Company. ***I am requesting to inspect and copy "ONLY" the contractual language that pertains to their indemnification of PNG.*** In lieu of my inspection of the contract, in the event you believe would not be possible, I would then request a copy of the "indemnify only portion" of the contract be copied by a PNG employee and provided to me.
- 3) A second item included in Carl Organis, Manager—Restoration at PNG email to me sent Tuesday, July 29, 2014 @ 1:36PM he stated that the name of the PNG employee that visited the job site at 7323 Denniston Avenue in Swissvale, Pa the same day that the improper repair of the common sewer line was discovered by Stahl Plumbing and Heating was Bart Ryan, PNG Supervisor. Mr. Orangis further stated that Bart determined at that time to contact M. O'Herron Company to request an investigation.

***I am requesting permission to view and copy the results of his investigation with M. O'Herron Company including memorandum, email, charts, computer (sic) records or other compilations of data from which the information I am requesting can be obtained.***

5. Respondent, through counsel, lodged objections to the above-referenced discovery requests.
6. Related to all three requests, Respondent objected upon grounds that the discovery requests "ha[ve] not be (sic) propounded by a party, or counsel for a party, in this proceeding."
7. These objections, now, can be disposed of summarily as Complainant is currently represented by undersigned counsel and all discovery requests are reasserted on Complainant's behalf.

8. Moreover, Respondent's further objections to the second discovery request, too, can be disposed of summarily.

9. Concerning the second discovery request, Respondent objected as follows:

Peoples further objects to this discovery request on the grounds that is beyond the scope of these proceedings and will not lead to the discovery of relevant or admissible information. This discovery requests seeks information about the business relationship between Peoples and its third-party, independent, non-affiliated contractor (the "Contractor") related to whether the Contractor is legally responsible to indemnify Peoples for certain damages. The relief requested in this proceeding seeks to "impose a fine, civil penalty or take other appropriate actions against Peoples Gas as set forth under the Commonwealth's Public Utility Code." In order to impose a fine, the Commission will have to find that Peoples violated an order, regulation or statute that the Commission has authority to administer. As no order, regulation or statute requires Peoples to maintain specific formula for indemnification terms with its contractor(s), the discovery is not likely to lead to the discovery of relevant or admissible evidence. Further, as the Commission is without authority to issue monetary damages, the relevancy of an indemnification provision and the responsibility for payment of alleged damages is a matter to be considered in a Civil Court of Law.

10. In response, Complainant notes that 52 Pa.Code § 59.33 requires that "[e]ach public utility shall at all times use every reasonable effort to properly warn and protect the public from danger, and shall exercise reasonable care to reduce the hazards to which employees, customers and others may be subjected to by reason of its equipment and facilities."

11. Notably, Pennsylvania courts have imposed liability upon employers of independent contractors for failing to address safety considerations by way of contract. *See, e.g.*, 3 West's Pa. Prac., Torts: Law and Advocacy § 4.6.

12. Respondent's contract with M. O'Herron and Company, therefore, is clearly germane to the issue of how Respondent contemplated (if at all) safeguarding the public from the dangers inherent to its contractors' work.
13. Though, admittedly, the second discovery request sought *only* the "indemnify only portion" of Respondent's contract, Complainant is entitled to the entirety of the contract to support a showing that Respondent acted negligently and in reckless disregard of 52 Pa.Code § 59.33.
14. To the extent Respondent demands a broader, more fitting discovery request, Complainant submits that such a request need not be propounded at this juncture since, in the interests of justice and judicial economy, Your Honor may construe the language of the original request liberally, giving due consideration to the Complainant's *pro se* status at the time.

WHEREFORE, for all the foregoing reasons, Complainant requests that Respondent be compelled to produce the documents and things as set forth in Complainant's original discovery requests and as more particularly requested herein.

Respectfully submitted.

s/ RYAN H. JAMES

Ryan H. James, Esquire (PA 313049)  
JAMES LAW, LLC  
633 Long Run Road  
McKeesport, Pennsylvania 15132  
412-977-1827  
ryan@rhjameslaw.com

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing **Complainant's Motion to Compel Discovery**, being electronically filed, has been served upon the following individuals in accordance with the requirements of 52 Pa. Code § 1.54 in the manner stated below, this 5th day of March, 2015.

**Via First-Class Mail**

Administrative Law Judge Susan D. Colwell  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Mario F. Urlini  
c/o Gabriella F. Brobst, POA  
1017 Tenth Avenue  
Irwin, PA 15642

**Via Electronic Service and First-Class Mail**

Jennifer L. Petrisek, Esquire  
Peoples Natural Gas Company, LLC  
375 North Shore Drive, Suite 600  
Pittsburgh, PA 15212  
(Counsel for Respondent)

s/ RYAN H. JAMES

Ryan H. James, Esquire (PA 313049)  
JAMES LAW, LLC  
633 Long Run Road  
McKeesport, Pennsylvania 15132  
412-977-1827  
ryan@rhjameslaw.com