**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mario Urlini :

:

v. : C-2014-2458557

:

Peoples Natural Gas Company, LLC. :

**ORDER DISPOSING OF COMPLAINANT'S MOTION TO COMPEL DISCOVERY RESPONSES**

On November 21, 2014, Richard C. and Gabriella F. Brobst, relying on a power of attorney held for Mario Urlini, submitted a formal Complaint against Peoples Natural Gas Company, LLC. (Respondent or Peoples or Company) alleging that a contractor employed by Peoples had damaged a 10" common sewer line causing extensive damage to the home of Mr. Urlini on or about May 31, 2012. The Complaint avers that the Urlini basement was flooded with over 3 inches of raw sewage, and that the contractor employed a repair which turned out to be temporary and subsequently failed. Complainant had to hire a contractor to repair the damaged pipe, incurring substantial costs. Repeated calls to Peoples over the course of several weeks resulted in a referral to the contractor.

On December 15, 2015, the Brobsts submitted a copy of the power of attorney, and the Complaint was accepted for filing on December 18, 2014.

The formal Complaint was served electronically by the Commission's Secretary,[[1]](#footnote-1) on December 18, 2014.

Peoples filed its Answer on January 21, 2015,[[2]](#footnote-2) without excuse for its lateness.

By telephonic hearing notice dated February 11, 2015, an evidentiary hearing was scheduled for Friday, March 27, 2015, and the matter was assigned to me. I issued a prehearing order on February 12, 2015, which contains some of the procedural requirements for appearing before the Commission, including the warning that a power of attorney does not give the holder the ability to appear before the Commission on behalf of another.

On March 2, 2015, Ryan H. James, Esq., filed his notice of appearance on behalf of Mario Urlini.[[3]](#footnote-3)

On March 4, 2015, the Office of Administrative Law Judge received a copy of Peoples' Objections to Discovery Requests dated February 23, 2015. Although the document indicates on its face that it was filed electronically, as of the date of this writing, it does not appear in the Commission's electronic document handling system. It does indicate service upon Messrs. Brobst and Urlini on February 23, 2015, by first class mail.

On March 5, 2015, Complainant filed a Motion to Compel Discovery, triggering a 5-day response period. On March 10, 2015, Peoples filed its Response. Under the Commission's regulations, my disposition of the Motion to Compel should be issued within 15 days of the Motion's presentation, on or before March 20, 2015. 52 Pa.Code § 5.342(g)(2).

DISCUSSION

The Motion to Compel Discovery seeks an Order to compel responses to the following discovery:

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 copies 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 Part 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.***

Respondent objected to all three requests based upon the fact that they were not propounded by a party or counsel for a party in this proceeding. Complainant's counsel points out that this objection is no longer valid as he has been retained to represent Complainant, and because he reasserts all discovery requests on behalf of Complainant. Motion ¶7.

In addition to the objection lodged against all three paragraphs, Respondent objects to paragraph 2 as follows:

Peoples further objects to this discovery request on the grounds that it is overbroad in that it is beyond the scope of these proceedings and will not lead to the discovery of relevant or admissible information. This discovery request 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 requested 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.

Respondent's Objections.

Complainant responds that Commission regulations provide that each utility shall use every reasonable effort to 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. 52 Pa.Code § 59.33. In addition, liability may be imposed upon employers of independent contractors for failing to address safety considerations by way of contract. He stated that he believes that he is entitled to the entire contract.

Complainant seeks to prove that the Respondent acted negligently and in reckless disregard of 52 Pa.Code § 59.33, and thus claims that he is entitled to the entire contract between Respondent and its contractor.

In its Response, Peoples agreed to respond to Paragraphs 1 and 3 within the time period proscribed by Commission regulations starting at the date that counsel adopted the discovery requests, March 5, 2015. Therefore, these two objections are moot.

Discovery Request 2 is still the subject of an objection:

. . . this discovery request is overly broad in that it is beyond the scope of these proceedings and will not lead to the discovery of relevant or admissible information. This discovery request 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 presence, or lack thereof, of an indemnification provision in a contract between a utility and its contractor is a legal decision between the utility and that contractor, and has no effect upon the safety or adequacy of the services provided by that utility to the public. Indemnification provisions in contracts are designed to address the legal remedies between parties in the event of damages, generally monetary, as a result of pone party's actions, or inactions and do not address the safe or reliable service to be provided by a utility.

Peoples' Response.

Peoples continues by pointing out that the Commission cannot award monetary damages, and therefore information regarding indemnification will not result in admissible evidence. This information should be sought in a civil court, not this Commission. The regulation cited does not address or provide a standard for the evaluation of the pure legal terms and conditions of contracts between a utility and an independent contractor.

**Resolution:** Whether or not it is cited, the Public Utility Code requires that a utility provide safe, adequate and reasonable service. 66 Pa.C.S. § 1501. Further, a contractor hired to perform work instead of the utility does not insulate the utility from responsibility from the contractor's actions. As the hearing is fast approaching, Respondent shall provide the entire contract sought within five days of the date of this Order.

Accordingly, the Complainant's Motion to Compel is granted for Paragraph 2.

THEREFORE,

IT IS ORDERED:

1. That the Motion to Compel Discovery filed by Mario Urlini against Peoples Natural Gas Company, LLC, in Docket No. C-2014-2458557, is granted insofar as it refers to Paragraph 2 of the Discovery Request.

2. That within five days of the date of this Order, the Peoples Natural Gas Company, LLC, shall either provide to Mario Urlini the contract between Peoples Natural Gas Company, LLC, and the independent contractor M. O'Herron and Company who performed work on Denniston Avenue in Swissvale, PA 15218 on or about May 31, 2012.

Dated: March 12, 2015 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Susan D. Colwell

Administrative Law Judge

**C-2014-2458557 - MARIO URLINI C/O GABRIELLA & RICHARD BROBST v. PEOPLES NATURAL GAS COMPANY LLC**RICHARD C AND GABRIELLA F BROBSTMARIO URLINI1017 TENTH AVENUEIRWIN PA 15642724.864.4318JENNIFER PETRISEK ESQUIREPEOPLES NATURAL GAS COMPANY LLC375 NORTH SHORE DRIVE SUITE 600PITTSBURGH PA 15212412.208.6834***-ACCEPTS ELECTRONIC SERVICE-***

1. Peoples has signed a waiver of the Section 702 requirements for service of formal complaints, 66 Pa.C.S. § 702 and has agreed to electronic service instead under the Commission's waiver of 702 program. Service is listed in the Audit History of the case as having been effected on December 18, 2014. [↑](#footnote-ref-1)
2. Answers to complaints must be filed within 20 days of the date of service of the complaint. The date of service is the date that the document is transmitted by electronic mail, and the 3-day "mailbox rule" does not apply unless service was by first class mail. 52 Pa.Code §§ 1.56, 5.61. [↑](#footnote-ref-2)
3. Mr. James' notice was proper and consistent with 52 Pa.Code § 1.24 but was not served upon me. Mr. James is reminded that once a presiding officer has been assigned, service must be made separately upon that presiding officer. 52 Pa.Code § 1.54(a). [↑](#footnote-ref-3)