

**BEFORE THE PUBLIC SERVICE COMMISSION**

In Re: Petition for the Commission to Issue an Order to Show Cause Against Peoples Gas System for Violations of Chapter 25-12, F.A.C., request for Imposition of Fines, and request for Rate Relief.

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Docket No.:

Filed: December 7, 2015

**PETITION REQUESTING THE FLORIDA PUBLIC SERVICE COMMISSION TO ISSUE AN ORDER TO SHOW CAUSE AGAINST PEOPLES GAS SYSTEM FOR VIOLATIONS OF CHAPTER 25-12, F.A.C., REQUEST FOR IMPOSITION OF FINES, AND REQUEST FOR RATE RELIEF**

Pursuant to Section 350.0611(1), F.S., which confers upon the Public Counsel the duty to provide legal representation for the people of this state and the authority "...[t]o recommend to the commission...by petition, the commencement of any proceeding or action or to appear, in the name of the state or its citizens, in any proceeding or action before the commission..." the Citizens of the state of Florida (Citizens), by and through the undersigned Office of Public Counsel (OPC), do hereby file this Petition requesting the Florida Public Service Commission (Commission) to issue an Order to Show Cause against Peoples Gas System (PGS) for violations of Chapter 25-12, F.A.C., and to impose fines, and order such other relief as the Commission deems necessary.

Based on the results of two Commission audits of the PGS distribution facilities in 2013 and 2015, the Citizens have a strong basis to believe that PGS continues to be in substantial violation of certain of the Commission's natural gas safety rules. The audits detail an ongoing and largely unremedied regime of being out of compliance with safety inspection rules designed to ensure the safety of the customers and employees of PGS. Therefore, Citizens allege that PGS has willfully violated the provisions of Chapter 25-12, F.A.C., has committed fraud in inspection activities that underlay reporting obligations to the PSC, and has received rate relief for conducting inspection activities that appear not to have been conducted. Citizens request the Commission to issue a Show Cause Order

requiring PGS to show cause why it should not be fined, be made to issue refunds to its customers, and to undergo a reduction in rates.

**Factual Background.**

In June 2013, the Commission initiated an audit to examine the process, systems, and internal controls used by PGS to perform inspections of its distribution facilities (See App. A). In July 2015, the Commission initiated a follow up audit to the 2013 audit and issued the follow-up audit report in November 2015 (See App. B).

The 2013 Commission audit report was released in September 2013 and specifically found:

- 1) During the period of 2010 to date, PGS did not complete timely inspections of leaks, cathodic protection, and casings as required in Chapter 25-12, F.A.C.
- 2) For portions of the period 2010 to date, PGS did not comply with Chapter 25-12, F.A.C., as it relates to other inspections, general record keeping, and annual reports.
- 3) During the period 2010 to date, sufficient information was available to PGS management that it should have been aware that the company was not in compliance with Commission rules.
- 4) Lack of attention to compliance inspection reviews allowed detected compliance deficiencies to persist.
- 5) Inadequate record-keeping and work planning systems allowed compliance deficiencies to develop and persist.
- 6) As a result of the audit, PGS recognized the magnitude of the deficiencies, instituted significant organizational and operational changes, and developed a comprehensive corrective action plan to address the un-remedied deficiencies (See App. A, pp. 3 & 4).

Furthermore, the Commission staff recommended the continuous monitoring of PGS' progress during the completion of the action plan and a follow-up audit (See App. A, p. 4).

Despite the corrective action plan developed by PGS in 2013 to address its deficiencies, the Commission's 2015 follow-up audit demonstrates an alarming lack of improvement on the part of PGS (See App. B, p. 2 & 3). In fact, the findings in 2015 are almost identical to the findings in 2013 with two additional findings. First, the 2015 follow-up audit report revealed that the Essentials compliance tracking software was not available for at least the first nine months of 2015 (See App. B, p. 20), causing a large backlog of completed surveys using paper records (*Id* at 21).

Second, and more significantly, the follow-up audit report revealed that approximately 1,907 of the Ocala Area leak surveys conducted in 2014 by PGS were falsified (See App. B, p. 11). PGS admitted to the falsification in its response. (See App. B, p. 26). As the report noted, these violations occurred "[D]espite efforts placing a high priority on compliance" (See App. B, p. 11). This type of fraud should never take place in a business such as PGS, where there is the potential of endangering so many human lives, especially when the business has already been warned once. The falsifications appeared to have been directly intended to subvert the inspection process required by Commission rules and thus, to create the appearance of compliance.

The staff auditors concluded that, as a result of the 2015 audit, "[s]ubstantial additional efforts are needed to accomplish a change in culture and in practices to fully support compliance with state and federal safety regulations" (See App. B, p. 3). Citizens have grave concerns with the numerous and continued violations committed by PGS. We submit that the rule violations set out and discussed below are of the greatest concern and warrant issuance of a show cause order, imposition of fines, and consideration of rate relief:

1. Rule 25-12.040, F.A.C., sets forth the utility's requirements to perform gas leak surveys. The Commission's 2013 audit found that PGS did not complete timely inspections of leaks in accordance with this rule. The Commission provided PGS adequate time to come into compliance; however, the Commission's 2015 follow-up audit revealed that approximately 1,907 of the Ocala area leak surveys conducted by PGS in 2014 were falsified. Citizens submit that PGS' continued violations of Rule 25-12.040 (coupled with admissions of fraudulent behavior) coming on the heels of filing a pre-existing corrective action plan and failing to comply with that plan is unacceptable corporate behavior and compelling evidence of its willful failure to correct the deficiencies outlined in the 2013 audit.
2. Rules 25-12.022, 25-12.050, 25-12.055, 25-12.060, and 25-12.085, F.A.C., address compliance with inspections, general record keeping, and annual reports. The Commission staff noted violations of the above rules in its 2013 audit report, and uncovered the recurrence of the same violations in its 2015 follow-up audit report. The 2015 follow-up audit report stated in part, "over 3,000 inspections were found to be past due in 2015" (See App. B, p. 9). Citizens submit that an aggregate of rule violations of 3,000 incomplete, delayed, and/or failed inspections are an unreasonable amount of violations for PGS to incur, given the safety nature of the inspections and especially in light of the submission of a corrective action plan that was supposed to eliminate such deficiencies in response to the 2013 audit.
3. The fraud involving the falsified leak surveys in 2014, that were not performed for approximately 1,907 service addresses, allegedly occurred 1) due to the lack of awareness of compliance activity by the management employees and 2) because the

Essentials compliance tracking software was not implemented in a timely fashion and the paper system was vulnerable to abuse (See App. B, p. 11-12). Regardless of the reasons for the falsified surveys, there can be no excuse for such flagrant behavior. Moreover, the 2015 audit notes that it is not known whether other compliance activity results (e.g. leak surveys, cathodic protection inspections, atmospheric inspections) were fraudulently reported within PGS' other service areas. In addition, the 2013 audit found that from the period 2009 to mid-2013, PGS did not have control over its required surveys and inspections, allowing many to go uncompleted. Therefore, the findings of fraudulent activity contained in the Commission's 2015 follow-up audit shows not only a lack of improvement by PGS, but an actual deterioration of PGS' compliance with Commission rules.

**Legal Standard to be applied.**

As precedent and authority for the relief requested, Citizens cite to the 2009 show cause that the Commission issued in Order No. PSC-09-0015-SC-TL, against Verizon Florida, LLC, for willful violations of Rule 25-4.070, F.A.C. Therein, the Commission stated:

[V]erizon's failure to meet the service quality requirements listed in Rule 25-4.070, F.A.C., meets the standard for a 'refusal to comply' and a 'willful violation' as contemplated by the Legislature when enacting Section 364.285, F.S. It is uncontroverted that Verizon has knowledge of both the service quality objectives and its continued failure to meet these objectives.

Order No. PSC-09-0015-SC-TL at 17.

Elsewhere in the order the Commission further found:

"However, 'willful violation' need not be limited to acts of commission. The phrase 'willful violation' can mean either an intentional act of commission or one of omission that is failing to act." Lastly, the Commission stated, "[a] willful violation of a statute, rule or order is also done with an intentional disregard of, or a plain indifference to, the applicable statute or regulation."

*Id* at 16.

In parallel to the willfulness the Commission found in Verizon's actions and inactions, PGS has also acknowledged its objective and responsibility to conduct safety-related inspection activities, in part by asking for rate relief in its last rate case to perform inspections of its distribution facilities. However, PGS subsequently not only failed to meet these responsibilities in 2013, but continued to act willfully thereafter in failing to meet these safety responsibilities as evidenced in the Commission's 2015 follow-up audit. Much as was the case in the Verizon situation and consistent with the standard announced in Order No. PSC-09-0015-SC-TL, PGS committed a willful violation each time it failed to complete a timely leak survey as required by Rule 25-12.040, F.A.C. The Staff's 2013 audit indisputably put PGS on heightened notice of the fraudulent state of its operations. PGS acknowledged it was on notice by submitting a corrective action plan in response to that audit. Nevertheless, as noted in the 2015 follow-up audit, the corrective action plan remained unfulfilled. This rendered the company's actions *per se* willful.

In *Metropolitan Dade County v. State Department of Environmental Protection*, 714 So. 2d 512, 517 (Fla. 1<sup>st</sup> DCA 1998), the Appellate Court offers the Black's Law Dictionary definition of willful as: "An act or omission is 'willfully' done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law."

The Florida Supreme Court further stated that, "[i]t is well settled by these authorities that the mere violation of a statute, ordinance or regulation does not constitute willful misconduct as a matter of law. In order for the statute to have effect there must be an intentional commission of an act violative of a statute with knowledge that such act is likely to result in serious injury, or the illegal

act must be done with a wanton disregard of probable consequences” *Smit v. Geyer Detective Agency, Inc.*, 130 So. 2d 882, 884 (Fla. 1961).

The totality of the circumstances surrounding the initial 2013 audit, the submission of the corrective action plan and failure to adhere to that plan, the evidence of falsification of records related to the conduct (or lack thereof) of the safety inspections in order to create a false appearance of compliance with Commission Rules, and the continued failure of PGS to meet the inspection requirements of the rule, are indicative of a “wanton disregard” of the consequences of meeting the requirements of the safety inspection rule. It is clear that PGS’ actions and inactions meet the definition of “willful conduct” as defined by both the Appellate Court and the Florida Supreme Court. Therefore, PGS should be held accountable for the consequences of its actions and omissions.

The Citizens further contend that, in PGS’s last rate case (Docket No. 080318-GU, Order No. PSC-09-0411-FOF-GU), PGS induced the Commission’s approval to increase its rates, based in part on the need to incur additional expenses for conducting safety inspections required by Rules 25-12.040, 25-12.029, 25-12.052, 25-12.053, 25-12.062, 25-12.022, 25-12.050, 25-12.055, 25-12.060, 25-12.085, 25-12.020, and 25-12.030. F.A.C. To the extent that PGS has not conducted the inspections that – as a result of inaction and/or the falsification of records – were assumed in the development of the operating expenses that the Commission relied upon in setting rates that the customers are currently paying, the OPC submits the customers should receive a refund and a rate reduction. The OPC has submitted discovery concurrent with the filing of this Petition to gauge the level, if any, of such over collection of O&M expenses.

Sections 350.127(1) and 366.095, F.S., give the Commission the authority to impose a fine of \$5,000 per offense per day on any regulated utility that willfully violates any lawful rule of the Commission. Therefore, as a result of PGS’ willful failure to correct the deficiencies noted in the

2013 audit, Citizens request the Show Cause Order to require PGS to show cause (1) why it should not be fined \$5,000 a day until the violations cease, (2) why it should not refund to customers money which was approved by the Commission in PGS' last rate case specifically for distribution facility inspections, where said inspections were not conducted or erroneously conducted by PGS, and (3) why it should not reduce its rates for the amount of expenses included in current rates but not used.

Because of the investigation into the potential larger scope, if any, of fraudulent inspection reporting, and ongoing discovery initiated with the filing of this Petition, the Citizens reserve the right to amend this Petition to seek different or additional relief.

WHEREFORE, Citizens hereby request that the Commission grant its Petition and conduct a review pursuant to the provisions of Chapter 120, F.S., issue an Order to Show Cause, impose appropriate fines, order rate relief in the form of refunds and/or rate reductions as are warranted by the facts, and order such other relief as deemed appropriate by the Commission.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail to the following parties on this 7<sup>th</sup> day of December, 2015.

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