

National Transportation Safety Board

Office of the Chair

Washington, DC 20594



September 18, 2023

By electronic mail to: [REDACTED]
Stephen M. DeFrank
Pennsylvania Public Utilities Commission
Chairman
Commonwealth Keystone Building
2nd Floor, Room N201
Harrisburg, PA 17120

Re: Accident involving natural gas explosion of the R.M. Palmer plant
West Reading, PA
March 24, 2023
NTSB # PLD23LR002

Dear Chairman DeFrank:

This letter confirms the conversation on September 15, 2023, in which the National Transportation Safety Board's (NTSB) Office of the Chair informed you that the NTSB has determined that the Pennsylvania Public Utilities Commission's (PA PUC) shall no longer be a party participant in the investigation of the March 24, 2023, natural gas explosion of the R.M. Palmer plant in West Reading, PA.

Pursuant to Title 49 Code of Federal Regulations (CFR) § 831.11, PA PUC was designated as a party to this investigation based on its oversight of UGI Utilities, Inc. (UGI), the natural gas pipeline operator whose assets were involved in the above-referenced accident, and because PA PUC could provide suitable qualified technical personnel and data relevant to the investigation that could actively assist in the investigation. Although the NTSB values the technical expertise that entities like yours can provide during the course of an investigation, participants in the investigation must be responsive to the direction of Board personnel or risk losing party status.

Participation by invited parties is governed by NTSB regulations as well as the Certification of Party Representative and associated guidance provided to all parties (copies attached). The actions of PA PUC have evidenced a lack of cooperation and adherence to our party processes and prevent your continued participation in the investigation. Specifically, PA PUC has refused to produce relevant, unredacted inspection reports for the UGI Distribution Integrity Management Program (DIMP) for a time period spanning five years prior to the accident on the grounds that they are protected from disclosure by the PA Confidential Security Information (CSI) Act. The NTSB's Office of General Counsel (OGC) subsequently engaged in discussions with PA PUC's Deputy Chief Counsel on July 5, 2023, and Acting Chief Counsel on August

8 and 21, 2023, to remind PA PUC of its party obligations, including the requirement to comply with the NTSB accident/incident investigation regulations contained in 49 C.F.R. § 831. These federal regulations expressly authorize NTSB to inspect any records related to an accident investigation (49 C.F.R. 831.9(a)(5)) and obligate a party to an NTSB investigation to provide any information related to the accident or incident (49 C.F.R. § 831.13(b)). OGC explained that because the PA CSI Act conflicts with the NTSB's statute and implementing regulations, the Supremacy Clause (Article IV, Section 2) of the U.S. Constitution dictates that the federal law preempts the state law. Thus, the PA PUC has no legal basis to withhold the DIMP inspection reports from the NTSB in any manner. In response to PA PUC's concern that these reports contained sensitive CSI, the NTSB committed to minimizing any extraneous release of confidential information.

PA PUC's party coordinator, Mr. Robert Horensky, certified that PA PUC would take all reasonable steps to ensure that members of your organization would comply with the requirements of party status, including the disclosure of information. PA PUC also received a copy of guidelines related to party status, which included the warning that PA PUC "may not withhold any information pertaining to the accident, or in any manner relevant to the investigation, from the NTSB." Further, on August 23, 2023, the NTSB sent PA PUC a letter warning that its party status could be revoked if it did not produce the requested DIMP inspection reports within one week. On August 30, 2023, PA PUC responded to the NTSB's letter, reiterating its refusal to produce the reports and abide by the party agreement and the cited federal regulations.

NTSB investigations are comprehensive, independent, and thorough, and are exacting by nature. Accuracy and completeness of an investigation are achieved through parties' full cooperation with the process, particularly with respect to information sharing. Because of PA PUC's failure to provide the requested unredacted DIMP reports to the NTSB, PA PUC has been removed as a party to this investigation.

This letter will be placed in the public docket along with any future correspondence relating to the West Reading, PA, investigation.

Sincerely,

A rectangular area of the document is redacted with a solid grey box, obscuring the signature of Jennifer L. Homendy.

Jennifer L. Homendy
Chair

cc: Robert Horensky, PA PUC Party Coordinator

Enclosures