**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ilya Pikus :

:

v. : F-2013-2359938

:

Philadelphia Gas Works :

**ORDER GRANTING MOTION TO COMPEL DISCOVERY**

On July 8, 2013, Ilya Pikus (Mr. Pikus or Complainant) filed what is essentially a Motion to Compel Discovery against Philadelphia Gas Works (PGW or Respondent). In his Motion, the Complainant asserts that PGW failed to respond or object to the request for production of documents dated June 14, 2013[[1]](#footnote-1).

Pursuant to 52 Pa. Code §§ 5.342(g)(1) and 1.56(b), a response to the Motion was due on or before July 16, 2013. No response was filed with the Pennsylvania Public Utility Commission (Commission) by that date, nor was I served with any response.

The Commission’s regulations permit a broad scope of discovery. The Rules of Administrative Practice and Procedure provide at 52 Pa. Code §5.321 that:

[A] participant may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of another party or participant . . . It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Specific limitations on the scope of discovery are found at 52 Pa. Code § 5.361(a), which prohibits discovery which is sought in bad faith, would cause unreasonable burden or expense, relates to privileged material or would require the making of an unreasonable investigation by the answering party.

By failing to object to the Complainant’s discovery request within the time period set forth in 52 Pa. Code § 5.342(c) and (d), the Respondent clearly has waived any possible objection that it may have had to the discovery. In addition, I have reviewed Mr. Mr. Pikus request for production of documents. They are reasonable and simply worded, and are intended to identify facts and data relevant to the Complaint.

The Complainant has an absolute due process right to have PGW respond to his discovery request. This information requested is directly relevant and material to the Complainant’s case against the Respondent. Mr. Pikus would be prejudiced in his preparation and presentation of his case in support of the Complaint without this information, and valuable resources may be unnecessarily expended both by the Complainant and the Commission without a clear articulation of the issues prior to hearing. It is axiomatic that parties appearing before the Commission must at least make a good faith effort to comply with its procedures. It does not appear that the Respondent has done that here.

This Order gives the Respondent one final opportunity to answer Mr. Pikus’ discovery request. The Complainant’s discovery request must be answered or objected to on or before July 31, 2013. If the Respondent fails to provide adequate responses to Mr. Pikus’ discovery request in compliance with this Order, Mr. Pikus may file a Motion for Sanctions in accordance with the provisions of 52 Pa. Code §§ 5.371, 5.372

THEREFORE,

IT IS ORDERED:

1. That Ilya Pikus Motion to Compel Discovery against Philadelphia Gas Works is granted.

2. That Philadelphia Gas Works is directed to respond to Ilya Pikus’ discovery request on or before July 31, 2013.

|  |  |  |  |
| --- | --- | --- | --- |
| Date: | July 19, 2013 |  |  |
|  |  |  | Eranda Vero  Administrative Law Judge |

**F-2013-2359938 - ILYA PIKUS v. PHILADELPHIA GAS WORKS**ILYA PIKUS2112 VERONA DRIVEPHILADELPHIA PA 19145215.389.0793LAURETO FARINAS ESQUIREPHILADELPHIA GAS WORKS4TH FLOOR800 W MONTGOMERY AVENUEPHILADELPHIA PA 19122215.684.6982***E-Serve***

1. On June 18, 2013, PGW’s counsel in this matter confirmed the receipt of Mr. Pikus’ discovery request by the Respondent. [↑](#footnote-ref-1)