

SBG Management Services, Inc.

P.O. Box 549 Abington, PA 19001
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December 31, 2013

Rosemary Chiavotta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: SBG Management Services, Inc. (and related entities) v. PGW, Docket Nos. C-2012-2304167; C-2012-2304183; C-2012-2304215; C-2012-2304303; C-2012-2304324; C-2012-2308454; C-2012-2308462; C-2012-2308465; and C-2012-2334253

Dear Secretary Chiavotta:

On behalf of the Complainants in the above-referenced matters, enclosed for filing is the original Second Motion to Compel. Copies to be served in accordance with the attached Certificate of Service. This Motion is also being electronically filed with the Commission today.

If you have questions or require additional information, please do not hesitate to contact me at 215-260-4562 or as described in the contact information, below. Your assistance in this matter is appreciated.

Sincerely,



Francine Thornton Boone, Esquire
Attorney for Complainants
General Counsel, SBG Management Services, Inc.
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Enclosure

cc: ALJ Franda Vero (by email and/or regular mail)
Laureto Farinas, Esquire, Philadelphia Gas Works (by email and/or regular mail)
Phil Pulley, SBG Management Services, Inc. (by email)
Kathy Treadwell, SBG Management Services, Inc. (by email)

**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In the Matter of:

Docket No. C-2012-2304167--SBG Management Services, Inc. (Ltrac) v. Philadelphia Gas Works
Docket No. C-2012-2304183--SBG Management Services, Inc. v. Philadelphia Gas Works
Docket No. C-2012-2304215--SBG Management Services, Inc. v. Philadelphia Gas Works
Docket No. C-2012-2304303--SBG Management Services, Inc. v. Philadelphia Gas Works
Docket No. C-2012-2304324--SBG Management Services, Inc. v. Philadelphia Gas Works
Docket No. C-2012-2308454--SBG Management Services, Inc. v. Philadelphia Gas Works
Docket No. C-2012-2308462--SBG Management Services, Inc. v. Philadelphia Gas Works
Docket No. C-2012-2308465--SBG Management Services, Inc. v. Philadelphia Gas Works
Docket No. C-2012-2334253--SBG Management Services, Inc./Colonial Garden Realty Co., L.P. v. Philadelphia Gas Works

CERTIFICATE OF SERVICE

I hereby certify that on December 31, 2013, I have served the foregoing Complainants' Second Motion to Compel, upon the Secretary for the Pennsylvania Public Utility by e filing and by mailing a hard copy, and served a copy of the same upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54:


VIA Email and/or First Class Mail only:

For the PA Public Utility Commission:
Administrative Law Judge Eranda Vero
PA Public Utility Commission
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Philadelphia, PA 19107
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For Respondent:
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Phil Pulley and Kathy Treadwell, SBG Management Services, Inc.
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Date: December 31, 2013

BY: 
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Attorney for Complainants

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

SBG MANAGEMENT SERVICES, INC./
COLONIAL GARDEN REALTY, LP
Complainant

V.

PHILADELPHIA GAS WORKS
Respondent

: DOCKET NO. C-2012-2304183

SBG MANAGEMENT SERVICES, INC./
FAIRMOUNT REALTY
Complainant

V.

PHILADELPHIA GAS WORKS
Respondent

: DOCKET NO. C-2012-2304215

SBG MANAGEMENT SERVICES, INC./
SIMON GARDENS REALTY, LP
Complainant

V.

PHILADELPHIA GAS WORKS
Respondent

: DOCKET NO. C-2012-2304324

SBG MANAGEMENT SERVICES, INC./
ELRAE GARDEN REALTY, LP
Complainant

V.

PHILADELPHIA GAS WORKS
Respondent

: DOCKET NO. C-2012-2304167

SBG MANAGEMENT SERVICES, INC./
MARSHALL SQUARE REALTY, LP
Complainant

V.

PHILADELPHIA GAS WORKS
Respondent

: DOCKET NO. C-2012-2304303

SBG MANAGEMENT SERVICES, INC./
MARCHWOOD REALTY
Complainant

V.

PHILADELPHIA GAS WORKS
Respondent

: DOCKET NO. C-2012-2308454

SBG MANAGEMENT SERVICES, INC./

OAK LANE REALTY CO., LP
Complainant

v.

PHILADELPHIA GAS WORKS
Respondent

SBG MANAGEMENT SERVICES, INC./
FERN ROCK REALTY
Complainant

v.

PHILADELPHIA GAS WORKS
Respondent

SBG MANAGEMENT SERVICES, INC./
COLONIAL GARDEN REALTY, LP
Complainant

v.

PHILADELPHIA GAS WORKS
Respondent

: DOCKET NO. C-2012-2308462

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COMPLAINANTS', SBG MANAGEMENT SERVICES, INC., COLONIAL GARDEN REALTY CO. (I and II), FAIRMOUNT REALTY CO., SIMON GARDENS, ELRAE GARDEN REALTY, MARCHWOOD REALTY, FERNROCK REALTY, OAK LANE REALTY CO., L.P., AND MARSHALL SQUARE REALTY ("COMPLAINANTS").

SECOND MOTION TO COMPEL PGW'S RESPONSES TO COMPLAINANTS' REQUESTS FOR PRODUCTION OF DOCUMENTS AND INTERROGATORIES ADDRESSED TO RESPONDENT PHILADELPHIA GAS WORKS, SET II, INTERROGATORY NO. 26 AND REQUEST FOR SANCTIONS ("SECOND MOTION TO COMPEL")

Pursuant to 52 Pa. Code Sections 5.342 and 5.321 (c), Complainants, by their undersigned counsel, hereby respectfully request the Pennsylvania Public Utility Commission ("Commission") to compel Philadelphia Gas Works ("PGW" or "Respondent") to fully respond and to file a complete answer to Complainants' Requests for Production of Documents and Interrogatories Addressed to Respondent PGW, Set II, Interrogatory No. 26 ("Interrogatory #26") as propounded by Complainants to Respondent, in this matter, and as attached hereto as "Exhibit 'A'".

I. SUMMARY

Respondent's response to Interrogatory #26 is incomplete and non-responsive and violates applicable statutory law, including 52 Pa. Code Sections 5.342, as well as the

November 14, 2013 and December 9, 2013 Orders of the Commission, as Respondent:
(1) submitted an incomplete response that failed to supply all the requested information;
(2) submitted an *exhibit* instead of (or at least in addition to) an *answer* to Interrogatory #26; (3) submitted a response that claims to provide information on all the accounts but then fails to provide the *all such* information; and (4) submitted a response that refers to “previously provided” information [to Complainants from Respondent] without specifically identifying where and in what particular documents the discoverable information is set forth.

II. SPECIFIC GROUNDS TO COMPEL RESPONSE TO INTERROGATORY #26

In support of this Second Motion to Compel, Complainants by and through their undersigned counsel, hereby move the Commission to enter an appropriate Order and Sanctions against Respondent, pursuant to 52 Pa. Code Section 5.342. In support of this Motion, Complainants aver as follows:

1. The above-referenced consolidated Complaints were commenced by filing Complaints and Amended Complaints. Respondents subsequently filed Answers and Amended Answers to the Amended Complaints.

2. Complainants, by its former counsel, Scott DeBroff, Esquire, served discovery requests upon counsel for Respondent.

3. On October 9, 2013, Complainants, by their current counsel, served a second set of discovery requests, Complainants’ Requests for Production of Documents and Interrogatories Addressed to Respondent PGW, Set II (collectively, “Interrogatories”

or "Interrogatories, Set II"), which included Interrogatory No. 26 ("Interrogatory #26"), a copy of which is attached as Exhibit "A", and incorporated herein by reference.

4. On December 9, 2013, ALJ Franda Vero issued an "Order on the Joint Motion to Extend the Time to Conduct Discovery and to Continue the Scheduled Hearings" ("12/9/2013 Order") on page 4 (second full paragraph), that cited ALJ Vero's November 14, 2013 Order ("11/14/2013 Order") as follows:

"On November 14, 2013, I issued an Order granting, in part, and denying, in part, the Complainants' Motion to Compel....Noting that the objections did not state with any degree of specificity where such information was provided to the Complainants, I instructed the Respondent to do so "within fifteen (15) days of the date of this Order unless the parties agree upon a different due date." See Order of Motion to Compel, Ordering Paragraphs 5, and 11. Based on the Respondent's claim that it had already provided to Complainants the information requested by the majority of their Set II-Discovery Requests, I deemed this amount of time **sufficient for the Respondent to direct the Complainants to the information it had provided during previous discovery, to supplement that information, and to answer the remainder of discovery requests propounded by the Complainants.**" (Emphasis added.)

5. Pennsylvania statutes define the manner and form of Answers to Interrogatories. Specifically, 52 Pa. Code Section 5.342 (a) (3) and (4) require:

(a) Form. Answers to Interrogatories must:

3. Be submitted as an answer and may not be submitted as an exhibit or in another form.

4. Answer each interrogatory fully and completely unless an objection is made.

(See 52 Pa. Code Section 5.342)

6. Interrogatory #26 stated:

26. Identify and describe any writings, utility reports, correspondence, letters, memorandums, email communications, "MELITA" notes, or any other documentation Respondents sent, mailed, faxed to Complainants or the Commission related to the resolution of or pertaining to Complainant's Customer Accounts, **SA accounts, former and current meters located at the Subject Properties**, including but not limited to, **Disputed Transactions attached hereto as Exhibits "A-1" through "A-8"**, and including but not limited to the same as

located in the **books and records of Respondents' Dispute Resolution Group, Customer Service Center and/or the Commercial Resource Center.** (*Emphasis added.*)

7. Further, ALJ Eranda Vero ordered, in the 12/9/2013 Order at Paragraph 3, page 6, that:

"That the Order issued on November 14, 2013, shall be amended to extend the period of time available to Philadelphia Gas Works for proving (sic) **a full and complete response to Complainants Set II of Interrogatories and Requests for Production of Documents to January 17, 2014.**" (*Emphasis added.*)

8. Respondent and Complainants agreed PGW would begin forwarding the responses to Complainants in December 2013.

9. Respondent filed a response to Interrogatory #26 on December 23, 2013 ("Response #26") that included the following:

"RESPONSE: Attached are the Customer Contract Screens for all of the SBG and related entity accounts. Although the information has been extracted from PGW's Billing and Credit and Customer Service System (BCCS), it is the same information that is contained in "Contacts for Account" screens that were provided during the hearings on this matter but for the additional employee identification. These contain information relating to writings reports correspondence with respect to any actions taken on the accounts. As the information has been specifically requested, we provide it as an initial response to this and other requests in Set II". (See a copy of the 12/23/2013 Response by Respondent for Interrogatory #1 and Interrogatory #26, which are included as two attachments, identified hereafter and attached hereto as Exhibit "B-1" and Exhibit "B-2".)

10. Response #26 only provides part of the information requested in Interrogatory #26, as Response #26 does not include the following requested discovery materials and information:

Identify and describe **any writings, utility reports, correspondence, letters, memorandums, email communications, "MEIITA" notes, or any other documentation** Respondents sent, mailed, faxed to Complainants or the Commission related to the resolution of or pertaining to Complainant's Customer Accounts, SA accounts, former and current meters located at the Subject Properties [for the] Disputed Transactions attached hereto as Exhibits "A-1"

through "A-8"... same as located in the books and records of Respondents' Dispute Resolution Group, Customer Service Center and/or the Commercial Resource Center.

11. Respondent states at page 3 of Response # 26 that Respondent is only providing data contained in "PGW's Billing Credit and Customer Service System (BCCS). See Exhibit "B-1", page 3.

12. Response #26 does not "identify" or "refer to" any "**writings, utility reports, correspondence, letters, memorandums, email communications**".

13. Response #26 does not identify or provide particular or individual emails, utility reports, letters, memorandums, correspondence or other writings on the Complainants accounts, SAs, or properties, which are required by Interrogatory #26.

14. Response #26 does not identify the particular Customer Contract Screens (which were identified in the Interrogatories by a different name, as MELITA notes) that are being used for Response #26.

15. Respondent also violates the Discovery Orders and 52 Pa. Code Section 5.342 as Response #26 provided an "extraction", which is essentially only an "exhibit" without the actual answer as required by 52 Pa. Code Section 5.342 (a) (4). (See 52 Pa. Code Section 5.342 (a) (4))

16. Complainants did not request an "extraction" from the Customer Contract Screens; Interrogatory #26 requested identification of the actual documents in the books and records of Respondent.

17. An "extraction" portends an editing and carving up of the documents and exclusion of certain information contained therein.

18. 52 Pa. Code Section 5.342 requires a full and complete response to Complainants' discovery requests, including Interrogatory #26.

19. Interrogatory #26 requires identification of the actual documents.

20. Respondent's objections were overruled and the Commission ordered Respondent to respond in the 11/14/2013 and 12/9/2013 Orders ("Discovery Orders").

21. Response #26, on its face, violates the Commission's Discovery Orders, by failing to completely respond and to fully provide the information requested by Interrogatory #26 as required by the Discovery Orders.

22. Response #26 also violates the Discovery Orders as Interrogatory #26 required Respondent to provide account, SA, and water meter information on all the Complainants' properties as fully described in Interrogatory #26.

23. Response #26 provides information on some account numbers, but fails to provide or identify whether the information goes to a particular SA, especially for a property with account numbers that have more than one SA. As such, Respondent failed to fully and specifically answer Interrogatory #26, with clarity and accuracy, as to which SA is involved, since only the account number (rather than the account number and each SA for said account number) is listed.

24. Despite Respondent's statement on page 3 of Exhibit 3 that Respondent "Attached... the Customer Contact Screens for all of the SBG and related entity accounts", Response #26 does not include all such information—for example, no information was provided for Account Numbers/properties: *Fairmount*: 89533358; 089533358; 215659749; 156030558; and 376578649; and *Etrae I*: 294731407;

405781694; and 525370204, which are owned by Complainants Fairmount Manor Realty Co., L.P. and Elrac Garden Realty, LP.

25. Respondent failed to organize the information in a clear and readily comprehensible manner: to date, the information on the gas usage accounts is usually organized by Complainants' names/property addresses, with each account number as a subcategory and each "SA" as a subcategory of the account number. Meter information was also provided separately. Here, Response #26 follows no logical order. The account numbers are not categorized in sequential numerical order or by property address.

26. Further, since the actual Customer Contact Screens are arranged by property address, the actual screens should be identified and provided. The "extraction" violates the Discovery Orders and violates the applicable case and statutory rules, which require full and complete responses. The "extraction" is not the same as identifying and providing copies of the actual Customer Contract Screens and leads to confusion as well as avoids the requisite full disclosure.

27. Though Respondent states: **Although the information has been extracted from PGW's Billing and Credit and Customer Service System (BCCS), it is the same information that is contained in "Contacts for Account" screens that were provided during the hearings on this matter but for the additional employee identification (See Page 2 of Response #26, attached as Exhibit "B-1")**, Response #26 does not specifically refer to which "'Contacts for Account' screens that were provided during the hearings on this matter..." answer as a specific response on any account, SA, or property. Respondent alleges to provide information in Response #26 that is not

actually in the Response #26, i.e. identify and state the specific "Contacts for Account" screens that answer Interrogatory #26.

28. Based on the foregoing and pursuant to 52 Pa. Code Section 5.342 and other applicable case and statutory law, Complainants respectfully request that this Commission compel Respondent to answer Interrogatory #26 or impose sanctions against Respondent for the failure to fully and specifically answer Interrogatory #26.

* * * * *

In summary, Interrogatories are governed by 52 Pa. Code Section,

52 Pa. Code Section 5.321(c) provides:

(c) Scope. Subject to this subchapter, a party 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 the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought is reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code Section 5.321 (c).

52 Pa. Code Section 5.342 states the form and manner of Answers:

(a) **Form. Answers to Interrogatories must:**

- (1) Be in writing.
- (2) Identify the name and position of the individual who provided the answer.
- (3) *Be submitted as an answer and may not be submitted as an exhibit or in another form.*
- (4) *Answer each interrogatory fully and completely unless an objection is made.*
- (5) Restate the interrogatory which is being answered or be inserted in the spaces provided in the interrogatories.
- (6) Be verified in accordance with Section 1.36 (relating to verification).

Here, Complainants served Interrogatory #26 on Respondent. Respondent failed to fully comply with Section 5.342, above, and Respondent provided partial information to Complainants. Neither Section 5.342, nor any other section of the statute, supports this incomplete and inadequate discovery response. As noted in prior pleadings, discovery is encouraged so that the parties may dispose of any or as many issues as possible, prior to trial or hearing. Through discovery, the parties may discover that certain issues are “resolvable” or not in dispute and avoid wasting precious judicial time and resources. Here, Respondent is acting in contradiction to the rules governing discovery.

Respondent must provide its discovery documents in a proper manner. Here, Respondent provided an exhibit or other form of documents that contains incomplete information and that fails to organize or state account information in a manner that fully and specifically answers or responds to Interrogatory #26 as required by Section 5.342. Respondent blatantly and under its own admission, fails to provide the discoverable materials and information. Respondent needs to answer Interrogatory #26 specifically, fully and completely as required by law and we respectfully request that the Commission compel PGW to do so.

Pursuant to 52 Pa. Code Section 5.321(c):

“...a party 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 the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter.”

Here, the Interrogatory #26 seeks information, including “books, documents, and other tangible things and the identity and location of persons having knowledge of a discoverable matter”, that are relevant to this proceeding and that are further defined as

discoverable at Section 5.321(c), above. Respondent failed to fully provide and identify those letters, correspondence, records, emails, and other documents. Respondent also failed to show where and how the information was previously provided "during the hearings" as stated in Response #26. Accordingly, Complainants respectfully request that the Commission compel Respondent to fully answer Interrogatory #26, here.

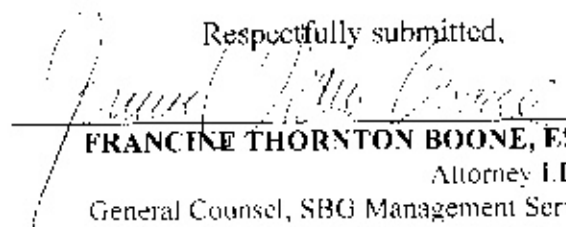
III. CONCLUSION

WHEREFORE, Complainants respectfully request Your Honor and the Commission:

- (1) grant this Motion to Compel;
- (2) compel PGW to answer Set II, Interrogatory No. 26 and produce full and complete answers and to provide all information requested in Set II, Interrogatory, No. 26 on or before January 17, 2013; and
- (3) grant any other relief deemed appropriate, including, but not limited to imposing appropriate sanctions for failing to fully and completely answer the Set II, Interrogatories, Interrogatory No. 26, in accordance with the Commission's prior Discovery Orders in this matter.

Date: December 31, 2013

Respectfully submitted,



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EXHIBIT "A"

INTERROGATORY #26

26. Identify and describe any writings, utility reports, correspondence, letters, memorandums, email communications, "MELITA" notes, or any other documentation Respondents sent, mailed, faxed to Complainants or the Commission related to the resolution of or pertaining to Complainant's Customer Accounts, SA accounts, former and current meters located at the Subject Properties, including but not limited to, Disputed Transactions attached hereto as Exhibits "A-1" through "A-8", and including but not limited to the same as located in the books and records of Respondents' Dispute Resolution Group, Customer Service Center and/or the Commercial Resource Center.

EXHIBIT "B-1" AND EXHIBIT "B-2"
ATTACHED AS TWO DOCUMENTS