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June 18, 2020

Via Electronic Filing

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

Re: PA Pennsylvania Public Utility Commission et al., v. Philadelphia Gas Works –
Docket No. R-2020-3017206

Dear Secretary Chiavetta:

Enclosed for Electronic Filing please find Philadelphia Gas Works' Answer to Motion to Dismiss and Direct Answers to Interrogatories of the Environmental Stakeholders in the above referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

Kristine E. Marsilio

Kristine E. Marsilio

KEM/lww

cc: Hon. Marta Guhl w/enc. (via email only)
Hon. Darlene Heep w/enc. (via email only)
Cert. of Service w/enc. (via email only)
Graciela Christlieb w/enc. (via email only)

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PGW's Answer to Motion to Dismiss and Direct Answers to Interrogatories of the Environmental Stakeholders upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Dated: June 18, 2020

/s/ Kristine E. Marsilio

Kristine E. Marsilio, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY :
COMMISSION : Docket No. R-2020-3017206
 :
 :
 v. :
 :
 :
 PHILADELPHIA GAS WORKS :

**ANSWER OF PHILADELPHIA GAS WORKS
TO MOTION TO DISMISS OBJECTIONS AND DIRECT ANSWERS
TO INTERROGATORIES
OF THE ENVIRONMENTAL STAKEHOLDERS**

Pursuant to Section 5.342(g)(1) of the Commission’s regulations, 52 Pa. Code § 5.342(g)(1), and the Corrected Prehearing Order dated May 15, 2020 in the above-captioned proceeding, Philadelphia Gas Works (“PGW”) hereby files this Answer to the Motion to Dismiss Objections and Direct Answers to Interrogatories (“Motion”) of the Sierra Club and Clean Air Council (collectively, “Environmental Stakeholders”) filed in the above-captioned proceeding.

The Environmental Stakeholders’ Interrogatories, Set I, Nos. 2-4 and 7-12 and Set II, Nos. 1-3 seek information regarding PGW’s EnergySense Program, other energy efficiency programs, and environmental concerns. PGW’s energy efficiency programs were fully and comprehensively addressed in PGW’s Demand Side Management Program Implementation Plan proceeding and Universal Service and Energy Conservation Plan proceeding. Additionally, many of these inquiries are intended to support the Environmental Stakeholders’ claim (as set out in their proposed direct testimony) that the PUC should require PGW to cease selling natural gas and otherwise attempt to reduce carbon emissions.¹ While these are important issues, they are

¹ See Environmental Stakeholders’ Statement No. 1 (“SC St. No. 1”) at p. 6, lines 5-14 and pp. 10-11, lines 15-2 (Direct Testimony of Ezra D. Hausman).

not issues appropriately presented before this Commission because it is well established that the PUC does not have jurisdiction over the environmental issues that are the subject of these discovery requests. Even if the Commission were to conclude it might have jurisdiction to consider these claims, the information sought is also not relevant to this base rate case, is not reasonably calculated to lead to the discovery of admissible evidence and is, therefore, beyond the scope of this proceeding. As such, PGW respectfully requests that Administrative Law Judges Darlene Heep and Marta Guhl (collectively, the “ALJs”) sustain PGW’s Objections to the Environmental Stakeholders’ Interrogatories, Set I, Nos. 2-4 and 7-12 and Set II, Nos. 1-3 and deny the Environmental Stakeholders’ Motion. In support thereof, PGW states as follows:

I. INTRODUCTION AND BACKGROUND

After intervening in PGW’s base rate proceeding, on June 2, 2020, the Environmental Stakeholders served Interrogatories Sets I and II upon PGW. The Environmental Stakeholders’ Set I Interrogatories, Nos. 2-4 and 7-12 request information regarding: 1) PGW’s EnergySense Program and other energy efficiency programs; 2) electrification as an alternative to the repair and/or extension of natural gas infrastructure; 3) greenhouse gas emissions and efforts to reduce same; and 4) efforts to divest from fossil fuels, limit global warming, and invest in renewable energy. The Environmental Stakeholders’ Set II Interrogatories, Nos. 1-3 seek information related to environmental issues, including greenhouse gas emissions and methane leaks.

Pursuant to the Corrected Prehearing Order dated May 15, 2020, PGW orally objected to these discovery requests on June 3, 2020. On June 5, 2020, counsel for PGW had a follow-up call with counsel for the Environmental Stakeholders to attempt to resolve this discovery dispute, but the parties were unable to reach a resolution.

On June 9, 2020, PGW served written Objections to Set I, Nos. 2-4 and 7-12 and Set II, Nos. 1-3. Of note, PGW’s Objection to Set I provided: “PLEASE NOTE: Without waiver of

these objections, PGW will attempt to respond to Set I, Nos. 2 and 3 to the extent reasonably possible.” Accordingly, on June 10, 2020, PGW served partial responses to the Environmental Stakeholders’ Set I, which included responses to Nos. 2-3.

On June 12, 2020, the Environmental Stakeholders filed a Motion to Dismiss Objections and Direct Answers to Interrogatories. In their Motion, the Environmental Stakeholders request that the ALJs dismiss PGW’s Objections to Set I, Nos. 2-4 and 7-12 and Set II, Nos. 1-3 and compel PGW to provide complete and timely responses to same.

The Environmental Stakeholders’ Motion should be denied because the underlying discovery requests seek information that is not relevant, is not reasonably calculated to lead to the discovery of admissible evidence, and is beyond the scope of this rate proceeding. Further, the Environmental Stakeholders’ Motion, insofar as it relates to Set I, Nos. 2-3 is moot, as PGW has already provided this information.

II. LEGAL STANDARD

In proceedings before the Commission, “a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.”² 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.³

Additionally, Section 5.361 of the Commission’s regulations⁴ limits the scope of discovery as follows:

Discovery or deposition is not permitted which:

² 52 Pa. Code § 5.321(c).

³ Id.

⁴ 52 Pa. Code § 5.361(a).

- (1) Is sought in bad faith.
- (2) Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or party.
- (3) Relates to matter which is privileged.
- (4) Would require the making of an unreasonable investigation by the deponent, a participant or witness

The Environmental Stakeholders bear the burden of demonstrating the relevance of the information that they are demanding.⁵ It should be fairly clear that these demands have no place in a utility base rate case.

III. ANSWER AND ARGUMENT

A. Environmental Stakeholders' Set I, Nos. 2-3

Environmental Stakeholders' Set I, Nos. 2-3 provide as follows:

CAC-I-2 Please provide all materials filed by PGW with the Pennsylvania Public Utility Commission concerning PGW's EnergySense Program and any other PGW energy efficiency programs since January 1, 2015.

CAC-I-3 Please provide all analyses, reports, cost-benefit studies and analyses, savings projections, and Evaluation, Measurement and Verification ("EM&V") studies produced by or for PGW concerning its EnergySense Program and any other energy efficiency programs of PGW. Please provide all analyses in their native electronic format with formulas intact.

1. Objection

PGW objected to the Environmental Stakeholders' Set I Interrogatories, Nos. 2-3, as this information is not relevant or reasonably calculated to lead to the discovery of admissible evidence. PGW has not proposed any changes to its EnergySense Program or any of its other

⁵ Contrary to the Environmental Stakeholders' claim, the Environmental Stakeholders bear the burden of establishing relevancy in this case. The very case cited by the Environmental Stakeholders supports PGW's position. *Koken v. One Beacon Ins. Co.*, 911 A.2d 1021, 1025 (Pa. Commw. Ct. 2006) ("if there is nothing in the record from which relevancy can be ascertained, this Court may place the burden of establishing relevancy upon the requesting party."). Here, the relevancy of the Environmental Stakeholders' discovery requests cannot be ascertained from the record, as environmental issues have not been raised in this case, and PGW has not proposed any modifications to its EnergySense Program or other energy efficiency programs. Further, pursuant to Section 332 of the Public Utility Code, as the moving party seeking answers to interrogatories, the Environmental Stakeholders bear the burden to prove relevancy. 66 Pa. C.S. § 332(a).

energy efficiency programs in this proceeding. PGW's energy efficiency programs were fully and comprehensively addressed in PGW's Demand Side Management Program Implementation Plan proceeding⁶ and Universal Service and Energy Conservation Plan proceeding.⁷

Accordingly, any attempt to litigate PGW's energy efficiency programs in this proceeding should be rejected.

2. Response to Motion

At the onset, it is important to reiterate that, without waiving its objection, PGW has already answered Set I, questions 2 and 3, and the Environmental Stakeholders acknowledge same.⁸ The Environmental Stakeholders do not argue that the information provided by PGW was insufficient. Therefore, the Environmental Stakeholders' Motion as it relates to Set I, Nos. 2-3 is moot and should be denied.

Nevertheless, PGW maintains that the information sought in these requests is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. The Environmental Stakeholders essentially argue that they should be permitted to challenge the effectiveness of PGW's Commission-approved EnergySense Program and energy efficiency programs in this proceeding as a basis to contest the reasonableness of PGW's proposed rate increase.⁹ This argument is clearly a thinly veiled attempt to relitigate PGW's EnergySense and

⁶ *Petition of Philadelphia Gas Works for Approval of Demand Side Management Plan for FY 2014-2016 and Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2014-2016 52 Pa. Code § 62.4 – Request for Waivers*, Docket No. P-2014-2459362.

⁷ PGW's Universal Service and Energy Conservation Plan was just approved by the PUC and is on appeal to Commonwealth Court. PGW's Universal Service and Energy Conservation Plan for 2017-2022 and Petition to Amend Philadelphia Gas Works Universal Service and Energy Conservation Plan for 2017-2022, Docket Nos. M-2016-2542415, *et. al.*, Order (March 26, 2020).

⁸ *See* Motion at 4.

⁹ *See* Motion at 5.

energy efficiency program. The Environmental Stakeholders should not be permitted to use this proceeding as an opportunity to raise concerns about PGW programs that were the subject of prior proceedings, regardless of their claim that they are not attempting to modify same.¹⁰ Further, if the Environmental Stakeholders are not, in fact, attempting to challenge PGW's EnergySense Program or energy efficiency programs, it is entirely unclear how information related to these programs could have any impact on PGW's proposed rate increase. The Environmental Stakeholders have failed to demonstrate how this information is relevant or could lead to the discovery of admissible evidence, and they have not cited any cases that support the relevance of such information in a rate case.

Additionally, the Environmental Stakeholders' reliance on the ALJ Order granting their intervention is misplaced.¹¹ The standard for granting intervention is separate and distinct from the standard for permissible discovery.¹² Certainly, by allowing the Environmental Stakeholders to participate in this proceeding, the ALJs did not intend to broaden the scope of permissible discovery in this proceeding. As discussed, the Environmental Stakeholders seek information that is outside the scope of discovery, as the information sought in Set I, Nos. 2-3 is not relevant or reasonably calculated to lead to the discovery of admissible evidence and is beyond the scope of this proceeding. As such, the Environmental Stakeholders' Motion should be denied.

B. Environmental Stakeholders' Set I, No. 4

The Environmental Stakeholders' Set I, No. 4 provides:

CAC-I-4 Please provide all analyses, reports, cost-benefit studies and analyses, savings projections, and Evaluation, Measurement and Verification ("EM&V") studies produced by or for PGW concerning building electrification, including

¹⁰ See Motion at 5.

¹¹ See Motion at 5-6.

¹² See 52 Pa. Code § 5.72.

building electrification as an alternative to the repair and/or extension of gas infrastructure. Please provide all analyses in their native electronic format with formulas intact.

1. Objection

In its Objection, PGW asserted that the information sought is not legally relevant, as the Commission lacks jurisdiction over electrification. PGW has an obligation to provide gas service. It has no obligation, nor the legal ability, under the Public Utility Code or the Commission's regulations to provide electric service.

Even if the Commission had jurisdiction over electrification, the information sought in this discovery request would neither be relevant to this rate case proceeding nor reasonably calculated to lead to the discovery of admissible evidence.¹³ The Environmental Stakeholders' Set I, No. 4 is not relevant to PGW's rate case filing or any existing PGW Tariff provision. The scope of a base rate case is to determine the reasonableness of a utility's proposed and existing Tariff (or any new proposals raised therein); it is not a "free-for-all," enabling a party to introduce any issue or complaint that it may have with the utility seeking the rate increase. Issues pertaining to electrification are not relevant to this proceeding as they are outside the Commission's purview.

2. Response to Motion

The Environmental Stakeholders make the bold and unsupported assertion that an analysis of building electrification directly relates to whether it is reasonable and prudent to accelerate capital investment in PGW's distribution system and, therefore, the Commission has

¹³ 52 Pa. Code § 5.321(c).

jurisdiction over this matter.¹⁴ Despite this assertion, the Environmental Stakeholders fail to cite any provision of the Public Utility Code (or even any case law) supporting their position.

As PGW maintained in its Objections, the Commission has only the power and jurisdiction expressed or necessarily implied to it by the legislature.¹⁵ The Commission must act within, and cannot exceed, its jurisdiction.¹⁶ Jurisdiction cannot be conferred where none exists.¹⁷ While the Commission has jurisdiction over a utility's facilities and service,¹⁸ it is clear that the Commission does not have the authority to direct the "electrification" of a natural gas utility. Pursuant to Section 2212 of the Public Utility Code,¹⁹ PGW is obligated to provide safe and adequate *natural gas* service to its existing and future customers at just and reasonable rates. The Commission cannot legally direct PGW to abandon this obligation or provide a wholly different utility service. Moreover, PGW has no obligation to evaluate alternatives such as electrification, which are wholly outside the scope of its Commission regulated services.

Further, even if the Commission had jurisdiction over this issue, as noted, the electrification of PGW's facilities has not been proposed in this case, nor does it pertain to any existing PGW Tariff. The Environmental Stakeholders do not even attempt to counter this argument and fail to cite any testimony or PGW Tariff provision that relates to their Set I, No. 4.

¹⁴ Motion at 7.

¹⁵ See *City of Phila. v. Phila. Elec. Co.*, 473 A.2d 997, 999-1000 (Pa. 1984) ("We begin our inquiry by recognizing that the authority of the Commission must arise from the express words of the pertinent statutes or by strong and necessary implication therefrom...It is axiomatic that the Commission's power is statutory; and the legislative grant of power in any particular case must be clear."); see also *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 795 (Pa. 1977); *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008).

¹⁶ *City of Pittsburgh v. Pa. PUC*, 43 A.2d 348 (Pa. Super. 1945).

¹⁷ *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

¹⁸ 66 Pa. C.S. § 1505.

¹⁹ 66 Pa. C.S. § 2212.

If these environmental advocates wish to challenge the continued existence of PGW as a natural gas company, they need to go to the General Assembly and modify provisions of the Public Utility Code or add new obligations and powers for the Commission. Or, at best, these advocates should petition the PUC to formulate rules that would apply to all natural gas utilities. The Environmental Stakeholders should not be permitted to inject these issues into a proceeding that has nothing to do with these issues.

For the reasons explained above, Set I, No. 4 is not legally relevant. The Commission is without jurisdiction to consider these issues, and the information sought is not relevant to this proceeding; nor is this question reasonably calculated to lead to the discovery of admissible evidence. It is thus beyond the scope of this proceeding. As such, the Environmental Stakeholders Motion should be denied.

C. Environmental Stakeholders' Set I, Nos. 7-12

The Environmental Stakeholders' Set I, Nos. 7-12 provide:

CAC-I-7 Governor Tom Wolf issued Executive Order No 2019-01 on January 8, 2019, describing climate change as “the most critical environmental threat confronting the world” and stating, in part, that “The Commonwealth shall strive to achieve a 26 percent reduction of net greenhouse gas emissions statewide by 2025 from 2005 levels, and an 80 percent reduction of net greenhouse gas emissions by 2050 from 2005 levels.” Please explain what actions PGW intends to take in order to reduce greenhouse gas (“GHG”) emissions associated with natural gas usage consistent with Executive Order 2019-01. Please provide all analyses performed by or for PGW of such actions in their native electronic format, with formulas intact.

CAC-I-8 Please provide all reports, presentations, and analyses provided to the PGW leadership or to the Philadelphia Facilities Management Corporation (“PFMC”) concerning Executive Order 2019-01 and PGW’s response to Executive Order 2019-01. Please provide minutes of PGW or PFMC meetings at which Executive Order 2019-01 was discussed.

CAC-I-9 The Philadelphia City Council adopted Resolution No. 170706 on September 14, 2017, stating in part that “The responsible direction of investment capital being necessary to fund responses to the crisis of climate disruption, Philadelphia encourages divestment from fossil fuels and investment in energy

efficiency and renewable energy alternatives” and committing the city of Philadelphia “to doing its part to meet the obligations of the United States under the Paris Accord to limit global warming to 1.5° C above preindustrial levels.” Resolution No. 170706 further asks public agencies, including PGW, “to join the City’s commitment to meet the goals of the Paris Accord.” Please explain what actions PGW has taken or intends to take in pursuit of the City’s commitment to meet the goals of the Paris Accord. Please provide all analyses performed by or for PGW of such actions in their native electronic format, with formulas intact.

CAC-I-10 Please provide all reports, presentations, and analyses provided to the PGW leadership or to the Philadelphia Facilities Management Corporation (“PFMC”) concerning Resolution No. 170706 and PGW’s response to Resolution No. 170706. Please provide minutes of PGW or PFMC meetings at which Resolution No. 170706 was discussed.

CAC-I-11 The Philadelphia City Council adopted Resolution No. 190728 on September 26, 2019, reiterating the commitment made by the city under Resolution No. 170706 and stating in part that “The Philadelphia Office of Sustainability, has issued Powering Our Future: A Clean Energy Vision for Philadelphia, outlining ways to achieve 80% carbon emissions reduction in the built environment by 2050” and resolving, among other matters, that “the City of Philadelphia shall take measures to achieve a fair and equitable transition to the use of 100% clean renewable energy for electricity in municipal operations by 2030, for electricity City-wide by 2035, and for all energy (including heat and transportation) city-wide by 2050 or sooner.” Please explain what actions PGW has taken or intends to take in pursuit of the City’s commitment to use 100% clean renewable energy for all energy, including heat, city-wide by 2050 or sooner. Please provide all analyses performed by or for PGW of such actions in their native electronic format, with formulas intact.

CAC-I-12 Please provide all reports, presentations, and analyses provided to the PGW leadership or to the Philadelphia Facilities Management Corporation (“PFMC”) concerning Resolution No. 190728 and PGW’s response to Resolution No. 190728. Please provide minutes of PGW or PFMC meetings at which Resolution No. 190728 was discussed.

1. Objection

In its Objections, PGW maintains that the information sought in these discovery requests is not legally relevant, as the Commission lacks jurisdiction over the environmental issues that are the subject of the Environmental Stakeholders’ discovery requests. Additionally, the commitments established in the referenced Executive Order and City Council Resolutions are *not* requirements set out in the Public Utility Code or the Commission’s regulations. Executive

Orders and City Council Resolutions “cannot legally operate to expand the powers of a statutory agency.”²⁰

Second, even if the Commission had jurisdiction over environmental issues or compliance with state or federal environmental laws, the information sought in these discovery requests would neither be relevant to this rate case proceeding nor reasonably calculated to lead to the discovery of admissible evidence.²¹ Environmental Stakeholders’ Set I, Nos. 7-12 are not relevant to PGW’s rate case filing or any existing PGW Tariff provision. The scope of a base rate case is to determine the reasonableness of a utility’s proposed and existing Tariff (or any new proposals raised therein); it is not a “free-for-all,” enabling a party to introduce any issue or complaint that it may have with the utility seeking the rate increase. Issues pertaining to greenhouse gas emissions and renewable energy are not relevant to this proceeding as they are outside the Commission’s purview.

2. Response to Motion

In its Motion, the Environmental Stakeholders, again, fail to cite any statute (or case law) to demonstrate that the Commission has jurisdiction over the environmental issues that are the subject of their discovery requests. As discussed, the Commission has only the power and jurisdiction expressed or necessarily implied to it by the legislature.²² The Commission must act

²⁰ *Funk v. Wolf*, 144 A.3d 228, 249 (Pa. Cmwlth. Ct. 2016); citing *Cnty Coll. of Delaware Cnty.*, 342 A.2d 468, 474 (Pa. Cmwlth. Ct. 1974); see also *Nat’l Solid Wastes Mgmt. Ass’n*, 600 A.2d 260, 261 (Pa. Cmwlth. Ct. 1991).

²¹ 52 Pa. Code § 5.321(c).

²² See *City of Phila. v. Phila. Elec. Co.*, 473 A.2d 997, 999-1000 (Pa. 1984) (“We begin our inquiry by recognizing that the authority of the Commission must arise from the express words of the pertinent statutes or by strong and necessary implication therefrom...It is axiomatic that the Commission’s power is statutory; and the legislative grant of power in any particular case must be clear.”); see also *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 795 (Pa. 1977); *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Order entered May 28, 2008).

within, and cannot exceed, its jurisdiction.²³ Jurisdiction cannot be conferred where none exists.²⁴ While the Commission has jurisdiction over a utility's facilities and service,²⁵ the Commonwealth Court has made it clear that the Commission does not have jurisdiction over environmental issues or compliance with state or federal environmental laws.²⁶

The Environmental Stakeholders' primary argument is that their interrogatories relate to whether or not PGW's proposed rate increase reasonably forecasts future system needs in light of commitments made by State and City governments.²⁷ This argument, however, is misplaced, as it completely disregards the Commission's lack of jurisdiction over the issue. In order for the Commission to evaluate "future system needs" in light of the commitments made in the Executive Order and City Council Resolutions, the Commission would need to consider the extent of those commitments and evaluate PGW's plans to comply therewith. As discussed, the Commission simply does not have jurisdiction to engage in such an analysis. The only system needs that PGW must consider before the PUC are those that pertain to its obligation to provide safe adequate and reasonable service, as defined in the Public Utility Code and the PUC's regulations. It is telling that these environmental advocates fail to cite a single PUC regulation or provision of the Public Utility Code in making their expansive demands. It should also be

²³ *City of Pittsburgh v. Pa. PUC*, 43 A.2d 348 (Pa. Super. 1945).

²⁴ *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

²⁵ 66 Pa. C.S. § 1505.

²⁶ *Rovin, D.D.S. v. Pa. Public Utility Commission*, 502 A. 2d 785 (Pa. Cmwlth 1986) ("*Rovin*") (Enforcement of environmental statutes is specifically vested in the Department of Environmental Protection and the Federal Environmental Protection Agency.); *Pickford v. Pa. Public Utility Commission*, 4 A.3d 707 (Pa. Cmwlth. Ct. 2010) ("*Pickford*") (customer complaints related to the conversion of water treatment plants from chlorinated water to chloraminated water were obvious challenges to the health effects of chloramines under permits issued by the Department of Environmental Protection and, thus, outside the Commission's jurisdiction); *Country Place Waste Treatment Company, Inc. v. Pa. Public Utility Commission*, 654 A.2d 72 (Pa. Cmwlth. 1995) ("*CPWT*") (Commission lacks authority to regulate air quality where sewage treatment plant caused odor).

²⁷ Motion at 9.

clear that neither a Philadelphia City Council Resolution nor an Executive Order can impose obligations upon a regulated utility like PGW that can be enforced before the PUC. The Commonwealth Court has made it clear that the referenced Executive Order and City Council Resolutions cannot legally operate to expand Commission jurisdiction where none exists.²⁸ Further, PGW maintains that the information sought in Set I, Nos. 7-12 is not relevant to PGW's filing or any existing Tariff provision.

For the reasons explained above, Set I, Nos. 7-12 are not relevant, are not reasonably calculated to lead to the discovery of admissible evidence, and are beyond the scope of this proceeding. As such, the Environmental Stakeholders' Motion should be denied.

D. Environmental Stakeholders' Set II, Nos. 1-3

The Environmental Stakeholders' Set II, Nos. 1-3 provide:

CAC-II-1 Please provide all reports, presentations, and analyses provided to the PGW leadership or to the Philadelphia Facilities Management Corporation ("PFMC") concerning the current and projected inventory of GHGs from PGW's operations, including from the combustion of gas delivered by PGW, and from methane estimated to be escaping from PGW's distribution system prior to combustion.

CAC-II-2 Please provide all reports, presentations, and analyses provided to the PGW leadership or to the Philadelphia Facilities Management Corporation ("PFMC") concerning the amount of methane leaking from different parts of PGW's distribution network, and whether any system components or sectors have been designated as high hazard.

CAC-II-3 Please provide all reports, presentations, and analyses provided to the PGW leadership or to the Philadelphia Facilities Management Corporation ("PFMC") concerning what steps PGW has taken, or procedures put in place to identify the largest methane leaking parts of PGW's distribution network.

²⁸ *Funk v. Wolf*, 144 A.3d 228, 249 (Pa. Cmwlth. Ct. 2016); citing *Cnty Coll. of Delaware Cnty.*, 342 A.2d 468, 474 (Pa. Cmwlth. Ct. 1974); see also *Nat'l Solid Wastes Mgmt. Ass'n*, 600 A.2d 260, 261 (Pa. Cmwlth. Ct. 1991).

1. Objection

In its Objections, PGW asserts that the information sought in the discovery requests is not legally relevant, as the Commission lacks jurisdiction over the environmental issues that are the subject of the requests. More specifically, the Commission does not have jurisdiction over greenhouse gas emissions and does not regulate methane.

Second, even if the Commission had jurisdiction over these issues, the information sought in these discovery requests would neither be relevant to this rate case proceeding nor reasonably calculated to lead to the discovery of admissible evidence.²⁹ Set II, Nos. 1-3 are not relevant to PGW's rate case filing or any existing PGW Tariff provision. A base rate case is not a "free-for-all," enabling a party to introduce any issue or complaint that it may have with the utility seeking the rate increase. Environmental issues have not been raised in this case, and this proceeding is not the appropriate forum to adjudicate these issues.

2. Response to Motion

In its Motion, the Environmental Stakeholders argue that the information sought is relevant in light of the above-referenced Executive Order and City Council Resolution No. 170706, in order to determine whether the planned investments underlying the proposed rate increase are reasonable.³⁰ As previously discussed, this argument, however, necessarily assumes that the Commission has jurisdiction to evaluate PGW's operations in light of environmental concerns and the commitments in the Executive Order and City Council Resolution. As discussed above, the Commission simply does not have jurisdiction over these issues. The

²⁹ 52 Pa. Code § 5.321(c).

³⁰ Motion at 11.

Environmental Stakeholders fail to cite any statutory authority (or case even case law) to the contrary.

The Environmental Stakeholders also make the misplaced argument that the information sought in Set II, Nos. 1-3 is necessary to assess the safety, reliability and efficiency of PGW's system.³¹ While the Commission has jurisdiction over a utility's facilities and service,³² the Commission does not have jurisdiction over environmental issues, including greenhouse gas emissions or methane leaks, that fall within the jurisdiction of the Pennsylvania Department of Environmental Protection and the Federal Environmental Protection Agency.³³ The Environmental Stakeholders, once again, fail to cite any statutory authority (or case even case law) to the contrary.

For the reasons explained above, Set II, Nos. 1-3 are not relevant, are not reasonably calculated to lead to the discovery of admissible evidence, and are beyond the scope of this proceeding. As such, the Environmental Stakeholders' Motion should be denied.

³¹ Motion at 11.

³² 66 Pa. C.S. § 1505.

³³ *Rovin, D.D.S. v. Pa. Public Utility Commission*, 502 A. 2d 785 (Pa. Cmwlth 1986) (“*Rovin*”) (Enforcement of environmental statutes is specifically vested in the Department of Environmental Protection and the Federal Environmental Protection Agency.); *Pickford v. Pa. Public Utility Commission*, 4 A.3d 707 (Pa. Cmwlth. Ct. 2010) (“*Pickford*”) (customer complaints related to the conversion of water treatment plants from chlorinated water to chloraminated water were obvious challenges to the health effects of chloramines under permits issued by the Department of Environmental Protection and, thus, outside the Commission's jurisdiction); *Country Place Waste Treatment Company, Inc. v. Pa. Public Utility Commission*, 654 A.2d 72 (Pa. Cmwlth. 1995) (“*CPWT*”) (Commission lacks authority to regulate air quality where sewage treatment plant caused odor).

IV. CONCLUSION

For the foregoing reasons, PGW respectfully requests that the ALJs sustain PGW's Objections to the Environmental Stakeholders' Set I, Nos. 2-4 and 7-12 and Set II, Nos. 1-3 and deny the Environmental Stakeholders' Motion to Dismiss Objections and Direct Answers to Interrogatories.

Respectfully submitted,

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