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July 22, 2020

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Re: Pennsylvania Public Utility Commission v. Philadelphia Gas Works;  
Docket No. R-2020-3017206

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Dear Counselors:

Enclosed please find Philadelphia Gas Works' Answer to Motion to Dismiss Objections and to Compel Answers to the Environmental Stakeholders' Set I Interrogatories in the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

*Kristine E. Marsilio*

Kristine E. Marsilio

Enclosure

cc: Hon. Marta Guhl w/ enc.  
Hon. Darlene Heep w/ enc.  
Cert. of Service w/ enc.  
Rosemary Chiavetta, w/COS only  
Graciela Christlieb, Senior Attorney, PGW (via email)  
Craig Berry, Senior Attorney, PGW (via email)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**ANSWER OF PHILADELPHIA GAS WORKS  
TO THE MOTION TO DISMISS OBJECTIONS AND TO COMPEL ANSWERS TO  
THE ENVIRONMENTAL STAKEHOLDERS’ SET I OF INTERROGATORIES  
DIRECTED TO PHILADELPHIA GAS WORKS**

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Pursuant to Section 5.342(g)(1) of the Commission’s regulations, 52 Pa. Code § 5.342(g)(1), and the e-mail dated July 21, 2020 provided by Administrative Law Judges Darlene Heep and Marta Guhl (collectively, the “ALJs”), Philadelphia Gas Works (“PGW”) hereby files this Answer to the Motion to Dismiss Objections and Compel Answers to the Environmental Stakeholders’ Set I of Interrogatories Directed to Philadelphia Gas works (“Motion”).

The Environmental Stakeholders’ Interrogatories, Set I, Nos. 2-3, 4(a)-(c), 5, and 7-19 seek information that is inadmissible at this late stage of the proceeding and would place an unreasonable burden on PGW. Further, the interrogatories are contrary to the commitments made by the Environmental stakeholders and the requirements of the ALJs that the Environmental Stakeholders cause no delay or otherwise disrupt the progress of these proceedings. PGW has already answered, or is in the process of answering several questions posed in this set that were fairly directed at PGW’s rebuttal testimony. But demanding detailed information regarding PGW’s direct testimony, to which all the objected to interrogatories pertain, is completely unfair and inconsistent with the PUC’s Rules of Procedure. As such, PGW

respectfully requests that the ALJs sustain PGW's Objections to the Environmental Stakeholders' Interrogatories, Set I, Nos. 2-3, 4(a)-(c), 5, and 7-19 and deny the Environmental Stakeholders' Motion. In support thereof, PGW states as follows:

**I. INTRODUCTION AND BACKGROUND**

PGW filed for a general rate increase on February 28, 2020, at which time PGW served eight pieces of written, direct testimony in support of its filing. The Environmental Stakeholders filed an untimely intervention on May 22, 2020, in which they promised that their intervention would not delay the orderly progress of the case. In granting their intervention, the ALJs held: "Environmental Stakeholders will have to enter and participate in the case as they find it and therefore intervention will cause no delay or otherwise disrupt the progress of these proceedings."<sup>1</sup>

The Environmental Stakeholders served their Direct Testimony on June 15, 2020, wherein they had their opportunity to present testimony in response to PGW's case-in-chief. PGW filed Rebuttal Testimony on July 13, 2020. The Environmental Stakeholders waited until July 14, 2020<sup>2</sup> to serve their first set of discovery,<sup>3</sup> which includes extensive questions pertaining to PGW's *direct* testimony. Surrebuttal Testimony is due in this proceeding on July 24, 2020, and hearings are scheduled to begin on July 28, 2020.

Pursuant to the Corrected Prehearing Order dated May 15, 2020, PGW orally objected to these discovery requests and attempted to reach a resolution with counsel for the Environmental Stakeholders. The parties, however, were unable to reach a resolution.

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<sup>1</sup> Order Granting Petition to Intervene of Environmental Stakeholders at 2 (June 1, 2020).

<sup>2</sup> While the discovery was served on July 14, 2020, PGW did not actually receive it until July 15, 2020.

<sup>3</sup> Clean Air Council previously served two sets of discovery. The set of discovery that is the subject of these objections is the first served on behalf of both Clean Air Council and Sierra Club/PA Chapter, jointly.

On July 21, 2020, PGW served written Objections to Set I, Nos. 2-3, 4(a)-(c), 5, and 7-19. On the same date, the ALJs issued an e-mail directing the Environmental Stakeholders to file any Motion no later than July 22, 2020 at noon and for PGW to file its Answer no later than Close of Business on the same date. PGW answered all the rest of the questions in the Set I.

Accordingly, the Environmental Stakeholders filed their Motion on July 22. In their Motion, the Environmental Stakeholders request that the ALJs dismiss PGW's Objections to Set I, Nos. Nos. 2-3, 4(a)-(c), 5, and 7-19 and compel PGW to provide complete and timely responses by close of business on Friday, July 24, 2020.

The Environmental Stakeholders' Motion should be denied because they seek information that is inadmissible at this late stage of the proceeding and would place an unreasonable burden on PGW.

## **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."<sup>4</sup> 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.<sup>5</sup> In other words, it is ground for objection that the information sought does not appear reasonably calculated to lead to the discovery of admissible evidence. *Importantly, "a Party is not permitted to introduce evidence during a rebuttal phase that should have been included in the party's case-in-chief."* 52 Pa. Code § 5.243(e)(2).

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<sup>4</sup> 52 Pa. Code § 5.321(c).

<sup>5</sup> Id.

Additionally, Section 5.361 of the Commission's regulations<sup>6</sup> limits the scope of discovery as follows:

Discovery or deposition is not permitted which:

- (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 that their interrogatories meet the standard.<sup>7</sup>

### **III. ANSWER AND ARGUMENT**

**Environmental Stakeholders' Set I, Nos. 2-3, 4(a)-(c), 5, and 7-19 seek information that is inadmissible at this stage of the proceeding, is not reasonably calculated to lead to the discovery of admissible evidence, and is unreasonably burdensome. 52 Pa. Code §§ 5.321(c), 5.361(a).**

The Environmental Stakeholders' Set I Interrogatories, Nos. 2-3, 4(a)-(c), 5, and 7-19 request information that is inadmissible at this stage of the proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. The Environmental Stakeholders do not (nor can they) dispute the fact that all of these discovery requests seek information that, at best, relates to PGW's case-in-chief and, certainly, does not relate to PGW's Rebuttal. Contrary to the picture the Environmental Stakeholders attempt to paint, these discovery requests are not "arguably" irrelevant.<sup>8</sup> They are not relevant at this stage of the proceeding because the

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<sup>6</sup> 52 Pa. Code § 5.361(a).

<sup>7</sup> 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).

<sup>8</sup> The Environmental Stakeholders misinterpret the use of the word "arguably." The interrogatories cannot lead to admissible evidence at this stage of the proceeding, and they are burdensome. "Arguably" was merely intended to demonstrate that PGW is not conceding to the relevance or admissibility of the information at any stage of the proceeding.

information sought would not be admissible at this stage of the proceeding pursuant to 52 Pa. Code § 5.243(e)(2).

While the Environmental Stakeholders argue that the information may be admissible for cross-examination purposes, such an argument is unfounded. Through these discovery requests, the Environmental Stakeholders are not seeking clarification of PGW's Direct Testimony, or "cross-examination type" questions aimed at evaluating PGW's responses. Rather, they are seeking for PGW to engage in extensive document production and analyses regarding material in PGW's direct. This is the type of information that could have and should have been introduced during a party's case-in-chief. This information is not readily available and, contrary to the Environmental Stakeholders' presumptuous claims, attaining this information will not assist PGW in its hearing preparation. Rather, it will impede PGW's hearing preparation, in direct conflict with the promises made by the Environmental Stakeholders when they intervened in this proceeding. The Environmental Stakeholders had ample opportunity to submit discovery with respect to PGW's Direct Case (which was filed February 29, some 5 months ago). Notably, in their Motion, the Environmental Stakeholders offered no excuse for their delay in asking these questions. PGW should not be required to produce information at this stage of the proceeding that should have been sought earlier.

Moreover, the information sought by the Environmental Stakeholders in Set I, Nos. 2-3, 4(a)-(c), 5, and 7-19 is unreasonably burdensome. The Environmental Stakeholders' claim that PGW has the same 10-day period to produce responses misses the point. PGW does not have the same capacity to respond to discovery requests at this stage of the proceeding than it had at earlier stages. Currently, PGW is actively engaged in hearing preparation. As noted by PGW in

its Objections, the interrogatories seek detailed explanations and information, and request the production of documents, analyses, backlogs, contracts (including amendments and supplements thereto) and arrangements, Company policies and guidelines, itemized lists, and supporting documentation and workpapers. PGW does not need to engage in a further explanation of this burden: A mere glance at the discovery requests demonstrates the extent of the questions and requests for production of documents. When considered in view of PGW's other hearing preparation obligations, it is clear that engaging in the document production and analyses requested by the Environmental Stakeholders will place an unreasonable burden on PGW. It is completely unreasonable for the Environmental Stakeholders to wait until two weeks before the hearing to ask questions pertaining to information that was available since February 28.

#### **IV. CONCLUSION**

For the foregoing reasons, PGW respectfully requests that the ALJs sustain PGW's Objections to the Environmental Stakeholders' Set I, Nos. 2-3, 4(a)-(c), 5, and 7-19 and deny the Environmental Stakeholders' Motion to Dismiss Objections and Compel Answers to the Environmental Stakeholders' Set I of Interrogatories Directed to Philadelphia Gas works.

Respectfully submitted,

*/s/ Kristine E. Marsilio*

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Dated: July 22, 2020



## CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing 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: July 22, 2020

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