

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ELLENA IRBY	:
Complainant	:
v.	: Docket No. C-2009-2117933
	:
PHILADELPHIA GAS WORKS	:
Respondent	:

**NOTE: Responsive pleading shall be filed within  
5 days of the date of service.**

**Motion to Compel Philadelphia Gas Works to Answer Ellena Irby's Interrogatories and  
Requests for Production of Documents, Set I, No. 24**

Pursuant to 52 Pa. Code §§ 5.321, 5.342, and 5.361, Complainant Ellena Irby, through counsel Community Legal Services, Inc., hereby moves to dismiss the Philadelphia Gas Works' Objections to the First Set of Written Interrogatories and to compel answers to Ellena Irby's Interrogatories and Requests for Production of Documents, Set I, No. 24. In support of this motion, Complainant states as follows:

1. On July 8, 2009, Complainant, Ellena Irby, filed a Formal Complaint with the Commission claiming that, in terminating her gas service without prior notice and refusing to restore service, the Philadelphia Gas Works ("PGW") violated the Public Utility Code Section 1501, 66 Pa. C.S. § 1501, requiring a utility to provide "reasonably continuous service," and violated Section 8.3.D of PGW's Tariff, prohibiting PGW from requiring persons not responsible for alleged theft of service to pay for gas used without authorization.

2. In her Formal Complaint, Complainant disputes, *inter alia*, PGW's claim for unauthorized gas usage from October 2005 to December 2008, during which time Complainant denies having gas service, and asserts that she had authorized gas service from December 2008 to March 2009 after PGW workers restored gas service to her home in December 2008.

3. On July 28, 2009, PGW filed its Answer to the Complaint, alleging in pertinent part as follows:

- a. "PGW records do not reflect that a PGW serviceperson restored that gas service in December 2008," (Answer of PGW, paragraph 4.(B-6)); and
- b. "... on December 15, 2008, the Complainant's account was credited \$800 for the Crisis grant and \$403 for the City grant. The Complainant's gas account was noted that if the Complainant contacted PGW, it was okay to schedule to restore the gas service. PGW did not receive contact from the Complainant until March 3, 2009," (Answer of PGW, paragraph 4.(B-7)).

4. On September 14, 2009, Complainant served Ellena Irby's Interrogatories and Requests for Production of Documents, Set I, directed to PGW, which consisted of 29 requests relating to Complainant's claims and defenses, and relating to disputes of PGW's claims and defenses.

5. The Commission's regulations, at 52 Pa. Code § 5.321(c), regarding the scope of discovery in formal proceedings, provide as follows:

(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 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 appears reasonably calculated to lead to the discovery of admissible evidence.

6. On September 24, 2009, PGW served on Complainant Philadelphia Gas Work's Objections to the First Set of Written Interrogatories, a copy of which is attached hereto as Exhibit A.

7. PGW's objects to one of Complainant's requests, namely Interrogatory No. 24, which states specifically as follows:

(24.) Please provide documents regarding all PGW visits to the 900 block of North 6th Street in Philadelphia during the month of December 2008, including the names and titles of PGW personnel making the visits, the addresses visited, the dates of the visits and the nature of each visit.

8. PGW does not state in its Objections that any of the information requested in Interrogatory No, 24 is a privileged matter.

9. In its Objections, PGW states that this Interrogatory No. 24

- a. "is overbroad, requiring an unreasonable and burdensome manual investigation of company filed records for the entire month of December 2008,"
- b. "may lead to the discovery of private information about other PGW customers," and

- c. “has little to no probative value and does not outweigh the highly speculative prejudicial inference that may be made of such information.”

10. Interrogatory No. 24 is not overbroad. Complainant limited her request to her own residential block and to the month in which Complainant states PGW visited her home to restore gas service. December 2008 is also the month in which PGW admits its own records show that “Complainant’s account was credited \$800 for the Crisis grant and \$403 for the City grant.” Answer of PGW, at paragraph 4.(B-7). Complainant’s request is not too burdensome in that it seeks information already known to PGW and does not require an unreasonable investigation.

11. Information about neighboring PGW customers is not a privileged matter excluded from the scope of allowable discovery in this case. Complainant disputes PGW’s assertions that its records are correct regarding no PGW visits to the Service Address in December 2008. Interrogatory 24 is designed to elicit information about PGW visits to neighboring addresses in December 2008 and is reasonably calculated to lead to the discovery of admissible evidence and witness testimony relating to Complainant’s claim. For instance, in PGW’s own Answer, at paragraphs 4.(B-8) and 4.(B-13), PGW entered adjacent property in connection with investigation of a leak report.

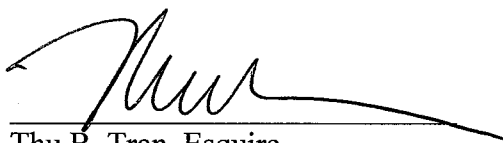
12. PGW’s opinion about the probative value of Interrogatory No. 24 is based on its own biased factual theories of this case and should be given no weight. PGW asserts risk of a “highly speculative prejudicial inference” but does not explain this assertion or how PGW would be prejudiced. Interrogatory No. 24 is related to Complainant’s claims and defenses and PGW’s

claims and defenses, and is, at the very least, reasonably calculated to lead to the discovery of admissible evidence and witness testimony.

13. Complainant Ellena Irby's Interrogatory No. 24 of her Interrogatories and Requests for Production of Documents, Set I, is well within the scope of discovery allowed by Commission regulations, 52 Pa. Code § 5.321, and does not violate any limitation of scope of discovery, 52 Pa. Code § 5.361. In its Objections, PGW prematurely asserts arguments as to the scope of the subject matter in this proceedings and attempts to too narrowly limit the scope of discovery accordingly.

WHEREFORE, Complainant moves that Philadelphia Gas Works' Objections to the First Set of Written Interrogatories be dismissed and that PGW be compelled to answer Ellena Irby's Interrogatories and Requests for Production of Documents, Set I, No. 24.

Respectfully submitted,



Thu B. Tran, Esquire  
Philip A. Bertocci, Esquire

For Complainant Ellena Irby

COMMUNITY LEGAL SERVICES, INC.  
1424 Chestnut Street  
Philadelphia, PA 19102  
215-981-3777

October 5, 2009

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ellena Irby,  
Complainant

v.

Philadelphia Gas Works,  
Respondent

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Docket No. C – 2009 – 2117933

**Philadelphia Gas Works'  
Objections to the First Set of Written Interrogatories**

Pursuant to 52 Pa. Code §5.342(d)(1), the Philadelphia Gas Works ("PGW") hereby objects timely to Interrogatory and Request for Production of Documents (Interrogatory) No. 24, contained in the First Set of written interrogatories dated September 14, 2009, that the Complainant has propounded upon PGW in the above captioned matter.

**Objection to Interrogatory No. 24**

PGW objects to Interrogatory No. 24, which states:

Please provide documents regarding all PGW visits to the 900 block of North 6<sup>th</sup> Street in Philadelphia during the month of December 2008, including the name and titles of PGW personnel making the visits, the addresses visited, and the dates of the visits and the nature of each visit.

PGW objects to this Interrogatory, as it is overbroad, requiring an unreasonable and burdensome manual investigation of company field visitation records for the entire month of December 2008. PGW further objects to Interrogatory No. 24 as the provision of information concerning the addresses visited, and the dates of the visits and the nature of each visit to homes of persons other than the Complainant may lead to the discovery of private information about other PGW customers. PGW objects to Interrogatory No. 24, as a response to it has no probative value.

The instant matter concerns a dispute of liability for discovery of meter tampering and a bill for the unauthorized usage for gas consumed at the Complainant's service address. The Complainant alleges that on an unspecified date in December 2008, the

Complainant's daughter provided access to the PGW meter at the service address and restored her gas service. According to PGW's answer, PGW records concerning the Complainant's Service Address show no visit to the Service Address to restore the Complainant's gas service in December 2008.

In the Complaint, the Complainant states that she neither tampered with the meter at her service address nor authorized anyone else to tamper with the meter at the service her address. It seems that the Complainant's family, including her husband (now ex-husband, Complaint, Verified Statement of Facts, Paragraph 4) had immediate access to the meter during the period of unauthorized usage. Interrogatory No. 24 seeks information on all other visitations to the entire block on which the Complainant resides for the entire month of December 2008, seemingly to facilitate the speculation that a PGW service person turned on her service in error. This information sought has little to no probative value and does not outweigh the highly speculative prejudicial inference that may be made of such information.


This information, if released to the Complainant, will contain the dates of the visits and the nature of each visit to homes of persons other than the Complainant. This information may lead to the discovery of information about other PGW customers in violation of the privacy of those customers.

Because of the burdensome nature, the potential to expose the private information of other PGW customers and the little probative value of Interrogatory No 24, the Commission should sustain PGW's objection to Interrogatory No. 24.

**WHEREFORE**, for the reasons stated above, PGW respectfully requests that the Commission issue an order sustaining the objection to Interrogatory and Request for Production of Documents No. 24 on the grounds stated herein.

Respectfully submitted,

September 24, 2009

  
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Laureto A. Farinas, Esq.  
Philadelphia Gas Works  
800 W. Montgomery Avenue  
Philadelphia, PA 19122

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ELLENA IRBY

Petitioner

vs.

PHILADELPHIA GAS WORKS

Respondent

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Docket No. C-2009-2117933

**CERTIFICATE OF SERVICE**

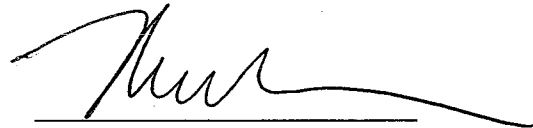
I hereby certify that I have this day, served a copy of Ellena Irby's Motion to Compel Philadelphia Gas Works to Answer Ellena Irby's Interrogatories and Requests for Production of Documents, Set I, No. 24 upon the participants, listed below, in accordance with the requirements of 52 Pa.Code §1.54 (relating to service by a participant).

By First-Class Mail, E-Mail and/or Facsimile, as indicated:

Administrative Law Judge Guy M. Koster  
Pennsylvania Public Utility Commission  
801 Market Street, Suite 4063  
Philadelphia, PA 19107  
Fax: 215-560-3133

Laureto A. Farinas, Esquire  
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Legal Department  
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Dated this 5th day of October, 2009.



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