



Philadelphia Gas Works

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April 7, 2010

James McNulty, Secretary
Pennsylvania Public Utility Commission
Room B-20, North Office Building
Harrisburg, PA 17105-3265

Re: Ellena Irby v. PGW, Docket No. C – 2009 – 2117933

Dear Secretary McNulty:

Pursuant to 52 Pa. Code §5.61, the Philadelphia Gas Works ("PGW") hereby files the original Response to the Complainant's Motion to Compel Answer to Complainant's Interrogatories and Requests for Production of Documents, Set II, Nos. 30 and 32 in the above captioned matter.

If additional information is required, please do not hesitate to contact the undersigned. Thank you for your assistance in the matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kristine Trock", is written over the typed name. The signature is fluid and cursive.

Kristine Trock

Enclosure

cc: Thu B. Tran, Esq. (Regular Mail)
Ms. Ellena Irby (Regular Mail)
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ellena Irby,	:	
Complainant	:	
v.	:	Docket No. C – 2009 – 2117933
	:	
Philadelphia Gas Works,	:	
Respondent	:	

**Philadelphia Gas Works' Response To
The Complainant's Motion to Compel Answer to Complainant's
Interrogatories and Requests for Production of Documents, Set II, Nos. 30 and 32**

Pursuant to 52 Pa. Code §5.342(g)(1), the Philadelphia Gas Works ("PGW") hereby answers the Complainant's Motion to Compel the answer to Interrogatories and Requests for Production of Documents (Interrogatory), Set II, Nos. 30 and, 32, and a supplemental request by e-mail dated March 23, 2010, to which PGW has objected in the above captioned matter.

1. Admitted. By way of further answer, PGW answered the Complaint, averring, *inter alia*, that after PGW had terminated the Complainant's gas service in October 2005, PGW had discovered unauthorized gas usage at the Complaint's home and terminated the unauthorized gas service in March 2009 in accordance with PGW Tariff Section 6.

2. Admitted. By way of further answer, in PGW's answers to the Complaint, PGW avers that PGW records do not indicate that a PGW worker visited the Complainant's home in December 2008.

3. Admitted.

4. Admitted. By way of further answer, PGW has objected to two (2) of these, Set II, Nos. 30 and 32.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Denied. Interrogatory No. 30 is overbroad and vexatious as it aids in establishing a biased, suggestive and unreliable photo identification process to be conducted with one or more of the Complainant's witnesses. The Complainant alleges that on an unspecified date in December 2008, the Complainant's daughter provided an unidentified PGW employee access to the gas meter at the Service Address who restored the Complainant's gas service.

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 discovery, PGW has provided a listing of those PGW workers who have visited any address on the Complainant's block during the month of December 2008. These photographs will be shown to one or more of the Complainant's witnesses so that the witness can identify a PGW employee who purportedly turned the gas on at the Service Address. The use of the photographs in this manner suggests that the observer pick any person in order to link that PGW employee to the Service Address. The use of the photographs in this manner is inherently bias, as whatever photograph is chosen is immediately linked to the Service Address.

PGW characterizes this method as "shooting fish in a barrel," because the Complainant's witness is able to choose from any person who has been determined to be on the Complainant's block, not on a specific day in December 2008 but rather, on any day in December 2008 because the Complainant and family cannot remember the day that their gas service was turned on. Whatever person is chosen through that identification process is immediately linked to the Service Address and the date that that person was on the Complainants' block must have been the day that the Complainant's service was restored.

Rather than submit all of the photographs of PGW employees who were on the block of the Service Address on any day of December 2008, and in the spirit of the Commission policy articulated in 52 Pa. Code §5.322, PGW offers a less suggestive and consequently fairer identification process than that of Interrogatory No. 30. PGW will assemble an array of PGW employee photos that include those who were on the block of the Service Address on any day of December 2008. In this way, the observer will be

required to recall and select the PGW employee who purportedly restored service in December 2008 rather than choose from the fish in the barrel.

11. Admitted.

12. Denied. The use of the photographs in the described identification process is so suggestive to a witness as to question its reliability. This is the reason that PGW has offered an alternative in the spirit of the Commission policy articulated in 52 Pa. Code §5.322. As an alternative to Interrogatory No. 30, PGW will assemble an array of PGW employee photos that include those who were on the block of the Service Address on any day of December 2008. In this way, the observer will be required to recall and select the PGW employee who purportedly restored service in December 2008.

13. Denied. While the production of photographs are within the scope of this proceeding, the identification method envisioned by Interrogatory No. 30 renders it vexatious. If Complainant is to use some other less suggestive identification process with the use of only the photographs of those PGW employees on the Complainant's block in December 2008, PGW invites the Complainant's counsel to discuss the method.

14. Admitted.

15. Denied. By way of further answer, PGW's objection to Interrogatory No. 32 is based upon the requirement that PGW create a "narrative" for the Complainant's use and not a document that is already in existence. According to 52 Pa. Code Section 5.321 (c), the scope of discovery does not include the creation of documents not already in existence. Interrogatory No. 32 (a through d), request information in narrative form that requires PGW to create documents instructing:

- a. How entries can be changed within PGW;
- b. Who is authorized to make changes within PGW;
- c. From what locations changes can be made;
- d. When and within what time parameters changes can be made

This Interrogatory is burdensome, vexatious and beyond the scope of this proceeding because it requires the creation of a document instructing the reader on things related to changing data in a PGW database. Rather than requesting manuals on the software that is the subject of the discovery, Interrogatory No. 32 seeks to have PGW create the

document which should be the result of the Complainant's review of the discoverable materials concerning the PGW database. The rule governing the scope of discovery, 52 Pa. Code Section 5.321 (c), does not include the requirement of the creation of original documents that further the Complainant's legal and factual theories. The scope of discovery in this matter includes information about the database and its policies and operation. But it does not include the obligation of PGW to fashion a method whereby information in a database may be manipulated so as to streamline and to relieve the Complainant of the burden to development its case.

16. Admitted

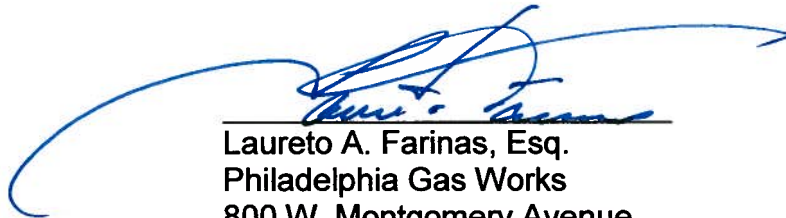
17. Denied. PGW is not avoiding its responsibility to provide discoverable material in this matter. PGW argues that it not be required to create original documents for production that develop the Complainant's legal and factual theories.

18. The Commission should sustain PGW's objections to Interrogatories Nos. 30 and 32 as these are burdensome and beyond the scope of discovery.

WHEREFORE, for the reasons stated above, PGW respectfully requests that the Commission issue an order sustaining the objections to Interrogatory and Request for Production of Documents Set II, No. 30 and, 32 on the grounds stated herein.

Respectfully submitted,

April 7, 2010



Laureto A. Farinas, Esq.
Philadelphia Gas Works
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Philadelphia, PA 19122

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

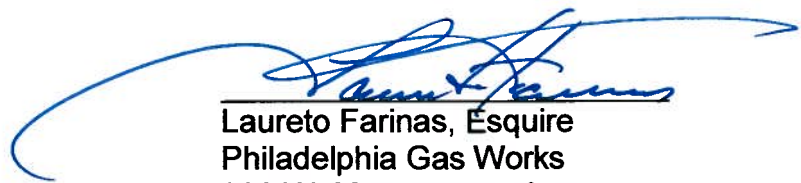
Service List:

For Complainant:

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April 7, 2010



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