

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
et al.	:	
	:	
v.	:	Docket No. R-00005654
	:	R-00005654C0001-C0004
Philadelphia Gas Works	:	

ORDER DENYING CEPA ET AL.'S MOTION TO COMPEL

On September 22, 2000, intervenors Consumers Education & Protective Association, Association of Community Organizations for Reform Now, Action Alliance of Senior Citizens of Greater Philadelphia and Tenants Action Group (CEPA et al.) served a Motion to Compel (Motion), in which they request that Philadelphia Gas Works (PGW) be compelled to respond to certain interrogatories and requests for admission. These are Interrogatories, Set I, Nos. 1-4, 6-11 and Requests for Admissions, Nos. 5-9.

Generally, the interrogatories request copies of the draft reports of various audits of PGW operations related to customer service, as well as answers to questions relating to customer service. The requests for admission relate to testimony given by City of Philadelphia Finance Director Janice Davis in the course of proceedings before the Philadelphia Gas Commission. A copy of each interrogatory and request, as well as the relevant objections, are attached to this Order.

On September 25, 2000 PGW served its Answer to the Motion. Essentially, the company contends that the Motion should be denied because the discovery addressed to alleged service inadequacy is outside the scope of this proceeding. In addition, the company asserts that the expedited nature of the proceeding makes it

impossible to deal with these issues. With respect to the proposed admissions regarding Ms. Davis' testimony, the company points out that the testimony was presented in the context of the operating and budget proceedings before the Gas Commission and therefore may content testimony irrelevant to this proceeding and that since Ms. Davis is not being presented as a witness, her testimony is hearsay.

As explained in more detail below, both parts of the Motion will be denied.

It is beyond dispute that the request to compel with respect to the customer service issues is untimely. To grant the Motion would be extremely unfair to the company, to the point of perhaps constituting a denial of due process. Direct and rebuttal testimony has already been filed; the evidentiary hearings begin tomorrow. The customer service issues are complex and simply cannot be considered in detail within the compressed schedule necessitated by the Commission's August 17, 2000 Order. Presumably, if the Motion were granted, CEPA et al. would use the documents to cross-examine the company witnesses but the company would have no opportunity to present responsive testimony. As it is, there simply is no time in the schedule for these complex issues to be fully and fairly addressed. As well stated by PGW in its Answer to the Motion, "It would be grossly unfair to permit any party to assert these allegations as facts – and have the PUC consider them as such – while PGW will be precluded from any meaningful response opportunity."

In addition, as noted in the interrogatories addressed to the reports themselves, these are draft reports, not final reports. Therefore, there is a substantial question as to whether there is any probative value to them whatsoever, or whether they even are discoverable. To have counsel questioning PGW witnesses using draft reports – with no opportunity for the company to respond in this proceeding - would be grossly unfair.

I am not, however, ruling that the issue of adequacy of service cannot be addressed in this proceeding. It is absolutely correct that the Commission directed that an expedited hearing process be conducted, and that it identified that the scope of this proceeding in its August 17, 2000 Order at Docket No. P-00001831 as follows:

While it would clearly be inappropriate for the Commission to comment at this time on the merits of PGW's request for interim rate relief, suffice it to say that PGW must present substantial evidence to support its assertion that an interim increase is necessary to maintain a minimal, adequate level of financial health required to fund operations and meet debt service requirements through the winter heating season until the Commission can conduct and rule on a full base rate proceeding. In particular, PGW must present substantial evidence to support its assertion that an interim increase is necessary for PGW to comply with its covenants to the holders of any approved bonds.

It can fairly be argued that the Commission intended that this expedited proceeding encompass only the narrow issue of financial necessity and that it was deferring until the full base rate case all other issues, so that they could be fully and appropriately examined. On the other hand, the Commission is free to consider any issue it feels is appropriate and for which there is substantial evidence of record. While those cases cited by movants correctly note that the Commission is able – if not required – to consider adequacy of service in the rate-setting context, there is nothing that says that this issue necessarily has to be addressed in this particular interim proceeding. It may well be that the Commission may decide that this issue, given the scant record necessarily able to be produced in the compressed time frame resulting from its August 17, 2000 Order, is not ripe for decision here and should be fully addressed in the up-coming base rate case.

To make it clear, the Motion with respect to the interrogatories is being denied because approval of it would constitute a denial of PGW's right to due process, not because the information sought is necessarily outside the scope of this proceeding.

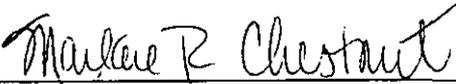
Turning to the request for admissions, this also should be denied. As correctly pointed out by the company, Ms. Davis' testimony was adduced in the context of proceedings before the Philadelphia Gas Commission and therefore may contain material not relevant to this proceeding.

In their Motion CEPA et al. assert that "Her testimony is relevant to this proceeding, because it provides evidence which permits a finder of fact to reach a judgment concerning whether interim relief should be based upon an assumption that the City payment must be made." Motion at 6. The determination of whether the "City payment must be made" is a legal issue, and therefore not properly the subject of Ms. Davis' testimony, unless she is giving her legal opinion as counsel for the City.

In addition, it is apparent that PGW is objecting to this on the basis that it constitutes hearsay. It is well established that hearsay which is objected to cannot be the basis for a material finding of fact, whether or not corroborated by other evidence. Myers v. Pa. Unemployment Compensation Board of Review, 533 Pa. 373, 625 A.2d 622 (1993); Walker v. Unemployment Compensation Board of Review, 367 A.2d 366, 370 (Pa. Cmwlth. 1976). Blivens v. Pennsylvania State Civil Service Commission, 312 A.2d 109 (Pa. Cmwlth. 1973).

Despite this ruling, the parties are encouraged to continue to discuss the possibility of stipulating to appropriate portions of Ms. Davis' testimony.

Date: September 26, 2000


MARLANE R. CHESTNUT
Administrative Law Judge

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re: Petition of Philadelphia Gas Works	:	Docket No. P-00001831
for Establishment of Interim Rate	:	
Procedures and for a Declaratory Order	:	
	:	
Pennsylvania Public Utility Commission	:	Docket No. R-00005654
	:	
v.	:	
	:	
Philadelphia Gas Works	:	

**PHILADELPHIA GAS WORKS' OBJECTIONS TO
CONSUMER EDUCATION AND PROTECTIVE
ASSOCIATION, ET AL.'S FIRST SET OF INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENTS
AND REQUEST FOR ADMISSIONS**

Philadelphia Gas Works ("PGW"), pursuant to 52 Pa. Code §§ 5.342, 5.349 and 5.350, hereby objects to the First Set of Interrogatories and Request for Production of Documents, Nos. 1-4 and 6-11, and Request for Admissions Nos. 5-9, which were served on PGW by Consumers Education and Protective Association, et al. ("CEPA") on September 12, 2000. PGW's objections to the above-identified discovery are as follows:

GENERAL OBJECTION

The purpose of this proceeding, for which an expedited hearing has been scheduled by the Commission, is to "establish interim rates for Philadelphia Gas Works." Order Establishing Interim Rate Procedures (entered August 17, 2000) at 11, ordering paragraph 1. The Commission further acknowledged in its Order that PGW's purpose in seeking such interim rates is "to maintain a minimal, adequate level of financial health required to fund operations and meet debt service requirements through the winter heating season until the Commission can conduct and rule on a full base rate proceeding." *Id.* at 7.

PGW therefore objects to any discovery to the extent that it is not relevant to the need for, or the appropriate level of, interim rates, or is not reasonably calculated to lead to the discovery

of relevant admissible evidence, but is rather directed to issues that could only be relevant in a request for an increase in permanent base rates.

**SPECIFIC OBJECTIONS TO INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS**

CEPA-1: Please provide a copy of the draft report dated May 26, 2000 by the Andersen Consulting Group entitled "BCCS Organization Evaluation Executive Summary" and all other reports made by Andersen Consulting Group in the course of providing the services referred to in PGW-IR ST. 1.0 APPENDIX C, PAGE 1 OF 2.

Objection 1: PGW incorporates by reference its General Objection. This request for production seeks a copy of a report from a management consultant concerning PGW's billing systems and other IT issues, but which is not relevant to PGW's need for interim rate relief. Although PGW, in its pre-filed testimony, presented a brief background regarding its efforts to improve service and increase efficiency as part of its "Transition to Excellence" plan and the Commission made PGW's commitment to that plan a condition to its Order Establishing Interim Rate Procedures, that effort is not an issue in this proceeding, nor is it relevant to the issue of PGW's need for, or the appropriate level of, interim rate relief. PGW witness Mr. Knudsen acknowledged in his testimony that PGW is "firmly committed to carrying through with our Transition to Excellence plan," but stressed that in this proceeding, PGW is seeking only to deal with the financial health of PGW. PGW-1R St. 1.0 at 15. Accordingly, the issues covered by any such reports are not issues in this proceeding and PGW objects to such discovery.

CEPA-2: Please provide a copy of the draft report dated June 12, 2000 entitled "Draft Report on the Assessment of the Human Resources Function" and all other reports made by Hay Group in the course of providing the services referred to in PGW-IR ST. 1.0 APPENDIX C, PAGE 1 OF 2.

Objection 2: PGW incorporates by reference its General Objection and its objection to CEPA-1 as to the documents sought by this request for production.

CEPA-3. Please provide a copy of the draft report dated June 5, 2000 entitled "Philadelphia Gas Works Call Center Assessment" and all other reports made by Vanguard Communications in the course of providing the services referred to in PGW-IR ST. 1.0 APPENDIX C, PAGE 1 OF 2.

Objection 3: PGW incorporates by reference its General Objections and objection to CEPA-1 as to the documents sought by this request for production.

CEPA-4: Over the period from September, 1999 to spring of 2000, approximately 19,000 PGW's approximately 75,000 residential customers who had budget billing ceased receiving budget bills due to inadequate design, programming and/or implementation of modules of the BCCS system:

- (a) Have all those customers been identified and restored to budget billing at this time?
- (b) If some customers have not yet been restored to budget billing, state the number of customers who have not yet been restored.
- (c) For those customers who have not yet been restored to budget billing, state when PGW expects that these customers will be restored to budget billing.

Objection 4: PGW incorporates by reference its General Objection. PGW further objects to this interrogatory since it seeks information regarding billing issues that are not relevant or germane to PGW's need for interim rate relief, nor are they likely to lead to the discovery of any relevant admissible evidence.

CEPA-6: In August 2000, did PGW actually bill all its customers?

- (a) If the answer is no, please state how many customers in each customer class were not billed in that month.
- (b) If the answer is no, please state the percentage of customers in each customer class who were not billed in that month.

Objection 6: PGW incorporates by reference its objection to CEPA-4. Notwithstanding this objection and without a waiver thereof, PGW will respond to this interrogatory.

CEPA-7: When will the PUC Management Audit performed by Barrington Wellesley be completed?

Objection 7: PGW incorporates by reference its General Objection and its objection to CEPA-1 with respect to this interrogatory.

CEPA-8: In connection with this audit, has Barrington Wellesley produced any preliminary reports, findings or recommendations? If the answer is affirmative, please provide copies of such documents.

Objection 8: PGW incorporates by reference its General Objection and its objection to CEPA-1 with respect to this interrogatory and request for production.

CEPA-9: Between July 1, 2000 and September 9, 2000, how many informal complaints have been filed by PGW residential customers with the PUC?

Objection 9: PGW incorporates by reference its General Objection. PGW further objects on the ground that this interrogatory, which seeks information regarding informal complaints against PGW before the PUC, is not relevant to PGW's need for interim rate relief, nor is it likely to lead to the discovery of any relevant admissible evidence.

CEPA-10: Between July 1, 2000 and September 9, 2000, how many Company Reports did PGW provide to the PUC with respect to the informal complaints referenced in CEPA-9?

Objection 10: PGW incorporates by reference its General Objection and its objections to CEPA-9.

CEPA-11: Between July 1, 2000 and September 9, 2000 how many Company Reports did PGW provide to the PUC with respect to informal complaints referenced in CEPA-9 within thirty (30) days of notification by the PUC that an informal complaint had been filed.

Objection 11: PGW incorporates by reference its General Objection and its objections to CEPA-9.

CEPA-Ad. 5: If Janice Davis was to provide testimony in this proceeding, she would provide the same pre-filed testimony and the same oral testimony that she provided in the Philadelphia Gas Commission Consolidated Proceedings.

Objection

Ad.5: _____

PGW incorporates by reference its General Objection. PGW further objects to this request since it deals with testimony given by Janice Davis before the Philadelphia Gas Commission that dealt with issues pertinent to PGW's operating and capital budgets and other issues not relevant to the issues in this case. Notwithstanding this objection, to the extent that any portion of that testimony is arguably relevant in this matter, PGW will stipulate with CEPA to its authenticity.

CEPA-Ad.6: At a Special Public Meeting on June 27, 2000, the Philadelphia Gas Commission issued the order (hereinafter "PGC" Order) which is attached hereto as Exhibit A.

Objection

Ad.6: _____

PGW incorporates by reference its General Objection and its objections to CEPA-4.

CEPA-Ad.7: PGW has not complied with Paragraph 3 of the PGC Order.

Objection

Ad.7: _____

PGW incorporates by reference its General Objection and its objections to CEPA-4.

CEPA-Ad.8: PGW will not have the technical ability to comply with Paragraph 3 of the PGC Order until mid-October or November, 2000.

Objection

Ad.8: _____

PGW incorporates by reference its General Objection and its objections to CEPA-4.

CEPA-Ad.9: As a result of this failure to comply with the PGC Order, over 20,000 participants in the PGW customer assistance program, the Customer Responsibility Program, have been receiving bills requesting that they pay an amount which PGW actually is not requiring them to pay at this time.

Objection
Ad.9:

PGW incorporates by reference its General Objection and its objections to CEPA-4.

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Dated: September 19, 2000

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