

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Pennsylvania Public Utility  
Commission

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v.

APR 25 2001

R-00006042

R-00006042C0001 et al

Philadelphia Gas Works

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FOLDER

**ORDER #5 GRANTING IN PART**  
**MOTION OF CEPA et al. TO DISMISS OBJECTIONS AND TO COMPEL ANSWERS**  
**TO INTERROGATORIES CEPA-1 through 21, 23 through 30, 32 through 42, and CEPA-**  
**49 of CEPA et al's FIRST SET OF INTERROGATORIES**

History

The Consumers Education and Protective Association, the Association of Community Organizations for Reform Now, Action Alliance of Senior Citizens of Greater Philadelphia and Tenants' Action Group (collectively "CEPA et al") served its First Set of Interrogatories on Philadelphia Gas Works ("PGW") on February 2, 2001.

On February 15, 2001, PGW served its written objections to CEPA-1 through CEPA 21, CEPA-23 through CEPA-30 and CEPA-32 through CEPA-42 (hereinafter collectively the "CEPA Interrogatories").

On March 12, 2001, OCA filed a Motion to Dismiss Objections and Compel Answers to Interrogatories. PGW filed an Answer to the Motion to Compel on March 16, 2001 and mentioned that it would be filing a Motion in Limine. On March 20, 2001, CEPA et al filed a Letter Memorandum in support of OCA's Motion to Dismiss Objections and Compel Answers.

PGW filed a Motion in Limine on March 21, 2001.

On April 2, 2001, OCA, OTS, PICGUG and CEPA et al filed Answers to the Motion in Limine.

On April 6, 2001, PGW filed Reply to Answers to the Motion in Limine.

On April 13, 2001, Order #3 Denying PGW's Motion in Limine was issued.

### **Discussion**

*The Interrogatories, Objections and responses are as follows:*

CEPA-1. What is the current PGW policy regarding company payment for employee parties and celebrations? If PGW has a written policy concerning this subject, provide a copy of the policy. Provide a detailed breakdown of the amount spent in FY2000 on such parties and the amount budgeted for FY2001.

CEPA-2. What is the current PGW policy regarding spending for retiree parties? If PGW has a written policy concerning this subject, provide a copy of the policy. Provide a detailed breakdown of the amount spent in FY2000 on such parties and the amount budgeted for FY2001.

CEPA-3. Provide a schedule showing post retirement non-pension benefits including but not limited to health benefits and legal services provided PGW retirees in FY2000. For each category of benefit, also state how much has been budgeted for FY 2001.

CEPA-4. Does PGW have a policy concerning company payment for membership fees for the company and/or for individual employees for country club, gym club, dining club and other non-professional associations? If the answer is affirmative state the policy. If the policy is in writing, provide a copy of the written policy.

CEPA-5. Provide a detailed breakdown of the amount spent, if any, in FY2000:

(a) on membership fees for PGW for country club, gym club, dining club and other non-professional associations.

(b) on membership fees for PGW senior management and/or other PGW employees for country club, gym club, dining club and other non-professional associations.

CEPA-6. Provide the year, make, model, and company number, if any, for every marked PGW vehicle and indicate the PGW department to which each such vehicle is assigned.

CEPA-7. The Company has indicated in the response to KB-50 in the PGW FY 2001 Consolidated Budget Proceedings before the Philadelphia Gas Commission that of 31 marked vehicles assigned to "Credit Collection," all but three are either  $\frac{3}{4}$  ton vans or  $\frac{1}{2}$  ton pickup trucks. The three exceptions are Plymouth Acclaim sedans.

(a) Update this information.

(b) Provide information concerning the cost per mile of operating pickups and vans as opposed to a sedan like a Plymouth Acclaim.

(c) Explain why PGW uses vans and pickup trucks for Credit/Collections work.

CEPA-8. In PGW's FY2001 Consolidated Budget Proceedings, PGW produced the document attached as Exhibit A in partial response to KB-50 which, inter alia, requested PGW to provide "for unmarked vehicles, the make and model of each car . . . as well as the person and title of the person to whom the care is assigned."

(a) Update the information on Exhibit A as of an administratively convenient date, no earlier than December 1, 2000.

(b) For each vehicle, indicate whether it has been assigned to a particular employee (1) for Commuting and Business Use only; (2) for Commuting, Business Use and Other Personal Use; (3) for Business Use only.

CEPA-9. Does PGW have a written policy governing when personal cars for Commuting and Business Use only and/or for Commuting and Business Use and Other Personal Use are assigned to PGW management employees? If the answer is affirmative, please provide a copy of the policy.

CEPA-10. Does PGW have a written policy governing the travel, local or non-local, for which a personal company car may be used? If the answer is affirmative, please provide a copy of the policy.

CEPA-11. What costs, if any, associated with operating a personal company car for Commuting and Business Use only does the PGW employee assume?

CEPA-12. What costs, if any, associated with operating a personal company car for Other Personal Use does the PGW employee assume?

CEPA-13. Provide a schedule showing on an annual basis how many PGW employees had personal company cars in FY1996 through FY20001 in which employees who had cars for Commuting and Business Use only are separated out from employees who had cars for Commuting, Business and Other Personal Use.

CEPA-14. Is it correct that PGW requires employees to whom a personal car has been assigned to pay the Company \$0.13 per mile when the car is being used for Other Personal Use? If the response is yes, explain why PGW receives only \$0.13 per mile from employees who use a company car for personal use when Federal Government employees receive government reimbursement for authorized use of their private cars for business use at the rate of \$0.325 per mile (41 CFR §301-10.303).

CEPA-15. When did PGW last update the amount per mile that it charges employees for usage of company cars for "Other Personal Use"?

CEPA-16. What PGW written Procedure or Regulation states the per mile charge for "Other Personal Use"?

CEPA-17. State the annual cost to PGW of providing personal company cars to PGW management employees in FY2000 for Commuting and Business Use only. Provide workpapers explaining how this cost was calculated.

CEPA-18. State the annual cost to PGW of providing personal company cars to PGW management employees in FY2000 for Commuting, Business and Other Personal Use. Provide workpapers explaining how this cost was calculated.

CEPA-19. What is the total average annual cost to PGW of having a sedan in its fleet? Please break down this annual average cost into relevant categories of costs, including but not limited to fleet management, insurance, maintenance costs, including payroll, gas and oil and depreciation (if owned by PGW) or lease costs.

CEPA-20. Does PGW have any written policy other than No. 776.01 defining when an employee qualifies for:

- (a) a car for Commuting Use and Business Use (if so, provide a copy);
- (b) a car for Commuting Use, Business Use and Other Personal Use (if so, provide a copy).

CEPA-21. Provide a copy of all current contracts between PGW and Aramark concerning the PGW cafeteria and/or provision of food services to the company.

CEPA-23. Provide the formula which is used to determine the amount of any subsidy to Aramark or refund from Aramark in connection with operation of the cafeteria and other food services at PGW.

CEPA-24. With regard to the formula set forth in response to CEPA-23 regarding food services, provide a schedule showing Total Sales, Net Costs, Profit/Loss, Management Fee and Subsidy/Refund for each year beginning in FY1996 through FY2000.

CEPA-25. Provide a schedule showing the amounts budgeted for the cafeteria Subsidy/Refund in FY1996 through FY2001.

CEPA-26. With regard to the Aramark contract provided in response to CEPA-21, has there been any change in the provisions concerning the commissions arising from cigarette sales provided to PGW from Aramark's vending machines since 1981?

CEPA-27. In the past ten years, has PGW solicited bids for the food service contract currently held by Aramark? If the response is negative, provide details concerning efforts by PGW in the last ten years to assess the economic reasonableness of its food service arrangements for the cafeteria and for PGW based vending machines.

CEPA-28. Provide a list of all purchased services contracts other than contracts for legal services under which services are being provided in FY2001 pursuant to a contract negotiated and executed prior to September 1, 1990.

CEPA-29. With regard to the cafeteria, provide a schedule showing:

(a) for FY1996 through FY2000, the annual costs to PGW for cleaning, exterminating, garbage and trash removal services and repair and replacement of food service fixtures in fulfillment of the obligations set forth on page 2 of the February 14, 1974 Agreement between PGW and ARA Services, Inc.

(b) the amount budgeted for FY2001 for the costs set forth in subsection (a) of this Interrogatory.

CEPA-30. Provide a schedule showing the amounts paid to Deloitte and Touche as outside auditors for each year FY1996 to FY2000 and budgeted for FY2001.

CEPA-32. Explain the current PGW policy regarding payment for employee professional membership dues. If there is a written policy, provide a copy of the policy.

CEPA-33.

(a) How much did PGW spend in FY2000 for professional dues for its employees?

(b) For how many employees did PGW pay for professional dues in FY 2000?

(c) Is there an annual limit for individual employees on the number of professional associations for which PGW will pay a membership fee?

(d) How much has PGW budgeted for FY2001 for professional dues for its employees? Provide a breakdown of this amount by Department.

CEPA-34. Provide a detailed itemization of the PGW dues and subscriptions contained in the proposed FY2001 budget for Legal and Regulatory Affairs, Operations, Marketing and Supply Services, Finance, Customer Service, Information Technology, and Human Resources. In connection with those itemizations, indicate which dues and subscriptions expenses constitute renewals and which ones are proposed expenditures which were not made in FY2000.

CEPA-35. For PGW's proposed subscriptions or memberships in the Delaware Valley Regional Planning Commission, Greater Philadelphia First, PENJERDEL, American Gas Cooling Center, Clean Cities, Natural Gas Vehicle Coalition, E-Source and ASHREA (Corporate), provide:

- (a) the annual cost of the membership or subscription;
- (b) whether PGW has previously subscribed or belonged to the association;
- (c) identification of tangible benefits arising from the previous membership or subscription;
- (d) a cost benefit analysis which would justify such expenditure.

CEPA-36. For each of the following organizations, Delaware River Valley Regional Planning Commission, Greater Philadelphia First, and PENJERDEL, state:

- (a) whether the City of Philadelphia and/or a City Department has a membership;
- (b) whether that member pays the same membership or subscription fee as PGW;
- (c) why the City of Philadelphia and/or a City Department with membership in the organization could not fairly represent/advocate for PGW interest;
- (d) whether PGW has discussed the possibility of the City or a particular City Department representing/advocating for PGW interests in these membership associations.

CEPA-37. Provide a detailed breakdown of the amount spent on public relations consulting contracts and advertising purchased services in FY2000 and budgeted for FY2001.

CEPA-38. For each advertising and public relations related purchased services contract for which expenditures were made in FY2000, provide:

- (a) the name of the vendor;
- (b) the service provided;
- (c) a copy of the contract pursuant to which the service was provided;
- (d) the amount paid by PGW pursuant to the contract in FY2000;
- (e) information concerning whether the contract was competitively bid.

CEPA-39. With regard to Beach Advertising:

- (a) explain what services Beach Advertising performed in FY2000 in connection with the LIHEAP program for which it received payment of \$110,000;
- (b) provide a copy of the contract with Beach Advertising;
- (c) state the amount included in the FY2001 budget for the same services.

CEPA-40. Describe the types of accounts for which PGW obtains purchased collection services.

CEPA-41. Are there any circumstances in which PGW seeks purchased collection services for a residential account in which the customer is delinquent, but still receiving service at that account? If the answer is affirmative, explain when PGW uses purchased collection services for such accounts.

CEPA-42. Provide a schedule detailing purchased services expenses for collection services provided to PGW in FY2000. For each contract, provide:

- (a) the name of the vendor;
- (b) state the service provided;
- (c) a copy of the contract pursuant to which the service was provided;
- (d) state the amount paid by PGW pursuant to the contract in FY2000;
- (e) state whether the contract was competitively bid;
- (f) state whether PGW has contracted for collection services with this vendor to be provided in FY2001, and provide a copy of the relevant contract.

PGW objected to each of the CEPA Interrogatories in a similar manner.

PGW objects to this question because it seeks legally irrelevant information and cannot lead to the production of admissible information. The Interrogatory is clearly directed at the appropriateness of expenditures provided for PGW's operating budget. According to 66 Pa.C.S. §2212(s), the Commission shall not abrogate or limit the City of Philadelphia's ability to determine PGW's budgets. The Philadelphia Gas Commission ("PGC"), a commission of the City, retains the authority to approve PGW's annual operating budget. While CEPA's Interrogatory may be relevant and appropriate in the budget proceedings before the PGC, it is beyond the scope of this proceeding.

Additionally, the Commission must, according to Section 2212(e) of the Public Utility Code, apply the same

ratemaking methodology and requirements as were applicable to PGW prior to its assumption of jurisdiction and set rates so as to allow PGW to satisfy its bond covenants. Under that methodology and those requirements, once the PGC set [sic] PGW's budget, the Management Agreement Ordinance and the bond covenants required that rates be set so as to fund the operating budget. Thus, as the PGC continues to set PGW's budget, this proceeding is not to question the wisdom of PGW's allocations and expenditures. Instead, this proceeding is to ensure that the identified expense has traditionally been included in PGW's operating budget and to set rates so as to cover the operating budget as approved.

### **CEPA et al's response**

According to the Natural Gas Choice and Competition Act ("Gas Choice Act"), city natural gas distribution operators are subject to regulation and control by the Commission with the same force as if the service were rendered by a public utility. 66 Pa. C.S. §2212(b). CEPA et al state that, before jurisdiction over PGW's rates and tariff was transferred from the Philadelphia Gas Commission("PGC"), the applicable standard in determining PGW's rates was whether the proposed base rate was "just and reasonable." Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 604 (1944).

CEPA et al contend that their Interrogatories are aimed at determining whether the PGW FY2001 test year budget is a reasonable and prudent budget or whether it contains costs which are unreasonable and imprudent.

With respect to CEPA-49, CEPA et al stated that PGW's answer was not responsive. On March 30, 2001, PGW filed additional information in response to CEPA-49.

In its Answer to CEPA et al's Motion, PGW stated that the interrogatories seek information that is irrelevant in this proceeding. PGW requested that the ruling on the motion to compel be deferred until the presiding officer ruled on PGW's Motion in Limine.

PGW argues that the interrogatories question minutia such as the cost difference in operating sedans as opposed to vans (CEPA-7) and numerous questions regarding the cents per mile fee charged to employees who use their company vehicle for personal use (CEPA-14-16, 18). PGW reiterated its argument that no adjustments to the budget can be recommended in this proceeding.

PGW's argument to limit the scope of this proceeding was rejected in Order #3 denying the Motion in Limine, dated April 13, 2001. There must be evidence in the record in this proceeding to allow the Public Utility Commission to determine whether *the rates are just and reasonable*. See Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 607 (1944), Public Advocate v. Philadelphia Gas Commission, 544 Pa. 129, 674 A.2d 1056, 1061 (1996) and Action Alliance v. Philadelphia Gas Commission, 45 Pa. Commonwealth 234, 406 A.2d 1155, 1158 (1979). The parties should be able to obtain evidence to assist them in deciding whether adjustments should be recommended. Consequently, the information is discoverable under 66 Pa. C.S. §333(d) and 52 Pa. Code section 5.321(c).

Nevertheless, PGW's objection to CEPA-14 will be sustained. The information in CEPA-14 relates to the information requested in CEPA-10, 12, 15, 16 and 18. Consequently, the objection to providing a response to CEPA-14 is sustained. PGW supplemented its response to CEPA-49. Therefore, the request for additional information in response to interrogatory CEPA-49 is denied.

PGW stated that it has offered to produce the information requested by CEPA et al as long as either CEPA et al entered into a stipulation or the Administrative Law Judge directed that by providing the requested data PGW has not admitted the legal relevance of the information, admitted that any adjustments that might be made using such information are legally permissible, or waived its position that the Code does not permit a compelled or induced City payment grant-back or revenue requirement adjustments. CEPA et al has not entered into a stipulation with PGW. However, the Administrative Law Judge directs that by providing the requested data PGW has not admitted the legal relevance of the information, admitted that any adjustments that might be made using such information are legally permissible, or waived its position that the Code does not permit a compelled or induced City payment grant-back or revenue requirement adjustments.

#### ORDER

THEREFORE,  
IT IS ORDERED:

1. That the CEPA, et al's Motion to Dismiss Objections and Compel Answers to Interrogatories 1-13, 15-21, 23-30, 32-42 is granted. The Motion to Dismiss Objections and Compel Answers to Interrogatories 14 and 49 is denied.
2. That PGW's request to have the Administrative Law Judge direct that by providing the requested data PGW has not admitted the legal relevance of the information, admitted that any adjustments that might be made using such information are legally permissible, or waived its position that the Code does not permit a compelled or induced City payment grant-back or revenue requirement adjustments is granted.

3. That PGW shall provide answers to the interrogatories within ten (10) days of this Order.

Date: April 19, 2001

*Cynthia Williams Fordham*  
CYNTHIA WILLIAMS FORDHAM  
Administrative Law Judge

Pennsylvania Public Utility Commission v. Philadelphia Gas Works  
Docket Number R-00006042

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