

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket Number
	:	
	:	R-00006042
	:	R-00006042C0001 <u>et al</u>
Philadelphia Gas Works	:	

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ORDER #4-GRANTING OCA'S MOTION TO DISMISS OBJECTIONS and TO COMPEL ANSWERS TO INTERROGATORY 31 of OCA SET II, and INTERROGATORIES 15, 23-26, 28-32, 34-37, 39-41, 45-46 and 51 of OCA SET II

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History

DOCKETED
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Pursuant to 52 Pa. Code §5.342, the Office of Consumer Advocate (OCA) filed a Motion to Dismiss Objections and to Compel the Philadelphia Gas Works ("PGW") to answer the interrogatories.

OCA Set II, consisting of 31 interrogatories, was served on January 29, 2001. On February 12, 2001, PGW submitted written objections to Interrogatory 31.

OCA Set III, consisting of 51 interrogatories, was served on February 6, 2001. On February 20, 2001, PGW served written objections to Interrogatories 15, 23-26, 28-32, 34-37, 39-41, 45-46, 51.

On March 12, 2001, OCA filed a Motion to Dismiss Objections and Compel Answers to Interrogatory 31 of OCA SET II and Interrogatories 15, 23-26, 28-32, 34-37, 39-41, 45-46 and 51 of OCA SET III. 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:

Set II-Interrogatory 31

Please provide schedules similar to Volume II, Schedules 4 and 5 with the following assumptions:

1. \$18 million grant-back in 6/01
2. \$18 million grant-back in 6/01; prepayment of City, PHA and Board of Education gas bills; advance from pension fund; pipeline and supplier deferral of demand and commodity charge obligations.

Objection

PGW objects to this question because it requests a calculation that would violate the Public Utility Code, i.e., the mandatory grant-back of the required \$18 million City payment, and therefore, the request is legally irrelevant and cannot lead to the production of relevant information. Pursuant to 66 Pa. C.S. §2212(f), the Commission shall permit PGW to charge and collect rates that ensure that it can make the \$18 million payment to the City.

OCA's response

The question does not assume a mandatory grant-back. It seeks information on the financial effect of such a grant-back if the City provided for it. The mere calculation does not violate the Public Utility Code.

OCA SET III-Interrogatories 15, 23-26, 28-32, 34-37, 39-41, 45-46 and 51.

15. Please provide a detailed schedule showing actual legal fees rendered for FY 1998, FY 1999 and FY 2000 and as budgeted for FY 2001.

23. Please provide a schedule for FY 1999, 2000 and 2001 detailing advertising expense by type.

24. Provide a breakdown by position of the \$1,757,000 for Officers' Salaries in Volume II, Revised SD-3. Identify vacant positions.

25. a) Provide gross amount expended for holiday pay to members of the GWEU bargaining unit for Flag Day 2000 and budgeted for Flag Day 2001.

b) Please quantify the cost to PGW of providing holiday pay for Flag Day 2000 and 2001 for non-union employees.

26. With regard to Article IX, Section 13 of the Collective Bargaining Agreement, provide a comprehensive list of employee "benefits and privileges" which are not specifically referred to in the Agreement.

- 28.** Provide a copy of PGW's Travel and Entertainment Expense Policy, effective August 1999. Is this policy still in effect?
- 29.** What is PGW's policy on 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 FY 2000 and amount budgeted for FY 2001.
- 30.** Does PGW have a written policy governing the assignment of personal company cars to PGW management employees? If yes, provide a copy of the policy.
- 31.** Provide a schedule showing on an annual basis how many PGW employees had personal company cars in FY 1996 through FY 2000 and the number budgeted for FY2001.
- 32.** a) Provide a copy of the current relocation and moving expense policy.
b) Provide a detailed breakdown by employee of the amounts spent in FY2000 and amount budgeted in FY2001.
- 34.** Describe the current system utilized by the General Counsel's office to review outside counsel's bills.
- 35.** a) Explain the PGW policy regarding payment for employee professional membership dues.
b) Provide a detailed breakdown of amount spent in FY 2000 on professional dues and amount budgeted for FY2001.
c) Is there an annual limit on number of professional associations for individual employees?
- 36.** a) Provide a copy of all current contracts between PGW and ARAMARK concerning the PGW cafeteria.
b) If PGW subsidizes the cost of employee meals, state the amount of the subsidy in FY2000 and the amount budgeted for FY2001 and explain how the subsidy is calculated?

37. Please identify by name, former title at PGW, last annual salary at PGW and current annualized compensation all former PGW employees who provided services to PGW during FY 2000 as an independent contractor or consultant.

39. Provide a schedule itemizing PGW's (i) actual, (ii) committed expenditures for community support, and/or charitable contributions or similar purposes for FY2000 and budgeted for FY2001.

OBJECTIONS to Interrogatories 15, 23-26, 28-32, 34-37 and 39

PGW objects to this question because it seeks legally irrelevant information and cannot lead to the production of admissible information. This Interrogatory is, at least in part, 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 department of the City, retains the authority to approve PGW's annual operating budget. While OCA'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 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.

40. Please explain the following variances in Purchased Services expense from FY2000 to FY2001 as shown in Volume II, Revised Exhibit C-4.

OBJECTION

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41. Regarding the response to PA-61 in the PGC budget proceeding, what does the \$300,000 item for "emergency operations" represent?

OBJECTION

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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 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.

45. Please update the reply to HE-42 in the PGC budget proceeding regarding PUC transition cost.

OBJECTION

PGW objects to this question because it seeks legally irrelevant information and cannot lead to the production of admissible information. This Interrogatory is 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 department of the City, retains the authority to approve PGW's annual operating budget. While OCA's Interrogatory may be relevant and appropriate in the budget proceedings before the PGC, it is beyond the scope of this proceeding.

46. Regarding the article entitled "PGW OK'd Raises" in the January 26, 2001 edition of the Phila. Daily News:

a) Provide the source document for the data utilized in the article

b) If not answered in a), provide a schedule detailing the “50 top executives who earn \$75,000 or more”

c) If not answered in a), provide a schedule detailing the “19 managers given substantial raises last year”

d) *If not answered in a), provide a schedule detailing the “small boosts to 46 midlevel supervisors” which “total about \$250,000”*

e) If not answered in a), provide a schedule detailing the “five other PGW officials” who earn less than \$125,000

f) Provide a schedule detailing the \$4 million decrease achieved so far this year in labor and discretionary spending

g) Provide a schedule detailing the cafeteria subsidy that “was recently lowered.”

OBJECTION

PGW objects to this question because it seeks legally irrelevant information and cannot lead to the production of admissible information. This Interrogatory is 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 department of the City, retains the authority to approve PGW’s annual operating budget. While OCA’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 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.

51. Please disclose legal expenses paid over the last five years to all law firms providing services to the company.

OBJECTION

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expense has traditionally been included in PGW's operating budget and to set rates so as to cover the operating budget as approved.

Finally, this interrogatory is redundant and duplicative of Interrogatory No 15.

OCA's response

City Natural Gas distribution operators are subject to regulation and control by the Commission 66 Pa. C. S. § 2212(b). PGW's objections appear to suggest that the PUC should merely "rubber stamp" any budgetary determinations of the Philadelphia Gas Commission. PGW's proposed budget is the foundation for this base rate request and in a base rate proceeding, it is quite common to examine revenues and expenses.

PGW makes the assumption that based on its interpretation of 66 Pa. C.S. §2212(s), the Commission must accept the budget approved by the Philadelphia Gas Commission. PGW ignores the fact that the budget request before the PUC has not been approved by the Philadelphia Gas Commission. It is the duty of the Commission to review all costs, expenses, and revenues to determine just and reasonable rates.

In its letter in support, CEPA et al state that they have a direct interest in the ruling on OCA's Motion because they have encountered similar objections to their discovery requests to PGW. CEPA et al disagree with PGW's legal theory and PGW's interpretation of section 2212(e) and (s) and the decision in Public Advocate v. Philadelphia Gas Commission, 544 Pa. 129, 674 A. 2d 1056 (1996). CEPA et al state that the applicable standard in determining rates is whether the proposed base rate is "just and reasonable."

OCA and CEPA et al contend that the requested information is discoverable pursuant to 66 Pa. C.S. §333(d) and 52 Pa. Code section 5.321(c).

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 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).

PGW stated that it has offered to produce the information requested by OCA as long as either OCA enters into a stipulation or the ALJ 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. OCA has not entered into a stipulation with PGW. However, the ALJ 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 Office of Consumer Advocate's Motion to Dismiss Objections and Compel Answers is granted.
2. That PGW's request to have the ALJ 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 17, 2001

Cynthia Williams Fordham
CYNTHIA WILLIAMS FORDHAM
Administrative Law Judge

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

SERVICE LIST

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