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February 28, 2020

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Ackie, et al v. Philadelphia Gas Works
In Re: C-2019-3013933
Motion to Compel Answers and Dismiss Objections to Written
Interrogatories Nos. 1-2 and 8-14

Dear Secretary Chiavetta:

Enclosed please find, for electronic filing purposes, the Motion to Compel Answers and Dismiss Objections to Written Interrogatories Nos. 1-2 and 8-14 along with Certificate of Service of Complainants Dwayne Ackie, Miguel Chavarria, Jr., Maurice Goodwin and Wayne Rauceo pursuant to 52 Pa.Code § 5.342 in the above captioned matter.

Thank you.

Yours truly,



Enclosures

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dwayne Ackie, Miguel J. Chavarria, Jr.,
Maurice A. Goodwin and Wayne Rauceo

v.

Philadelphia Gas Works

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C-2019-3013933

**COMPLAINANTS' MOTION TO COMPEL ANSWERS AND DISMISS OBJECTIONS
TO WRITTEN INTERROGATORIES NOS. 1-2 AND 8-14**

Dwayne Ackie, Miguel J. Chavarria, Jr., Maurice A. Goodwin and Wayne Rauceo (collectively "Complainants" or "Employees") respectfully request Presiding Officer Judge Darlene Heep dismiss Respondent Philadelphia Gas Works' ("Respondent" or "PGW") Objections to Written Interrogatories Nos. 1-2 and 8-14 and compel PGW to answer all interrogatories pursuant to 52 Pa.Code § 5.342. In support of the herein Motion, Employees aver as follows:

Interrogatory Nos. 1- 2:

1. Describe in detail the incident that occurred on or about September 11, 2018 involving Passyunk Plant Operations Supervisor Ryan O'Donnell ("O'Donnell") leaving the plant property without proper notification to plant personnel, taking a company vehicle and getting involved in a car accident.
 - a. Your description shall include the names, job titles and actions of all PGW personnel who had to retrieve O'Donnell and the company vehicle as well as those responsible for investigation and/or reporting in the matter.
 - b. Your response shall include all documents concerning, related and referring to this event.

2. Describe in detail the incidence that occurred in September 2019 involving O'Donnell leaving the plant property without notification to plant personnel, taking a company radio and leaving the company radio at a store, where the company radio was by a store personnel.
 - a. Your description shall include the names, job titles and actions of all PGW personnel who had secure the return of the company radio as well as those responsible for investigation and/or reporting of the matter.
 - b. Your response shall include all documents concerning, related and referring to this event.

Objection

Complainants. Nos. 1-2, seek information that is overbroad, assumes nonexistent facts, and would require PGW to provide information regarding certain incidents that did not occur as alleged. Complainants, No. 1-2, also seeks documents and information that is potentially

privileged and/or protected by work product doctrine. 52 Pa.Code § 5.361(a)

Response

Employees identified in paragraphs 9 and 10 of their Formal Complaint the same safety violations incidents. PGW's preliminary objections to these paragraphs were overruled. Employees also identified proposed witnesses to these incidents and identifying the Operations Supervisor at issue. (See Complainants' Pre-Hearing Conference Mem. at 4-5). Thus, Interrogatories Nos. 1-2 are within the permissible scope of discovery and are not being sought in bad faith. (See generally McNeil v. Jordan, 585 Pa. 413, 894 A.2d 1260, 1274 (2006)(citing broad discretion of court if discovery found to be in bad faith). In the matter *sub judice*, PGW's presents no averments as to how these Interrogatories meet the standards of bad faith.

Employees narrowed the time period of the incidents in question as occurring on or about September 11, 2018 (No. 1) and in September 2019 (No. 2), thereby precluding an objection based on overbread in temporal scope. And, since the safety violations at issue only relate to one Operations Supervisor during a limited time period regarding limited events, PGW's objections based on overbread in context are equally precluded. Employees themselves are witnesses to each incident averred in the Interrogatories Nos. 1-2, so the facts are not "nonexistent". If PGW is alleging that incidents "did not occur as alleged," then the Interrogatories give it a chance to state what happened according to its witnesses.

Finally, PGW's allegation that these Interrogatories "seek documents and information that are *potentially* privileged and/or are protected by the work product doctrine" (emphasis added) implies PGW failed to perform its due diligence with regards to these Interrogatories, and at this time is unaware whether or not either of those defenses exist in fact. Based on the above response, Employees request the Presiding Officer DISMISS PGW's Objections to Interrogatories Nos. 1-2, and COMPEL PGW to answer each in full.

Interrogatory No. 8

8. State with specificity whether the same policies and procedures are in place at the Passyunk plant for the winter vaporization process (converting LNG to VNG) as were in place on December 22, 2000?
 - a. If not, please describe with specificity the changed policies and procedures?
 - b. If so, please describe with specificity the policies and procedures employed by the Passyunk plant for the winter vaporization process.
 - c. Your answer shall include all documents concerning, relating or referring to the winter vaporization policies and procedures at the Passyunk plant.

Objection

Complainants, No. 8, is vague and relates to information regarding policies at the plant dating back to December 22, 2000 and would require the making of an unreasonable investigation by PGW. 52 Pa. Code § 5.361(a). Additionally, by Order dated January 3, 2020, Judge Darlene Heep ruled that claims regarding the unsafe release of gas that involve occurrences prior to three

years before the filing of the Complaint in October 2019 are barred by the statute of limitations. Accordingly, a request for information from almost 20 years ago is barred as well and is not relevant to any issue in this proceeding or reasonably calculated to lead to the discovery of admissible information. 52 Pa. Code § 5.321(c).

Response

Employees acknowledge the Presiding Officer's ruling in its January 3, 2020 Order Granting in Part and Denying in Part PGW's Preliminary Objections to their Formal Complaint paragraphs 14 and 16. However, during the Pre-Hearing Conference in these matters, ALJ Heep further stated that paragraphs 14 and 16 can be used for a "pattern of safety" violations showing the continuing nature of such violations. Employees aver there have been other explosions at the Passyunk Plant including, but not limited to, an explosion that occurred on or about December 22, 2000 during the winter vaporization process at the Plant, which was and continue to be due to safety violations. The averments in paragraph 16 of the Formal Complaint and Interrogatory No. 8 support the continuing nature of the violations that resulted in actual hazards to the City and community, *inter alia*. (See also Pa.R.C.P. 4003.1(b))

Furthermore, Employees only seek policies, practices and documents regarding a limited scope issue, i.e., the winter vaporization process (conversion of LNG to VNG) at the Passyunk Plant. It is not clear that these policies, practices and documents have changed much or at all over the time period requested nor does PGW allege that they have.

Based on the above response, Employees request the Presiding Officer DISMISS PGW's Objections to Interrogatory No. 8, and COMPEL PGW to answer it in full.

Interrogatory Nos. 9, 10, 11 and 12

9. If you disagree with Complainants' statements of facts in paragraph 7 of their Formal Complaint, state with specificity what statements you disagree with.
 - a. Your answer shall include information that provide a more accurate description of the event(s).
10. If you disagree with Complainants' statements of facts in paragraph 8 of their Formal Complaint, state with specificity what statements you disagree with.
 - a. Your statements shall include information that provides a more accurate description of the event(s).
11. If you disagree with Complainants' statements of facts in paragraph 11 of their Formal Complaint, state with specificity what statements you disagree with.
 - a. Your statements shall include information that provides a more accurate description of the events.
12. If you disagree with Complainants' statements of facts in paragraph 13 of their Formal Complaint, state with specificity what statements you disagree with.

- a. Your statements shall include information that provides a more accurate description of the events.

Objection

Complainants, Nos. 9, 10, 11 and 12, are premature and impose an improper burden on PGW to plead its case via responses to Interrogatories. 52 Pa. Code § 5.361(a). Complainants' requests seek information that is more properly obtained through service of Requests for Admissions at the appropriate time. 52 Pa. Code § 5.350.

Response

In its Answer filed on November 20, 2019, PGW generically "denied as written" the factual averments in each of Employees' Formal Complaint paragraphs 7, 8, 11 and 13. PGW's answer to all such paragraphs further generically states ". . . PGW submits that the Passyunk Plant is constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection for all of its employees. Further, PGW has protocols in place to: (1) supervise and monitor the actions of its employees; (2) investigate any actions that may constitute a violation of the Public Utility Code, or Commission regulations or Orders; and (3) enforce compliance with the Public Utility Code and Commissions regulations and orders through appropriate disciplinary action, or other measures PGW deems necessary."

Employees seek the facts alleged by PGW related to each safety violation proffered in the herein mentioned paragraphs. Pa.R.C.P. 4003.1 allows Employees to seek the information requested in these Interrogatories including, but not limited to, opinions and contentions related to PGW's defense, *inter alia*. PGW's suggestion that Employees should serve Requests for Admissions instead, when PGW has given no factual answers to make such Requests, is being offered in bad faith in an attempt to cause unnecessary delays and is arbitrary and vexatious serving no legitimate purpose other than to prevent Employees from moving forward with meaningful discovery in this matter. PGW's suggestion would require Employees to go on a fishing expedition to uncover admitted facts.

Based on the above response, Employees request the Presiding Officer DISMISS PGW's Objections to Interrogatory Nos. 9, 10, 11 and 12, and COMPEL PGW to answer each in full.

Interrogatory Nos. 13 and 14

13. If you disagree with Complainants' statements of facts in paragraph 14 of their Formal Complaint, state with specificity what statements you disagree with.
 - a. Your statements shall include information that provides a more accurate description of the events.

14. If you disagree with Complainants' statements of facts in paragraph 16 of their Formal Complaint, state with specificity what statements you disagree with.
 - a. Your statements shall include information that provides a more accurate description of the events.

Objection

Complainants, Nos. 13 and 14, seek information relating to paragraphs 14 and 16 of the Complaint. By Order dated January 3, 2020, Judge Darlene Heep dismissed paragraphs 14 and 16 of the Complaint. Therefore, requests for information relating to the facts alleged in those paragraphs are not relevant to any issue in this proceeding or reasonably calculated to lead to the discovery of admissible information. 52 Pa. Code § 5.321(c).

Response

Employees acknowledge the Presiding Officer's ruling in its January 3, 2020 Order Granting in Part and Denying in Part PGW's Preliminary Objections to their Formal Complaint paragraphs 14 and 16. However, during the Pre-Hearing Conference in these matters, ALJ Heep further stated that paragraphs 14 and 16 can be used for a "pattern of safety" violations showing the continuing nature of such violations. As noted in Interrogatory No. 8, *supra*, Employees aver the continuing nature of PGW's safety violations regarding the winter vaporization process in Interrogatories 8, 9 and 10, which relate to paragraph 16 of Formal Complaint; as well as the continuing nature of PGW Passyunk Plant management's safety violations related to the use of plant vehicles in Interrogatories 1, 2 and 11, which relate to paragraph 14 of the Formal Complaint.

Also, since PGW did not aver in the alternative these Interrogatory are "premature and an improper burden on PGW to plead its case via responses to Interrogatories. 52 Pa. Code § 5.361(a). Complainants' requests seek information that is more properly obtained through service of Requests for Admissions at the appropriate time. 52 Pa. Code § 5.350," Employees request these objections be deemed waived related to Interrogatories 13-14.

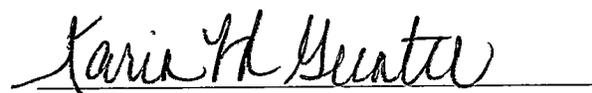
Based on the above response, Employees request the Presiding Officer DISMISS PGW's Objections to Interrogatory Nos. 13-14, and COMPEL PGW to answer each in full.

Respectfully submitted:

LAW OFFICE OF KARIN M. GUNTER

Dated: February 28, 2020

By:



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**BEFORE THE
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Dwayne Ackie, Miguel J. Chavarria, Jr.,
Maurice A. Goodwin and Wayne Rauceo

v.

Philadelphia Gas Works

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C-2019-3013933

CERTIFICATE OF SERVICE

I do hereby certify that service of a true and correct copy of herein Motion to Compel Answers and Dismiss Objections to Written Interrogatories Nos. 1-2 and 8-14 pursuant to 52 Pa.Code § 5.342 of Complainants Dwayne Ackie, Miguel J. Chavarria, Jr., Maurice A. Goodwin and Wayne Rauceo were made on the Presiding Officer and below counsel for Philadelphia Gas Works via electronic service:

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Date; February 28, 2020