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March 6, 2020

Via Electronic Filing

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

Re: Dwayne Ackie, Miguel J. Chavarria, Jr., Maurice A. Goodwin and Wayne Rauceo
v. Philadelphia Gas Works, Docket No. C-2019-3013933

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' ("PGW") Answer to Motion to Compel and Dismiss Objections to Written Interrogatories, Nos. 1-2 and 8-14 Propounded by Complainants with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Karen O. Moury

KOM/lww
Enclosure

cc: Hon. Darlene Heep w/enc.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PGW's Answer to Motion to Compel Answers and Dismiss Objections to Written Interrogatories Nos. 1-2 and 8-14 upon the person(s) listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via First Class Mail and Email

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Dated: March 6, 2020



Karen O. Moury, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dwayne Ackie, Miguel J. Chavarria, Jr.,	:	
Maurice A. Goodwin and Wayne Rauceo,	:	Docket No. C-2019-3013933
Complainants	:	
	:	
v.	:	
	:	
Philadelphia Gas Works,	:	
Respondent	:	

**ANSWER OF PHILADELPHIA GAS WORKS TO MOTION TO COMPEL
ANSWERS AND DISMISS OBJECTIONS TO WRITTEN INTERROGATORIES NOS.
1-2 AND 8-14 PROPOUNDED BY DWAYNE ACKIE, MIGUEL J. CHAVARRIA, JR.,
MAURICE A. GOODWIN AND WAYNE RAUCEO**

Pursuant to Section 5.342(g)(1) of the Commission’s regulations, 52 Pa. Code § 5.342(g)(1), Philadelphia Gas Works (“PGW”) files this Answer to the Motion to Compel Answers and Dismiss Objections to Written Interrogatories Nos. 1-2 and 8-14 propounded by Dwayne Ackie, Miguel J. Chavarria, Jr., Maurice A. Goodwin and Wayne Rauceo (“Complainants”) on February 28, 2020. In support thereof, PGW states as follows:

I. INTRODUCTION AND BACKGROUND

The Complainants initiated this proceeding on October 31, 2019 with the filing of a Complaint against PGW. PGW timely filed an Answer on November 20, 2019 and also filed Preliminary Objections on that date. The Administrative Law Judge (“ALJ”) issued an Order Granting in Part and Denying in Part Preliminary Objections on January 3, 2020 (“January 3 Interim Order”). By the January 3 Interim Order, the ALJ dismissed all allegations in the Complaint relating to employment discrimination. Additionally, the January 3 Interim Order dismissed Paragraph No. 14 (regarding an automobile accident at the Passyunk Plant) and

Paragraph No. 16 (regarding the release of gas) of the Complaint as the events discussed did not occur within the three-year statute of limitations in 66 Pa.C.S. § 3314(a).

A prehearing conference was held on February 6, 2020. At the conference, a procedural schedule was established, with dates for the service of written testimony and evidentiary hearings scheduled for June 3-5, 2020. By a Procedural Order dated February 11, 2020, the ALJ memorialized this schedule and further directed that responses to motions to compel be filed within five days after service. Upon request, the ALJ afforded PGW two additional days for filing this Answer to Complainants' Motion to Compel, so that it is due on March 6, 2020. It is being timely filed on this date.

The Complainants' Motion to Compel should be denied because Interrogatories Nos. 1-2 and 9-14 are a classic fishing expedition through which the Complainants are seeking to obtain any information that might be remotely related to the incidents that are alleged in the Complaint, without any link to an alleged violation, safety-related or otherwise, of the Public Utility Code or Commission regulations. Under Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), the Complainants have the burden of proof. This means that the Complainants must produce substantial and credible evidence showing a violation by PGW of the Public Utility Code and Commission regulations. *See Samuel J. Lansberry, Inc. v. Pa PUC*, 578 A.2d 600, 602 (Pa. Commw. Ct. 1990).

Upon the filing of the Complaint, the Complainants should have been positioned to move forward in producing substantial and credible evidence in support of their allegations. PGW should not be required to undergo the unreasonable and burdensome process of opening up all of its records, policies, procedures and documents to satisfy the curiosity of the Complainants. *See Pa PUC, et al. v. Pennsylvania American Water Company*, Docket No. R-2011-223243 (Order on

Motion to Compel dated July 21, 2011 at 21-22). Notably, the Complainants have each filed federal lawsuits in the United States District Court for the Eastern District of Pennsylvania against PGW raising employment discrimination issues relating to many of the same allegations that are set forth in the Complaint pending before the Commission. Complaint, ¶ 18. The Complainants should not be permitted to use the Commission's discovery process to search for any possible nugget of information that they may find useful in pursuing their federal court lawsuits. A discussion of PGW's specific objections appears below.

II. ANSWER AND ARGUMENT

A. Complainants, Nos. 1 and 2

Complainants, Nos. 1 and 2 state as follows:

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, Nos. 1-2, also seek documents and information that are potentially privileged and/or protected by the work product doctrine. 52 Pa. Code § 5.361(a).

RESPONSE TO MOTION TO COMPEL

Complainants premise Interrogatories Nos. 1 and 2 on the allegations that Passyunk Plant Operations Supervisor Ryan O'Donnell left the plant property without "proper notification" in September 2018 and 2019. Because they have no basis to do so, Complainants make these allegations with absolutely no reference to any regulation, safety code or the like that Mr. O'Donnell purportedly violated. Instead, they seek to compel PGW to undergo the burdensome process of searching its records and providing all the information it has regarding certain incidents in the hopes that some piece of evidence may be found that would create a viable case for Complainants – either in the instant action, or in the frivolous lawsuits they have filed in federal court.

As the Commission has held previously, this type of fishing expedition is not a proper use of the discovery process. . *See West Goshen Twp. v. Sunoco Pipeline, L.P.*, Docket No. C-2017-2589346 (Order on Motion to Compel dated Nov. 1, 2017 at 2) ("While discovery is broad in Pennsylvania, parties are not entitled to engage in 'fishing expeditions.'") (citing *Land v. State Farm Mut. Ins. Co.*, 410 Pa. Super. 579, 585, 600 A.2d 605, 608 (1991)). Moreover, to the extent any of the information or documents requested are protected under the attorney-client privilege or work product doctrine, PGW is under no obligation to produce it to Complainants. 52 Pa. Code § 5.361(a).

B. Complainants, No. 8

Complainants, No. 8, states as follows:

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 TO MOTION TO COMPEL

Again, Complainants make unsupported allegations relating to the winter vaporization process at the Passyunk plant without any reference whatsoever to violations of any safety code or regulation, and they improperly seek to create a cause of action via the discovery process. This time, Complainants want PGW to search records dating back to December 22, 2000 – *almost 20 years ago* – to determine whether their hunch that some safety violation may have occurred then is valid or not. As with Interrogatories Nos. 1 and 2, Complainants’ fishing expedition for this type of information is an abuse of the discovery process and should not be permitted. *See Land*, 410 Pa. Super. at 585, 600 A.2d at 608 (“fishing expeditions’ are not to be countenanced under the guise of discovery”).

Moreover, even assuming the Complainants *were* able to find what they believe to be a violation (which PGW strongly contends they cannot), a cause of action based on an event that occurred almost twenty years ago does not exist, and therefore no “violation” can ever be established. *See* 66 Pa.C.S. § 3314(a); January 3 Interim Order at p. 7. Complainants acknowledge that such an allegation would be time-barred, *see* Motion to Compel at p. 3; thus, Complainants’ argument that they need information dating back to the year 2000 to attempt to prove “continuing violations” must fail.

C. Complainants, Nos. 9, 10, 11 and 12

Complainants, Nos. 9, 10, 11 and 12 state as follows:

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 TO MOTION TO COMPEL

Complainants' Interrogatories Nos. 9-12 demand that PGW dissect multiple paragraphs containing factual allegations in the Complaint and correct every detail that PGW believes to be inaccurate. Pursuant to the Prehearing Order issued in this matter on February 11, 2020, PGW's written testimony concerning Complainants' allegations is not due until May 15, 2020 – after Complainants' submit their testimony. Complainants' Interrogatories Nos. 9-12 are nothing more than an improper attempt to compel PGW to give its complete testimony regarding Complainants' factual allegations before the time PGW is required to do so per the operative scheduling order. As noted in PGW's objection, if there are particular facts about which Complainants seek PGW's position, Complainants are permitted to serve Requests for Admission pursuant to 52 Pa. Code § 5.350. But Complainants' blanket request for PGW to plead its case now with respect to the Complainants' factual allegations places a premature, undue burden on PGW and thus overreaches the permissible scope of interrogatories permitted by the Commission.¹ 52 Pa. Code § 5.361(a).

D. Complainants, Nos. 13 and 14

Complainants, Nos. 13 and 14 state as follows:

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.

¹ In support of its Motion to Compel responses to Interrogatories Nos. 9, 10, 11 and 12, Complainants cite to the Pennsylvania Rules of Civil Procedure. These Rules are inapplicable to the instant proceeding before the Commission.

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 TO MOTION TO COMPEL

Complainants' Interrogatories Nos. 13 and 14 seek PGW's position on the facts alleged in paragraphs 14 and 16 of the Complaint. Like Complainants' Interrogatories Nos. 9-12, Interrogatories Nos. 13 and 14 demand that PGW dissect two paragraphs in the Complaint containing factual allegations and correct every detail that PGW believes to be inaccurate. As an initial matter, Nos. 13 and 14 are objectionable for the same reasons as Nos. 9-12 – namely, that they improperly burden PGW with proffering its complete testimony regarding Complainants' factual allegations before the time PGW is required to do so per the operative Prehearing Order.

But beyond the unduly burdensome nature of these requests, they are also improper because they seek information relating to the two paragraphs of the Complaint that were dismissed pursuant to the Order dated January 3, 2020 that was issued in this matter. More specifically, the January 3 Order states: “Complainants allege in paragraph No. 14 that in the summer of 2016, there was an auto accident at the Plant and actions to cover it up. They also allege in paragraph No. 16 that on March 22, 2016, there was unsafe release of gas. *The Complaint was brought more than three years after these two events occurred and therefore paragraphs Nos. 14 and 16 will be dismissed.*” January 3 Interim Order, at p. 7 (emphasis added). In light of the fact that the allegations in paragraphs 14 and 16 were dismissed, PGW should not be burdened with searching

its files and detailing its position on events that are no longer pertinent to the case. *See* 52 Pa. Code § 5.321(c); 52 Pa. § 5.361(a)(2).

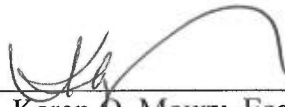
As to Complainants' argument concerning Administrative Law Judge Heep's comments at the prehearing conference of their ability to pursue the allegations in paragraphs 14 and 16 if they show that they are of a continuing nature, the discovery request is focused solely on the incidents that allegedly occurred more than three years ago and are barred by the statute of limitations. Moreover, the Commission does not have jurisdiction to hear evidence of a "pattern" of safety violations. The Commission's jurisdiction is limited to hearing individual complaints about acts allegedly taken or not taken by public utilities in violation of the Public Utility Code, Commission regulations and orders. 66 Pa.C.S. § 701. Also, the statute of limitations in Section 3314 provides no basis for the Commission to allow a complainant to avoid the three-year time period by alleging a pattern of continuing violations. 66 Pa.C.S. § 3314. Complainants appear to be relying on a theory used in employment law cases where plaintiffs are able to pursue claims that are time-barred by showing a pattern of continuing violations that demonstrate a hostile work environment. *See, e.g., Velez v. QVC, Inc.*, 277 F. Supp. 2d 384 (2002). This tactic should not be permitted.

III. CONCLUSION

For the foregoing reasons, PGW respectfully requests that PGW's objections to Complainants' Interrogatories Nos. 1-2 and 8-14 be sustained and an Order be entered dismissing Complainants' Motion to Compel Answers and Dismiss Objections.

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Respectfully submitted,



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Dated: March 6, 2020