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March 13, 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 First Request for
Production of Documents Nos. 3-8

Dear Secretary Chiavetta:

Enclosed please find, for electronic filing purposes, the Motion to Compel Answers and Dismiss Objections to First Request for Production of Documents Nos. 3-8 along with Certificate of Service of Complainants Dwayne Ackie, Miguel Chavarria, Jr., Maurice Goodwin and Wayne Rauceo pursuant to 52 Pa.Code §§ 5.342 and 5.349 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 FIRST REQUEST FOR PRODUCTION OF DOCUMENTS NOS. 3-8
PURSUANT TO 52 Pa. Code § 5.349**

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 their First Request for Production of Documents Nos. 3-8 and compel PGW to answer all document production requests pursuant to 52 Pa.Code § 5.349. In support of the herein Motion, Employees aver as follows:

Document Production Request Nos. 3-8:

3. Provide copies of Passyunk Plant schedules for Operations personnel only for the following time periods:
 - a. December 1, 2017 to January 1, 2018, inclusive;
 - b. August 1, 2018 to November 1, 2018, inclusive; and
 - c. August 1, 2019 to November 1, 2019, inclusive.
4. Any and all documents referring to the investigation, reporting, interviews, disciplinary actions, terminations, safety violations, policy violations and resolution of the February 2018 incident identified in paragraph 11 of the Formal Complaint.
 - a. Documents shall include, but are not limited to, unsworn statements, incident reports, security logs and logbook entries, emails, memoranda, calendar entries, text messages, security video recordings and handwritten notes.
5. Any and all documents referring to the investigation, reporting, interviews, disciplinary actions, terminations, safety violations, policy violations and resolution(s) of the December 25, 2017 incident identified in paragraph 13 of the Formal Complaint.
 - a. Documents shall include, but are not limited to, unsworn statements, incident reports, security logs and logbook entries, time cards, emails, memoranda, calendar entries, text messages, handwritten notes and security video recordings.

6. Any and all documents referring to Passyunk Plant General Supervisor David Martinez's scheduled vacation time taken during the 2017 calendar year.
7. For the period from January 1, 2016 to the present, any and all documents referring to damages to Passyunk Plant vehicles used and/or caused by Operations personnel only.
 - a. Documents shall include, but are not limited to, incident reports; names of persons operating vehicles at time of incident; damages to vehicles; time(s), date(s) and location(s) of incident; and description of incident.
8. Resumes and Employee's Service Records of Passyunk Plant General Supervisor David Martinez and Passyunk Plant Operations Supervisor Ryan O'Donnell.

Objection:

Complainants are requesting months of plant and vacation schedules, years of employee service records, and even resumes of plant personnel. (Nos. 3, 6, 8.) They also seek all documents dating back to over four years ago that make any reference to any damage to any plant vehicles that were used by any Operations personnel. (No. 7.) Finally, Complainants seek all documents relating to two alleged "incidents" involving the whereabouts of two employees at the plant. (Nos. 4, 5.)

Complainants have yet to plead any regulation or code provision that PGW has allegedly violated, and therefore can show no relevance that these documents could possibly have to this proceeding. For example, Paragraph 13 of the Complaint, which is referenced in request No. 5, alleges that one employee reported late for work, without offering any basis for how that single act, assuming it is true, could constitute a safety violation. Further, request Nos. 3, 6, 7 and 8 do not even identify a Paragraph in the Complaint or any allegation to which they pertain. Accordingly, PGW objects to these requests on the grounds that they seek irrelevant information. 52 Pa. Code § 5.321(c).

Moreover, all of these requests are overly broad and unduly burdensome, as they would require PGW to make an unreasonable investigation. 52 Pa. Code § 5.361(a). Complainants are unnecessarily diverting critical resources that are needed to operate the LNG plant safely to assist them in their fishing expedition, in the hopes that they will be able to concoct a viable cause of action either in the instant case or in their federal court litigation. This is a blatant misuse of the discovery process and is barred by the Commission's regulations. *See id.*

Responses

Document Request No. 3

Complainants specifically narrowed their requests for Passyunk Plant Schedules to include only the time periods and permissible time ranges commensurate with claims of their Formal Complaint that survived Respondent's preliminary objections. Thus, falling into the permissible scope of discovery afforded by 52 Pa. Code § 5.321(c). In particular, Complainants' request for Passyunk Plant Schedules for the Operational personnel only cover:

- (a) December 1, 2017 to January 1, 2018, inclusive relates to Formal Complaint, ¶ 13;

(b) August 1, 2018 to November 1, 2018, inclusive relates to Formal Complaint ¶ 10; and
(c) August 1, 2019 to November 1, 2019, inclusive relates to Formal Complaint ¶ 9.

Complainants do not seek schedules for all Passyunk Plant personnel, which would include maintenance personnel and the like. They request only the plant schedules for Operations. Complainants have attached a sample copy of the one page plant schedule that exist for August 19, 2017 to September 15, 2017 (in PDF format) as Exhibit “A” to give the Presiding Officer a perspective of the nature of Complainants’ request.

Document Request No. 4

Once again, Complainants have narrowed their scope of document production in this request to a specific event that occurred in February 2018 related to specifically Passyunk Plant General Manager Brian McGuire. Complainants have attempted to get some of this information through other discovery requests, i.e., Written Requests for Statements Previously Made pursuant to 52 Pa. Code § 5.323(b). However Respondent remains coy about the interpretation and meaning of the term “safety violation” and fails to acknowledge the event at all. A true and correct copy of PGW’s response to Complainants’ Written Request for Statements Previously Made regarding Formal Complaint ¶ 11 is attached as Exhibit “B”.

At least one of the Complainant was present during this incident. Thus, they are certain it occurred. Complainants have specifically stated in paragraphs 7, 11 the extremely dangerous environment of the winter vaporization process involving LNG. Furthermore, it goes without saying the danger in any confined location for anyone to drive in the Plant at midnight without lights on a vehicle and being inebriated. Given the time constraints in this matter as well as PGW’s exclusive possession of the relevant requested information, Respondent’s full and complete cooperation in this matter is warranted.

Document Request No. 5

The same is true for the claims and objections to this document production request. Complainants narrowed their request to a known incident identified in their Formal Complaint ¶ 13, and PGW continues to be coy with its response. At least two of the Complainants were present for this December 25, 2017 incident, and therefore know it in fact happened. When Complainants made a written request pursuant to this incident, PGW’s response was it “is unaware of any ‘December 25, 2017 Christmas Day safety violation.’” A true and correct copy of PGW’s Response to Complainants’ Written Request for Statements Previously Made is attached hereto as Exhibit “C”. The instant document production request seeks to address PGW’s semantic avoidance of fully participating in this PUC matter.

PGW has made previous statements regarding the minimal and optimal Operations personnel needed at the Passyunk Plant. Given the nature of the work at Passyunk Plant during the winter vaporization season and there being no Working Foreman present for a time period on December 25, 2017, Respondent is well aware of the safety and staffing hazards represented here.

Document Request No. 6

Complainants aver in their Formal Complaint ¶ 12, Passyunk Plant General Supervisor David Martinez demanded an operations supervisor and a senior process operator leave the Plant in order to follow him to the airport and return his personal vehicle to the Plant parking lot while Martinez was on vacation. They seek only his vacation schedule during 2017 to narrow the time period for Complainants direct testimony and other evidentiary purposes.

Document Request No. 7

Complainants request this information in support of their Formal Complaint ¶¶ 9, 10 for Operations personnel only at the Passyunk Plant. As with document production requests numbers 4, 5, Complainants attempted to get some of these documents via their Written Request for Statements Previously Made. However, PGW again toyed with the terms “September 2018 safety violation” and “September 2019 safety violation” instead of responding completely and fully to the requests. Respondent further attempt to stall this process by alleging this request does “not even identify a Paragraph in the Complaint or any allegation to which they pertain.” (Resp.’s Obj. ¶ 3) However, it is clear from the Formal Complaint that plant vehicles are the subject of paragraphs 9, 10 of the Formal Complaint and would include allegations in paragraph 12 as well.

PGW’s response to relevant Written Requests for Statement Previously made is attached hereto as Exhibit “D”.

Document Request No. 8

Complainants state in paragraph 17 of the Formal Complaint that General Supervisor David Martinez’s and Operations Supervisor Ryan O’Donnell’s rapid promotions and lack of experience were reasons in part reasons for the “irresponsible and dangerous behaviors” averred in the complaint. Requests for their service records and resumes will directly support these claims. Once again, Complainants were specific in narrowing their requests to both person’s resumes and employee’s service records, which is a limited summary document of their employment history including, but not limited to, promotions, dates of hire, departments and other coded information. These documents do not include personnel file information that may have more personal identifier disclosures. Once again, these documents are relevant pursuant to 52 Pa. Code 5.321(c).

Complainants also include a true and correct copy of Set I Attachment A November 1, 2019 Letter from PGW CEO Craig E. White, as Exhibit “E” herein, for completeness. It is interesting to note that the undersigned was not included in the correspondence at the time it was prepared and disseminated. PGW’s March 5, 2020 disclosures in this matter is the undersigned’s first awareness of PGW’s response, which did not include the alleged EEOC attachments. Complainants choose not to respond to the content of CEO White’s letter since the EEOC matters, as a whole, are not relevant to the matter *sub judice*. However, if this tribunal finds it relevant for a response, Complainants will cheerfully do so.

Based on the above Response, Employees request the Presiding Officer DISMISS PGW's Objections to First Requests for Production of Document Request Nos. 3-8, and COMPEL PGW to answer each in full.

Respectfully submitted:

LAW OFFICE OF KARIN M. GUNTER

Dated: March 13, 2020

By: /s/ Karin M. Gunter,
Karin M. Gunter, Esquire
Counsel for Complainants
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Passyunk Plant Schedule

19-Aug-17
to
15-Sep-17

A - 6:00AM to 6:00PM
B - 6:00PM to 6:00AM
V - VACATION
AL - ADMIN. LEAVE

D/M=Generator Test **OQ** = Richmond Training
* = Odorant Sniff Test immediately after shift (Richmond)
#M = Odorant Sniff Test 6:00am (Passyunk)
#M = 10 am to 10 pm

	19-Aug	20-Aug	21-Aug	22-Aug	23-Aug	24-Aug	25-Aug	26-Aug	27-Aug	28-Aug	29-Aug	30-Aug	31-Aug	1-Sep	2-Sep	3-Sep	4-Sep	5-Sep	6-Sep	7-Sep	8-Sep	9-Sep	10-Sep	11-Sep	12-Sep	13-Sep	14-Sep	15-Sep
	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F
SUPERVISORS																												
W. Rauceo	-	D	D	D	D	D	-	-	D	D	D	D	D	-	-	V	H	D	D	D	-	-	A	D	D	D	D	-
J. Walker	M	M	L	L	-	-	M	V	M	L*	L	-	-	V	V	A	B	L	-	-	M	V	V	V	V	-	-	V
R. O'Donnell	-	-	M	M	M	M	D	-	-	M	M	M	M	D	-	-	A	M	M	M	D	ED	-	M	M	M	M	D
W. Benson	L	L	-	-	L*	L	L	L	L	-	-	L	L	L	B	B	-	-	L	L	L	L	B	-	-	L	L	L
J. Colon	D	-	OQ	-	D	D	D	D/M	-	OQ	-	D	D	M	A	-	-	V	M	D	D	M	V	L	L	-	-	M
J. Mullin	-	-	D	D	FA	D	D	-	-	D	D	D	D	D	-	-	H	D	D	D	D	-	-	D	D	D	D	D
FOREMAN																												
G. Nelson	A	A	ED	-	V	V	V	V	V	-	-	A	A	A	A	D	-	ED	D	D	D	A	D/M	-	-	A	D/M	D
J. Ortiz	V	V	M	D*	ED	-	A	A	A	B	B	-	-	V	V	M	A	M	-	EL	M	V	S	A	M	-	-	M
M Chavarria	B	-	EL	M	M	D/M	B	B	-	EA	V	V/M	V/M	B	B	-	-	V	V	V	L	B	-	-	D	V/M	HO	L
M. Tomczak	-	B	HO	L/OQ	L	L	-	-	B	OQ	A	L	L	-	-	L	B	L	M/L	M	-	-	L	B	L	L	L	-
	-	-						-	-						-	-						-	-					
P.O 1																												
J. Jenkins	EM	D/M	A	A	D/M	D	-	ED	D	D	D	D	D	-	-	M	D	S	D	D	ED	-	S	A	D	D	D	ED
D. Ackie	V	V	V	V	-	-	V	M	M	L*	L	-	-	D	A	D	L/D	L	-	-	M	A	#M	B	L	-	-	HO
M. Goodwin	ED	-	B	B	M	M	A	-	-	M	M	M	M	M	-	-	M	M	M	M	V	-	-	V	M	M	M	M/L
S. Edwards	L	L	-	-	L	L	B	L	L	-	-	L	L	L	B	L	-	-	L	L	L	B	L	-	-	L	L	L/D
	-	-						-	-						-	-						-	-					

"A" 7/14/17

**Response of Philadelphia Gas Works ("PGW")
to the Written Request of
Complainants, Set I in
Docket No. C-2019-3013933**

Request: Complainants' – Set I-2 Statements made by PGW Gas Processing employees McGuire, Martinez, Wallace Benson ("Benson"), Pat McGlone ("McGlone"), Malkemes, Zuk, Rauceo, contract security guard Freddy Fernandez ("Fernandez") and other such PGW employees who made statements regarding the investigation(s) and/or reporting(s) of the February 2018 safety violations and other concerns event identified in Complainants' Conference Memo Issue E. This event concerns Passyunk General Manager McGuire sneaking into the Plant, inebriated, without his employee ID, turning off the lights on a company vehicle and driving through the Plant during LNG truck unloading.

Response: PGW is unaware of any "February 2018 safety violation". Regarding Complainants' alleged safety-related concerns, please refer to the November 1, 2019 correspondence from Craig E. White, President & Chief Executive Officer of PGW, to the Honorable Mayor James Kenney and the Honorable Derek S. Green, attached hereto as Attachment A. At this time, PGW does not possess any other statements responsive to this Request that were made by the PGW employees referenced or by any other witness or party, as defined by 52 Pa. Code § 5.323(b).

Response provided by: Raquel Guzman

Dated: March 5, 2020

Exhibit "B"

**Response of Philadelphia Gas Works ("PGW")
to the Written Request of
Complainants, Set I in
Docket No. C-2019-3013933**

Request: Complainants' – Set I-1 Statements made by PGW Gas Processing employees Jose Ortiz ("Ortiz"), Michael Tomczak ("Tomczak"), Ryan O'Donnell ("O'Donnell"), Brian McGuire ("McGuire"), David Martinez ("Martinez"), Curt Malkemes ("Malkemes"), John Zuk ("Zuk") and other such PGW employees who made statements regarding investigation(s) and/or reporting(s) of the December 25, 2017 Christmas day safety violations and other concerns event as identified in Complainants' Conference Memo Issue G. This event involved O'Donnell clocking in Tomczak, who was not present at the time he was clocked in and Ortiz leaving the Plant without a replacement.

Response: PGW is unaware of any "December 25, 2017 Christmas Day safety violation". Regarding Complainants' alleged safety-related concerns, please refer to the November 1, 2019 correspondence from Craig E. White, President & Chief Executive Officer of PGW, to the Honorable Mayor James Kenney and the Honorable Derek S. Green, attached hereto as Attachment A. At this time, PGW does not possess any other statements responsive to this Request that were made by the PGW employees referenced or by any other witness or party, as defined by 52 Pa. Code § 5.323(b).

Response provided by: Raquel Guzman

Dated: March 5, 2020

Exhibit "C"

**Response of Philadelphia Gas Works ("PGW")
to the Written Request of
Complainants, Set I in
Docket No. C-2019-3013933**

Request: Complainants' – Set I-3 Statements made by PGW Gas Processing employees Malkemes, Zuk, McGuire, Martinez, O'Donnell, John Walker ("Walker"), Gary Nelson ("Nelson"), Ackie and other such PGW employees who made statements regarding investigation(s) and/or reporting(s) of the September 2018 safety violations and other concerns event as identified in Complainants' Conference Memo Issue D. This event concerns O'Donnell leaving the plant without authorization in a company vehicle and getting in a car accident.

Response: PGW is unaware of any "September 2018 safety violations". Regarding Complainants' alleged safety-related concerns, please refer to the November 1, 2019 correspondence from Craig E. White, President & Chief Executive Officer of PGW, to the Honorable Mayor James Kenney and the Honorable Derek S. Green, attached hereto as Attachment A. At this time, PGW does not possess any other statements responsive to this Request that were made by the PGW employees referenced or by any other witness or party, as defined by 52 Pa. Code § 5.323(b).

Response provided by: Raquel Guzman

Dated: March 5, 2020

Exhibit "D"

**Response of Philadelphia Gas Works ("PGW")
to the Written Request of
Complainants, Set I in
Docket No. C-2019-3013933**

Request: Complainants' – Set I-4 Statements made by PGW Gas Processing employees Malkemes, Zuk, McGuire, Martinez, O'Donnell, Miguel Chavarria ("Chavarria") and other such PGW employees who made statements regarding investigation(s) and/or reporting(s) of the September 2019 safety violations and concerns event identified in Complainants' Conference Memo Issue C. This event concerns O'Donnell leaving the plant without authorization in a company vehicle and with a company radio, leaving the radio at a Rite Aid drugstore and a Rite Aid employee using the radio.

Response: PGW is unaware of any "September 2019 safety violations". Regarding Complainants' alleged safety-related concerns, please refer to the November 1, 2019 correspondence from Craig E. White, President & Chief Executive Officer of PGW, to the Honorable Mayor James Kenney and the Honorable Derek S. Green, attached hereto as Attachment A. At this time, PGW does not possess any other statements responsive to this Request that were made by the PGW employees referenced or by any other witness or party, as defined by 52 Pa. Code § 5.323(b).

Response provided by: Raquel Guzman

Dated: March 5, 2020

SET I
ATTACHMENT A

Exhibit "E"



PHILADELPHIA GAS WORKS

Craig E. White
President & Chief Executive Officer
800 W. Montgomery Avenue, Philadelphia, PA 19122

November 1, 2019

The Honorable Mayor James Kenney
Mayor of the City of Philadelphia
City Hall Office 215
Philadelphia, PA 19107

The Honorable Derek S. Green
Chairman, Philadelphia Gas Commission
One Parkway Building
1515 Arch Street, 9th Floor
Philadelphia, A 19102

Dear Messrs. Kenney and Green:

I wanted to take a few moments to fill you in regarding the inaccurate and misleading statements made by Karin M. Gunter, Esquire, in her letter to you dated October 17, 2019 (attached). I assure you and the other recipients of that letter that there is no validity to any of the statements of discriminatory conduct, or the asserted safety issues that Ms. Gunter mentions.

By way of background, the PGW employees that Ms. Gunter represents first brought allegations of discrimination to the attention of PGW in late 2017. PGW responded quickly to these complaints by retaining an outside law firm team, led by former Philadelphia Bar Chancellor Gaetan Alfano, to investigate the claims. The firm conducted an exhaustive investigation and found the claims to be unsubstantiated, but Ms. Gunter went ahead and filed Charges on the complainants' behalf with the U.S. Equal Employment Opportunity Commission (EEOC). In response, the EEOC informed Ms. Gunter and each of the complainants that it found no evidence whatsoever to support her clients' claims of discriminatory treatment and declined to pursue PGW on that basis. (I have attached copies of the strong letters sent by the EEOC – it is worth noting that the EEOC investigator expressly found that PGW took proper action with respect to handling the asserted claims.) Despite being told that there is no evidence to support her clients' claims, Ms. Gunter has filed lawsuits on behalf of the complainants in federal court. PGW is now responding to those frivolous and baseless claims.

The safety issues asserted by Ms. Gunter are similarly unsupported. As you are already aware, PGW expects its employees to report and/or address safety issues any time a concern arises. Ms. Gunter's clients previously made PGW aware of most of the concerns listed in the letter, and PGW has had personnel with appropriate qualifications review their concerns. When reviewed by qualified experts, Ms. Gunter's intended exposé wilts, as her safety concerns are as unfounded as her clients' other claims. (It should be noted that none of the complainants are engineers or have other professional qualifications regarding system processes.) For example, the statements regarding monitoring of temperature made in Ms. Gunter's

November 1, 2019

Page 2

letter are ignorant of the safety shutdown systems of the LNG vaporizers at the Passyunk Plant. Additionally, the maintenance methodology PGW is performing on its LNG equipment is being undertaken to ensure safety and system integrity with the day-to-day involvement of the original manufacturer of the equipment, as well as experienced PGW personnel and a contracted metallurgist. There were not "cracks" in the tank as stated by Ms. Gunter. Each paragraph of Ms. Gunter's letter is easily debunked, and I am happy to discuss any of the statements made further if you would like.

I trust that this letter provides you with the proper context for Ms. Gunter's correspondence because frankly, Ms. Gunter's letter is an obvious attempt to inflate the potential settlement value of her clients' baseless discrimination lawsuits.

Rest assured that PGW will continue to be vigilant in addressing any claims of discrimination or safety concerns. It will also continue to vigorously defend itself - and its ratepayers - with respect to frivolous claims.

Sincerely,



Craig E. White

/cew

Attachments

cc: The Honorable Gladys Brown Dutrieuille, Chairwoman, PUC (via facsimile (717) 783-0698)

**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

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 First Request for Production of Documents Nos. 3-8 pursuant to 52 Pa.Code § 5.349 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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Heather R. Olson, Esquire
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/s/ Karin M. Gunter

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Date; March 13, 2020