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January 12, 2021

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
Complainants' Response in Opposition to PGW's Motion in Limine

Dear Secretary Chiavetta:

Enclosed please find the **NON-PROPRIETARY/PUBLIC VERSION** of Complainants Dwayne Ackie, Miguel Chavarria, Jr, Maurice Goodwin and Wayne Rauceo's Response in Opposition to Philadelphia Gas Works' Motion in Limine filed on January 8, 2021 along with Certificate of Service in the above captioned matter.

Thank you.

Yours truly,



Enclosures

cc: Certificate of Service w/ encl. (via email only)
Hon. Darlene Heep w/ encl. (via email only)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Dwayne Ackie, Miguel J. Chavarria, Jr.,	:	
Maurice A. Goodwin and Wayne Rauceo	:	
	:	
v.	:	C-2019-3013933
	:	
Philadelphia Gas Works	:	

CERTIFICATE OF SERVICE

I do hereby certify that service of a true and correct copy of herein Complainants' NON-PROPRIETARY/PUBLIC VERSION Response in Opposition to PGW's Motion in Limine was made on the Presiding Officer and below counsel for Philadelphia Gas Works via electronic service:

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Date: January 12, 2021

NON-PROPRIETARY/PUBLIC VERSION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dwayne Ackie, Miguel J. Chavarria, Jr., :
Maurice A. Goodwin and Wayne Rauceo :
 :
v. : C-2019-3013933
 :
Philadelphia Gas Works :

**RESPONSE IN OPPOSITION TO
PHILADELPHIA GAS WORKS' MOTION IN LIMINE
REGARDING THE SUPPLEMENTAL DIRECT TESTIMONY
OF WAYNE RAUCEO**

PRELIMINARY STATEMENT

Dwayne Ackie (“Ackie”), Miguel J. Chavarria, Jr. (“Chavarria”), Maurice A. Goodwin (“Goodwin”) and Wayne Rauceo (“Rauceo”)(collectively “Complainants” or “Employees”) respectfully submit this response in opposition to Respondent Philadelphia Gas Works’ (“PGW”) Motion in Limine pursuant to 52 Pa. Code § 5.103(c). PGW specifically seeks the exclusion of certain portions of the Supplemental Direct Testimony of Wayne Rauceo (“EE Stmt No. 4-SUP”)(“Contested Portions”)¹. Employees oppose PGW’s herein motion based on affirmative defenses of truth, waiver, unclean hands and case law. The contested portions relate to the Additional (Late-Filed) Answers of Philadelphia Gas Works (PGW).

PGW summarizes the contested portions as Mr. Rauceo’s attempt to imply a discovery issue that is “improper to address . . . through witness testimony” and the result of “inadmissible, lay legal opinions.” (PGW’s Mot. Limine at 2. PGW goes on to say “[i]f Complainants truly believed that PGW was withholding relevant information to which Complainants were entitled,

¹ PGW identifies the contested portions of Mr. Rauceo’s Supplemental Direct Testimony to be: EE St. No. 4-SUP at 1:8-12, 22-25; 2:9-24; and Exhibits IV and VI. (See PGW’s Mot. Limine at 1).

the Complainants should have pursued this issue through a Motion to Compel.” (*Id.*) They did.

As noted in their response in opposition to PGW’s first motion in limine dated October 19, 2020, Complainants filed a motion to compel on March 13, 2020 regarding PGW’s Objections to their First Request for Production of Documents Request No. 4, *inter alia*. (Compls’ Resp. Oppn, Oct. 20, 2020, ¶ 16). Request No. 4 related to the February 2018 incident as identified in paragraph 11 of the Formal Complaint. On March 19, 2020, Presiding Officer Heep issued an order that requests [Nos. 4 and 5] “are limited to **plant safety and operations matters** and the Respondent provide responses/documents no later than April 9, 2020.” (emphasis added) On April 9, 2020, PGW produced no documents in response to Request No. 4. On October 9, 2020, Complainants learned for the first time, from a subpoena in the federal lawsuits, “all daily security logs, security incident reports and all documents are retained by the Philadelphia Gas Works.” (Compls’ Resp. Oppn, Oct. 20, 2020, ¶22) On October 9, 2020, the discovery deadline in instant matter had expired.

ALJ Heep ordered PGW to provide supplemental late-filed answers at the October 21, 2020 hearing. (Tr. at 7:13 – 9:17) Thus, by two orders of ALJ Heep, PGW twice had an obligation to produce documents to paragraph 11 of the Formal Complaint. For PGW to now suggest the onus is on Complainants to file a second motion to compel production of documents related to paragraph 11 of the Formal Complaint is curious. The implication of PGW’s statement is that three orders are required for it to comply.

The permissible scope for supplemental testimony to the late-filed answers of PGW produced on November 4, 2020 is articulated in ALJ Heep’s orders of March 19, 2020 and November 24, 2020. In the former order, “plant safety *and* operations matters” are permissible. (emphasis added) In the latter order, testimony is limited to “*issues* addressed in the

supplemental responses provided by PGW” are permissible. (emphasis added) On April 9, 2020,

PGW responded:

PGW filed objections to Set III-4, Complainants filed a Motion to Compel and on March 19, 2020, Administrative Law Judge Heep directed that PGW need only provide documents related to the alleged February 2018 incident identified in paragraph 11 of the Formal Complaint as they concern the safe operation of the plant. No responsive documents are available.

Response provided by: Raymond Snyder

The March 19, 2020 order did NOT state “PGW need only provide documents related to the alleged February 2018 incident . . . as they concern the *safe operation of the plant.*”

(emphasis added) As noted above, the order stated “plant safety and operations matters.”

On November 4, 2020, PGW responded with the following supplemental response:

PGW continues to believe that no responsive documents are available related to the safe operation of the plant. However, in the spirit of cooperation in this litigation, PGW is providing security logs for February 21-23, 2019. They are included in Attachment A.

Response provided by: Brian McGuire

A true and correct copy of the Supplemental Response without the November 4, 2020 attachment A is attached hereto as Exhibit “I”.² Thus, the “*issues*” addressed in the November 4, 2020 PGW supplemental response are:

1. Whether PGW’s interpretation that only documents related to “the safe operation of the plant” is a correct interpretation of the March 19, 2020 order. [Suggested Answer: No]
2. Whether PGW’s response that it has “no responsive documents available” related to paragraph 11 of the Formal Complaint is accurate based on the correct interpretation of the March 19, 2020 order. [Suggested Answer: No]
3. Whether PGW’s “continues to believe” is reasonable in light of the correct interpretation of the March 19, 2020 order. [Suggested Answer: No]
4. Whether the security logs are the only responsive documents based on the correct interpretation of the March 19, 2020 order. [Suggested Answer: No]

² PGW’s November 4, 2020 Attachment A is Exhibit V in Mr. Rauceo’s December 18, 2020 Supplemental Direct Testimony.

5. Whether Brian McGuire's failure to sign the security log on February 23, 2018 is a responsive plant safety and/or operations matter pursuant to the March 19, 2020 order. [Suggested Answer: Yes]

Based on these issues, the contested portions of Mr. Rauceo's Supplemental Direct Testimony is within the permissible scope of ALJ Heep's March 19, 2020 and November 24, 2020 orders. His knowledge of the outside law firm's investigation report that relates to February 2018 incident in which Mr. McGuire gave statements differing from his statements in his deposition in the federal lawsuit and statements/testimony in this PUC matter are relevant to the safety and operations of Passyunk Plant.³ Furthermore, there are other documents related to plant safety and operations matters including, but not limited to, deposition testimony of other PGW employees, which are also responsive to paragraph 11 of the Formal Complaint that PGW continues to fail to produce by its interpretation of the March 19, 2020 order to mean "the safe operation of the plant."⁴ (*Id.*) Moreover, the plant safety and operations matters posed by Mr. McGuire in February 2018 by not signing the security log and not announcing his presence at the plant to the operations supervisor were discussed in the outside law firm's investigation report and are part of a pattern of Mr. McGuire's as addressed in the Exhibit VI of Mr. Rauceo's

³ EE Stmt No. 4-SUP, at 1:8-12 and Ex. IV. The outside counsel redacted privileged and unredacted confidential report existed during the discovery period of this PUC matter, but PGW did not disclose it. For instance, **BEGINNING OF CONFIDENTIAL INFORMATION** " ."
END OF CONFIDENTIAL INFORMATION However, in his testimony in this PUC matter, Mr. McGuire stated he had "the authority to go in the plant at any time. . . There is – the security officers would call back to the operation supervisor to get permission - . . . for someone doesn't have the authority to be there [for after hours' entry into the plant]." (Tr. at 156:15-157:20)

Also, McGuire stated "went through the guard shack and signed in." (Tr. at 148:2-6) Attachment A to PGW's later-filed supplemental answers dated November 4, 2020 show Mr. McGuire did not sign in.

⁴ For example, the November 24, 2020 deposition testimony of Charles J. Grant, former PGW Senior Vice President of Labor Relations Department, Human Relations Department, Corporate Communications and Security & Loss Prevention contains responsive responses/documents related to paragraph 11 of the Formal Complaint. Mr. Grant's testimony is based on his confidential handwritten notes, i.e., documents PGW had during the discovery period of this PUC matter but did not produce.

supplemental direct testimony.

Finally, there are at least three other misstatements in PGW's herein motion in limine. (PGW Mot. Limine at 2). First, all four complainants and respondent PGW are parties in the federal lawsuits.⁵ As such, the parties entered into a confidentiality stipulation and 502(d) order that allows Complainants to use certain confidential information in the "concurrent PUC matter."⁶ The confidential information at issue in Mr. Rauceo's supplemental direct testimony were requested in discovery in this PUC matter and approved by ALJ Heep. Complainants did not receive certain confidential documents in the federal lawsuit until August 31, 2020, which was after the discovery deadlines expired and after the submission of direct testimony in this PUC matter. So, once again, it is curious that PGW says "[t]he Complainants had a full opportunity to pursue their issues in this proceeding. It is not appropriate for Complainants to introduce new and/or cumulative evidence nearly two months after the hearing in this case," when PGW had responsive documents/information that existed at the beginning (i.e., October 31, 2019) and all during this PUC matter, but failed to produce them. (PGW's Mot. Limine at 2).

Next, the privileged report prepared by the outside law firm that PGW characterized as Complainants' "already unsuccessful[] attempt to obtain in their unrelated federal discrimination litigation and were told by the judge in that matter that the report was privileged" is not an accurate statement. (PGW's Mot. Limine at 2). A full and accurate discussion of the

⁵ Messrs. Ackie, Chavarria and Goodwin are union employees. In their suits, their union is also a defendant. Based on December 29, 2020 email thread of PGW's counsel in the federal lawsuits, it is indisputable that PGW believes the PUC matter and the federal lawsuits are interconnected in some aspects.

⁶ Specifically, the parties agreed to permit the use of confidential information from the federal lawsuits "in the concurrent PUC matter to the extent the information, testimony and/or document were also requested through discovery and approved by the Presiding Officer in that matter." (Rauceo v. PGW, No. 2:19-cv-04279-GJP, Confidential Stipulation and 502(d) Order, 8/12/2020, ¶ 7 (ECF No. 24))(Exhibit "II")

outside law firm report reveals that PGW disclosed portions of that report, which PGW labelled as “privileged and confidential” on August 31, 2020. Some of the confidential and non-redacted portions of that report are discoverable and relate to this PUC matter. Specifically, the purpose of the report, the February 23, 2018 incident including statements by Brian McGuire and Mr. Ackie, December 25, 2017 incident and promotion and protection of employees who violate safety protocols, *inter alia*. (See Formal Compl. ¶¶ 1, 13, 15, 17 and 18; January 3, 2020 Order). Those confidential documents are discoverable in this matter and the federal judge did not rule otherwise. The only issue before the federal judge related to the “redacted portions” of the report. He reviewed the entire unredacted investigative report and concluded “the redacted portions are properly classified as work-product prepared in anticipation of the litigation or fall outside the scope of discovery.” Chavarria v. PGW, et al., No. 2:19-cv-04428-GJP, n.1. (ECF No. 39)(See PGW’s Mot. Limine, Ex. B).

Lastly, at the parties’ prehearing conference on February 6, 2020, the undersigned’s recollection is ALJ Heep determined employment discrimination (¶ 18) as well as paragraphs 14 and 16, that latter of which are otherwise barred by the statute of limitations, were within the permissible scope of discovery in this PUC matter to the extent any of them could be used to show a continuous pattern and/or practice causing safety violations and other concerns.

Wherefore, Complainants respectfully request the Contested Portions of Mr. Rauceo’s Supplemental Direct Testimony be ADMITTED into the record and considered in this proceeding.

I. BACKGROUND

1. Admitted in part, denied in part. It is admitted Ackie, Chavarria, Goodwin and Rauceo are Complainants and initiated the proceeding on October 31, 2019 by filing a Formal

Complaint. All other allegations in this paragraph are denied as stated. By way of further response, the document speaks for itself.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted in part, denied in part. It is admitted on February 29, 2020 Complainants served their first request for production of documents on PGW, i.e., the third set of discovery served on PGW. All other allegations in this paragraph are denied as stated. The documents speak for themselves. (*See Ex. I*). By way of further response, PGW's objections and Complainants' motion to compel related to requests numbers 3-8.

6. Admitted in part, denied in part. It is admitted on March 19, 2020, ALJ Heep issued an Order responsive to Set III-4. All other allegations in this paragraph are denied as stated. By way of further response, the document speaks for itself.

7. Admitted in part, denied in part. It is admitted on April 9, 2020, PGW provided a response to Set III-4. (*See Ex. I*). All other allegations in this paragraph are denied as stated. By way of further response, the March 19, 2020 order and April 9, 2020 responses speak for themselves.

8. Admitted in part, denied in part. All allegations in this paragraph are admitted except the term "Complaints," should read "Complainants".

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted in part, denied in part. It is admitted a hearing in this proceeding was held

on October 21, 2020 and ALJ Heep directed PGW to serve Complainants with remaining documents to Set III-4 within two weeks and gave Complainants seven days after that to review and supplement their exhibits and testimony. (Tr. at 7-9, 161-163). All other allegations in this paragraph are denied.

13. Admitted in part, denied in part. All allegations in this paragraph are admitted except PGW's allegation that the responsive documents concerning the February 2018 incident relate to "the safe operation of the plant." By way of further responses, Complainants aver responsive documents should relate to "plant safety and operations matters."

14. Admitted in part, denied in part. It is admitted Judge Heep issued an Order on November 24, 2020. All other allegations in this paragraph are denied as stated. By way of further response, the document speaks for itself.

15. Admitted in part, denied in part. It is admitted counsel for Complainants sent a responsive email on November 25, 2020. All other allegations in this paragraph are denied as stated. By way of further response, the email speaks for itself.

16. Admitted in part, denied in part. It is admitted on December 18, 2020, Complainants served Wayne Rauceo's Supplement Direct Testimony to PGW's late-filed answers to Set III-4. It is further admitted, on December 18, 2020, PGW served Brian McGuire's surrebuttal testimony regarding the October 15-16, 2020 valve incident at the Passyunk Plant, which occurred after discovery deadlines expired and as such raised for the first time during the hearing on October 21, 2020. All other allegations in this paragraph are denied as stated.

17. Employees are without knowledge sufficient to form a belief as to the truthfulness of the allegations in this paragraph. To the extent a response is require, denied.

II. LEGAL STANDARD

18. Admitted.

19. Conclusion of law for which a response is not required. To the extent a response is required, denied. The document/case speaks for itself.

20. Admitted in part, denied in part. It is admitted as a matter of public policy, the Commission may exclude “any oral or documentary evidence” that is irrelevant or immaterial. It is further admitted the quoted text is a true and correct statement of the text in cited cases as noted in footnote 7. All other allegations in this paragraph are denied as stated. By way of further response, the Commission is a Commonwealth agency and as such “shall not be bound by technical rules of evidence at agency hearings, and all relevant evidence of reasonably probative value may be received.”⁷

21. Admitted.

22. Admitted. By way of further response, “witnesses must have first-hand knowledge of the subject matter on which they are testifying for that testimony to be admissible.”⁸

III. ARGUMENT

23. In his supplemental direct testimony, Mr. Rauceo testified to what he has first-hand knowledge of based on documents produced by PGW in his federal lawsuit related to the February 2018 incident and other plant safety and operations matters raised in the PUC matter. Specifically, Formal Complaint paragraphs 11, 13, 15, 17 and 18 are addressed in the confidential, non-redacted, non-privileged portions of the outside law firm investigative report. In this report, Mr. McGuire made statements that are different from his testimony given in this case. Thus, Mr. Rauceo’s testimony neither implicates inadmissible lay legal opinion testimony

⁷ Gibson v. WC.A.B., 861 A.2d 938, 947 (Pa. 2004)(citation omitted)

⁸ *Id.*

nor attorney work product. It does involve confidential information for which he had personal knowledge of, and the parties have a confidentiality stipulation provision in the federal lawsuit (§ 7), which permits documentary and testimony disclosures in this matter. Counsel for PGW in this PUC matter and the undersigned have reached an agreement on how to address introduction of such confidential/proprietary evidence in this PUC matter. (See PGW's Mot. Limine at 7 n.12).

24. Employees re-aver and incorporate by reference their response to paragraph 23, *supra*. Moreover, PGW provided, using its term "lay legal opinion", testimony throughout this proceeding including, but not limited to, in its supplemental responses of April 9, 2020 and November 4, 2020 and at the hearing on October 21, 2020. For example, Messrs. Snyder and McGuire stated PGW "believes" there are "no responsive documents" with regards to Set III-4. (See Ex. I) PGW did not identify neither Mr. Snyder nor Mr. McGuire as its representatives for PGW in this matter. In substance, they are fact witnesses. Mr. Rauceo in his supplemental direct testimony is responding to Mr. McGuire's statements that "no responsive documents are available relating to the safe operation of the plant." (*Id.*) However, PGW in its instant motion seeks to distinguish Mr. Rauceo's statements that responsive documents for which he has personal, first-hand knowledge of, do exist as being inadmissible lay legal opinion. At best, PGW seeks to advance contradictory argument related to the same issue. At worst, PGW seeks to have it both ways.

25. Employees re-aver and incorporate by reference their statements in Preliminary Statement at 1-2, *supra*.

26. Counsel for Complainants provided PGW with an unredacted version of the confidential April 19, 2018 letter as Exhibit 5 in their initial response to PGW's motion in limine

on October 20, 2020.⁹ Counsel for Complainants also provided PGW with the redacted version of the confidential April 19, 2018 letter with an email thread explaining the reason for the redaction on October 22, 2020. Thus, as early as October 22, 2020, both parties had an opportunity to be heard on any possible due process considerations and could have addressed their opinions regarding the April 19, 2018 McGuire letter, *inter alia* and their admissibility and discoverability in the PUC matter. PGW did not raise any objections in October 2020 until PGW counsel in the federal lawsuits contacted the undersigned in late December 2020.

27. Once again, PGW wants it both ways. In its Supplemental Rebuttal Testimony of Daniel J. Cassidy dated January 8, 2021, PGW provides documents that are also from the federal lawsuits. Specifically, PGW Exhibit DJC-1 documents are Bates labelled in the bottom right hand corner with A-PGW000179-A-PGW000185, which are labels from the federal lawsuit. PGW and Employees have an agreement in the federal lawsuit that allows for the use of documents from those cases in the “concurrent PUC matter”. (Ex. II, ¶ 7)

28. Employees re-aver and incorporate by reference their statements in Preliminary Statement, at 2-4, *supra*. The March 19, 2020 order speaks for itself, and what it says is different from PGW’s interpretation. The order clearly says “plant safety and operations matters.” The Time and Labor Management (TLM) and the C-Cure security badging systems absolutely have to do with the operations of the Passyunk plant. The April 19, 2018 letter clearly identifies time periods inclusive of February 2018. The “subsequent complaints of retaliation” noted in the April 19, 2018 letter includes the February 23, 2018 incident, which the confidential, unredacted portions of the outside law firm’s investigative report also addresses. Further, the February 2018

⁹ As agreed upon by counsel for PGW and Complainants, proprietary and non-proprietary versions of the October 20, 2020 Response in Opposition to the Motion in Limine have been submitted to the Secretary’s Bureau to correct Employees’ prior publication errors.

incident involved Mr. McGuire not having his badge when returning to the Plant off hours and gaining access to the Plant, *inter alia*. His statements as discussed in the confidential, unredacted portions of the outside law firm's investigative report differ from Mr. McGuire's statements in this action. Thus, by personal, first-hand knowledge, Mr. Rauceo knows facts supporting the existence of relevant documents to Set III-4 that were not produced in this matter by PGW.

29. Employees re-aver and incorporate by reference statements in Preliminary Statement, at 5-6, *supra*; and paragraphs 23, 26 and 28, *supra*.

30. Employees re-aver and incorporate by reference statements in Preliminary Statement, at 6, *supra*; paragraphs 23 and 28, *supra*; and Ex. II.

31. Employees re-aver and incorporate by reference statements in Preliminary Statement, at 2-4, *supra*; and paragraphs 23 and 28, *supra*.

32. Employees re-aver and incorporate by reference statements in Preliminary Statement, at 6, *supra*. In their Formal Complaint paragraphs 15 and 17, Employees aver violations of plant safety and operations protocols based on promotion and protection of unqualified persons including, but not limited to, Brian McGuire (Plant Manager)(Caucasian) and David Martinez (white Hispanic)(Operations General Supervisor). Mr. Rauceo's Exhibits IV and VI as well as the confidential, non-redacted, non-privileged portions of the outside law firm's investigation reports support Employees' averments.

33. Agreed.

34. PGW twice had an obligation to produce documents responsive to Employees' Request No. 4 in this matter. Twice it failed to do so with the exception of Attachment A in its November 4, 2020, Set III-4 late-filed answers. Counsel for PGW and Complainants recognized some information including, but not limited to, confidential documents and testimony would be

responsive to the “concurrent PUC matter” as the federal lawsuit. Thus, their confidential stipulation and 502(d) order included specific, negotiated provision(s) for such. Despite these negotiations, PGW failed to produce relevant, material, discoverable and admissible documents and things that for the most part existed prior to the initiation of this PUC matter and for which Complainants only learned of through the federal lawsuits. PGW’s failure should not result in denial of Complainants’ right to present a full and complete record in this proceeding.

IV. CONCLUSION

For the reasons set forth above, Complainants respectfully request ALJ Heep rule in favor of Complainants and against PGW by DENYING their Motion in Limine and allowing all Contested Portions of Employee Rauceo’s statements admitted into the evidentiary record and considered in this proceedings.

Respectfully submitted:

LAW OFFICE OF KARIN M. GUNTER

Dated: January 12, 2021

By: /s/ Karin M. Gunter,
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**Response of Philadelphia Gas Works
to the Interrogatories/Request for Production of Documents
of the Complainants, Set III in
Docket No. C-2019-3013933**

Request: Complainants' – Set III-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.

Response:

PGW filed objections to Set III-4, Complainants filed a Motion to Compel and on March 19, 2020, Administrative Law Judge Heep directed that PGW need only provide documents related to the alleged February 2018 incident identified in paragraph 11 of the Formal Complaint as they concern the safe operation of the plant. No responsive documents are available.

Response provided by: Raymond Snyder

Dated: April 9, 2020

Supplemental Response:

PGW continues to believe that no responsive documents are available relating to the safe operation of the plant. However, in the spirit of cooperation in this litigation, PGW is providing security logs for February 21-23, 2018. They are included as Attachment A.

Response provided by: Brian McGuire

Dated: November 4, 2020

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

WAYNE RAUCEO,	:	
	:	CIVIL ACTION
<i>Plaintiff</i>	:	
	:	
v.	:	
	:	
	:	
PHILADELPHIA GAS WORKS	:	NO. 2:19-cv-04279-GJP
	:	
<i>Defendant.</i>	:	
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CONFIDENTIALITY STIPULATION AND 502(d) ORDER

The parties and their counsel agree as follows:

1. “Confidential Information” shall include, but is not limited to, Confidential Documents and Confidential Testimony as herein defined. It shall also include any item of business, medical, personnel, employment information, trade secret, proprietary information, HIPAA-protected information, financial reporting, or other confidential commercial information so designated, in good faith, during the course of this litigation.

2. “Document” refers to all written, recorded or graphic matter of any nature whatsoever, including documents produced by any party or on behalf of any party to this action to another party and/or the party’s representative to this action, whether pursuant to formal discovery or by informal agreement. “Document” shall exclude any written, recorded or graphic matters of any nature whatsoever that are protected by an evidentiary privilege unless that privilege is specifically waived or released by the producing party.

EXHIBIT “II”

3. “Confidential Document” refers to all documents which the producing party, in good faith, deems to contain confidential medical and/or employment information or such other information which is not publicly available.

4. Documents may be designated as “confidential” either by placing the word “Confidential” upon the document itself, or by stating in writing, at the time any document is delivered, that it is to be treated as confidential and specifically identifying the document by Bates number. For Confidential Documents that do not have a Bates number, the written statement of confidential designation shall serve the same function as a Bates number.

5. “Confidential Testimony” refers to any testimony, testimony regarding confidential documents and/or written discovery responses provided as part of this lawsuit.

6. Testimony may be designated as “confidential” by indicating on the record at which the testimony is taken, or in writing when the testimony is delivered to a party, that the testimony is/was confidential.

7. No party receiving any Confidential Information (including that party’s representatives, e.g., attorneys, experts, deponents or witnesses) shall use any Confidential Information, or any information contained therein, for any purpose other than the prosecution or defense of this action, nor shall any Confidential Information, or any information contained therein, be disclosed by any party or party’s representatives except as provided herein. This provision specifically excludes a party’s use of Confidential Information in the concurrent Formal Complaint matter against Defendant PGW alleging safety violations and other concerns at the PGW Passyunk Gas Processing Plant before the Pennsylvania Public Utility Commission (“PUC”). Confidential Information may be used in the concurrent PUC matter to the extent the information, testimony

and/or documents were also requested through discovery and approved by the Presiding Officer in that matter.

8. Except with prior written consent of the producing party, or as set forth in Paragraph 7, no Confidential Information may be disclosed to any person other than the following:

- A. Counsel for any party in this action, or persons regularly employed in the offices of counsel, and any in-house attorney of a corporate party, or persons acting at the direction of an in-house attorney;
- B. All parties in this action and the PUC matter;
- C. Any judge assigned to this case and the PUC matter, including his or her clerks and staff;
- D. Experts retained by a party with whom counsel for such party determine it is necessary to consult in the prosecution or defense or any claim in this action and the PUC matter;
- E. Persons noticed for depositions or designated as trial witnesses and their counsel, to the extent deemed necessary by counsel for any of the parties in order to prepare such witnesses;
- F. Persons identified in a Party's Rule 26 disclosures and Pre-Hearing Conference Memorandum; Direct, Rebuttal and Surrebuttal Testimony in the PUC matter;
- G. Authors, addressees or persons copied on the document at issue; and
- H. Deposition and trial court reporters.

9. Except for persons identified in Paragraph 8, no person authorized under this Stipulation to receive access to Confidential Information shall be granted access to it unless and until such person has read this Stipulation and agrees in writing to be bound by its provisions as set forth in the form attached as Exhibit A. Each party shall be responsible for maintaining a list of all persons to whom it discloses Confidential Information, as well as copies of the Agreement signed by them.

10. If a receiving party objects to the designation of a document, deposition transcript or testimony, or any portion thereof, as confidential, it must notify the producing party of this objection in writing and identify the reasons in support of its objection. The producing party shall respond to such objection in writing within twenty (20) days by either withdrawing the confidential classification, or providing justification for refusing to do so. Upon receipt of a notification of refusal, the receiving party may apply to the Court for an order removing the confidential classification of the particular document or information in question. Until the issue is finally determined by the Court or, if an immediate interlocutory appeal, upon determination of such appeal, the document and information therein shall be treated as confidential.

11. Confidential Information may be copied, and summaries, digests or abstracts may be made of them. However, all such copies, digests, abstracts and summaries shall be marked Confidential and shall be subject to the provisions of this Stipulation.

12. Confidential Information may be designated for use at trial, offered into evidence in open court, or attached to a court filing, provided the receiving party has had an opportunity to seek a protective order.

13. Either party may, in good faith, designate, in whole or in part, interrogatory answers, responses to requests to admit, deposition testimony, or deposition exhibits as Confidential Information.

14. The production of privileged or work-product protected documents, electronically stored information (“ESI”), or information, whether inadvertent or otherwise, is not a waiver of the privilege or protection from discovery in this case or in any other federal or state proceeding. This Stipulation and Order shall be interpreted to provide the maximum protection allowed by Federal

Rule of Evidence 502(d). It is provided, however, that this Stipulation shall not prevent any party from moving to compel production of allegedly privileged documents on grounds other than their inadvertent production. Upon a request from a party which has inadvertently produced any document which it believes may be subject to the attorney-client or attorney work-product privilege, the opposing party shall immediately return the identified document(s) to the producing party. However, the opposing party will be permitted to prepare a record for its own use that identifies the date, author, addresses, and topic of the document and such other information as is reasonably necessary to identify the document and describe it to the Court in a motion to compel. This record of the identity and nature of a document may not be used for any purposes other than preparing a motion to compel in this action.

15. Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review of documents, ESI, or information (including metadata) for relevance, responsiveness, and/or segregation of privileged and/or protected information before production.

16. Nothing in this Stipulation imposes any restrictions on the use or disclosure by a party or witness of any document, material or information legitimately obtained by such party or witness independently of the discovery proceedings in this action or the PUC matter. However, a party against whom such documents, material or information alleged to have been obtained independently shall have the right to designate those documents, material and/or information as "confidential" and subject to the provisions of this Confidentiality Stipulation, if those documents would otherwise be restricted based on this Stipulation, paragraph 1, *supra*.

17. Nothing in this Stipulation affects any privilege or right that any producing party might otherwise have concerning the discovery of any materials sought by any other party.

18. Within thirty (30) days of the conclusion of this action, all Confidential Information in the possession of any party, counsel, retained expert or other person described in paragraph 8, shall be destroyed promptly or returned to the producing party, unless otherwise specifically agreed in writing. Upon the request of the producing party, attorneys for the receiving party shall provide a letter affirming compliance with the requirements of this paragraph.

19. This Stipulation may be modified at any time in writing by the parties through their counsel.

BY: /s/ Karin M Gunter

BY: /s/ Brett A. Zahorchak

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Date: 8/10/2020

Date: 8/11/2020

BY THE COURT:

/s/ Gerald J. Pappert 8/12/20

PAPPERT, J.