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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, for electronic filing purposes, the NON-PROPRIETARY VERSION Response in Opposition to Philadelphia Gas Works' Motion in Limine filed on October 19, 2020 along with Certificate of Service of Complainants Dwayne Ackie, Miguel Chavarria, Jr., Maurice Goodwin and Wayne Rauceo 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**

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

**CERTIFICATE OF SERVICE**

I do hereby certify that service of a true and correct copy of herein NON-PROPRIETARY VERSION Response in Opposition to PGW's Motion in Limine of Complainants Dwayne Ackie, Miguel J. Chavarria, Jr., Maurice Goodwin and Wayne Rauceo was made on the Presiding Officer and below counsel for Philadelphia Gas Works via electronic service:

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Honorable Darlene Heep  
Pennsylvania Public Utility Commission  
Office of Administrative Law Judge  
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/s/ Karin M. Gunter  
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Date: January 12, 2021

**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 TESTIMONY SUBMITTED BY COMPLAINANTS**

Dwayne Ackie (“Ackie”), Miguel J. Chavarria, Jr. (“Chavarria”), Maurice A. Goodwin (“Goodwin”) and Wayne Rauceo (“Rauceo”)(collectively “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 Direct Testimony (“EE Stmt No. 1”) and Surrebuttal Testimony of Dwayne Ackie (“EE Stmt No. 1-SR”) as well as the Direct Testimony of Wayne Rauceo (“EE Stmt No. 4”)(collectively “Contested Portions”). Employees oppose PGW’s herein motion based on affirmative defenses of truth, waiver, unclean hands and case law. The contested portions relate almost exclusively to the February 2018 incident involving PGW Passyunk Plant Manager Brian McGuire (“McGuire”). (Formal Compl. ¶11). A true and correct copy of the Formal Complaint is attached as Exhibit “1”.

**I. BACKGROUND**

1. Admitted in part, denied in part. It is admitted Ackie, Chavarria, Goodwin and Rauceo (collectively “Complainants”) 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

**NON-PROPRIETARY VERSION  
WITH CONFIDENTIAL EXHIBIT “5” REMOVED**

further response, the document speaks for itself.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted in part, denied in part. It is admitted the hearings in this proceeding were scheduled for October 20-22, 2020 with the first day of hearings cancelled at the joint request of the parties and approval of ALJ Heep. Employees are without knowledge sufficient to form a belief as to the truthfulness of the remaining allegations in this paragraph. To the extent a response is required, denied.

11. 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**

12. Admitted. By way of further response, the Commission's regulations also give presiding officers authority to "exclude **irrelevant, immaterial** or unduly repetitive evidence . . ." (emphasis added).<sup>1</sup>

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

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<sup>1</sup> 52 Pa. Code § 5.483(a)

14. Conclusion of law for which a response is not required. To the extent a response is required, denied. By way of further response, the Rule speaks for itself.

15. Admitted in part, denied in part. It is admitted, the Commission is an administrative agency having quasi-judicial functions and is not limited by the strict rules relating to the admissibility of evidence. It is also admitted the Pennsylvania Supreme Court affirmed the “hearsay rule is not a mere technical rule of evidence, but a fundamental rule of law which *ought to be* followed by agencies when facts crucial to the issue are sought to be placed on the record and an objection is made thereto.”<sup>2</sup> (emphasis added) All other allegations in this paragraph are denied as stated.

By way of further response, in the case law cited by PGW, the courts have consistently stated the rules of evidence “should be’ or “ought to be” followed by administrative agencies regarding crucial issues on the record.<sup>3</sup> However, the courts have not stated that the rules of evidence “must” or “shall” be followed. Specifically, the courts have consistently forbade agencies from deciding cases “wholly on hearsay evidence,” but have allowed the admissibility of hearsay evidence “not inconsistent with the undisputed facts” in cases where circumstantial evidence is used to establish the case.<sup>4</sup>

16. Conclusions of law for which a response is not required. To the extent a response is required, denied as stated. The documents/cases speak for themselves.

By way of further response, the cases cited by PGW once again turn on the key word “solely”. For both the testimony of Ackie and Rauceo, these employees were either present on

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<sup>2</sup> Gibson v. WC.A.B., 861 A.2d 938, 947 (Pa. 2004)(citation omitted)

<sup>3</sup> Pittsburgh & L.E.R. Co. v. Penna. P.U.C., 85 A.2d 646, 653 (Pa.Super. 1952)(“should be”); Bleilevens v. State Civil Serv. Comm., 312 A.2d 109, 111 (Pa. Commw. 1973)(“ought to be”); and Gibson, 861 A.2d at 947 (“ought to be”)

<sup>4</sup> Bleilevens, 312 A.2d at 111.

the evening of February 23, 2018 or actually viewed the video footage of events occurring on February 23, 2018. Thus, the contested portions of their testimony is not “solely” based on hearsay. Furthermore, as is discussed below, PGW has unclean hands since Employees requested “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.” (Ees’ Mot. to Compel Prod. of Docs. Nos. 3-8, Req. No. 4, Exhibit “2”). ALJ Heep by order dated March 19, 2020 limited scope of documents to “plant safety and operations matters” further requiring PGW to “provide responses/documents no later than April 9, 2020.” (Exhibit “3”) PGW failed to produce relevant responsive documents, which Employees later learned.

### **III. ARGUMENT**

17. Complainant Ackie provides competent, credible and corroborated direct and surrebuttal testimony regarding the February 23, 2018 incident when Passyunk Plant Manager McGuire returned to the plant after shift.<sup>5</sup> The majority of Ackie’s testimony is corroborated with his personal journal notes, Passyunk Plant schedule affirming his work shift on February 23, 2018 from 6:00 p.m. to 6:00 a.m. and his personal knowledge of the events and plant operations policies for after-hours access to the plant.<sup>6</sup>

18. Complainant Rauceo also provided competent, credible and corroborated direct testimony regarding the February 23, 2018 incident when Passyunk Plant Manager McGuire returned to the plant after shift, since he viewed the security video of a portion of the events of

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<sup>5</sup> EE Stmt No. 1 at 10:20 – 17:11.

<sup>6</sup> EE Stmt No. 1 at 1:1 – 2:20 (Ackie’s five years of employment at Passyunk Plant and shift work scheduling including after-hours work).

that evening.<sup>7</sup> Thus, the crucial facts of the incident that occurred on February 23, 2018 do not “solely” turn on hearsay evidence.

19. Furthermore, Complainants specifically requested PGW to produce documents and things related to the February 2018 matter. (See paragraph 16, *supra*; Ex. 2). ALJ Heep specifically ordered PGW to provide “responses/documents” to this request, however limiting the responses/documents to “plant safety and operations matters.” (Ex. 3)

20. In response to this document production request, PGW responded by its witness Raymond Snyder (“Snyder”) “No responsive documents are available.” (Exhibit “4”). This, Complainants learned, is not true and wasn’t true at the time Snyder responded.

21. On or about April 19, 2018 as a result of an investigation related to the discrimination complaint filed by Chavarria in December 2017, which forms the basis of his and the other employees discrimination lawsuits (See paragraph 18 of the Formal Complaint, Ex. 2), McGuire received a letter from PGW Human Resources finding he in fact “disregarded security protocols and bypassed the Plant’s C-Cure system” *inter alia*. (See Exhibit “5”) PGW itself stated that this and other systems at the Plant were “crucial to PGW’s operations and impact payroll, security and regulatory requirements. (*Id.*). PGW in general and McGuire in particular knew of this responsive, relevant document and failed to produce it.

22. Furthermore, Ackie in his employment discrimination lawsuit against PGW requested all documentation from Sovereign Security regarding the February 23, 2018 incident via subpoena, *inter alia*. (See Exhibit “6”). On October 9, 2020, Complainants learned “all daily security logs, security incident reports and all documents are retained by the Philadelphia Gas Works.” (*Id.*)

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<sup>7</sup> EE Stmt No. 4 at 7:17-25.

23. Thus, the reason “these allegations . . . are based entirely on uncorroborated hearsay” (Mot. in Limine ¶ 18) is because PGW has unclean hands and failed to provide truthful and complete disclosures. PGW should not now be allowed to benefit from its deliberate deception to this agency and Complainants.

24. Employees therefore reasonably believe PGW waived any right to raise the issues and argument made in its Motion in Limine.

#### **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 Ackie and Rauceo’s statements admitted into the evidentiary record and considered in this proceedings.

**Respectfully submitted:**

**LAW OFFICE OF KARIN M. GUNTER**

Dated: October 20, 2020

By: /s/ Karin M. Gunter,  
Karin M. Gunter, Esquire  
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ATTORNEY FOR COMPLAINANTS

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DWAYNE ACKIE, MIGUEL J. CHAVARRIA, JR.,	:	
MAURICE A. GOODWIN and WAYNE RAUCEO,	:	
Complainants,	:	No.:
	:	
v.	:	
	:	
PHILADELPHIA GAS WORKS,	:	
Respondent.	:	

**FORMAL COMPLAINT**

**Preliminary Statement**

This complaint is being brought by current employees of Respondent Philadelphia Gas Works ("PGW") at its Passyunk Gas Processing Plant averring safety violations and other concerns including, but not limited to, persistent, insidious race, color and/or national origin discrimination of brown/black employees.

**Complainants Information**

1. Dwayne Ackie ("Ackie")(naturalized African American of Trinidadian descent): 5000 Woodbine Avenue, Apartment 301, Philadelphia, PA 19131, (215) 909-1958 and montaguefrog@hotmail.com. He is a Senior Process Operator at the Passyunk Plant.
2. Miguel J. Chavarria, Jr. ("Chavarria")(African American of Costa Rican descent): 131 E. Durham Street, Philadelphia, PA 19119, (267) 978-1149 and mchavarriajr@yahoo.com. He is a Working Foreman at the Passyunk Plant.
3. Maurice A. Goodwin ("Goodwin")(African American): 2111 Bridge Street, Philadelphia, PA 19124, (267) 259-2418 and Jesusgoodkid4@gmail.com. He is a Senior Process Operator at the Passyunk Plant.

4. Wayne Rauceo ("Rauceo")(naturalized African American of Trinidadian descent):  
6123 Greene Street, Philadelphia, PA 19144, (267) 770-6744 and wrauceo@gmail.com. He is a  
Operation Supervisor at the Passyunk Plant.

#### **Counsel for Complainants**

5. Karin M. Gunter, Esquire: Law Office of Karin M. Gunter, 85 Old Cedarbrook Road,  
Wyncote, PA 19095, (215) 548-9992 (ph), (215) 548-7277 (facsimile), kgunterlaw2@gmail.com  
and PA ID No.: 79852.

#### **Respondent Information**

6. Philadelphia Gas Works, 800 W. Montgomery Avenue, Philadelphia, PA 19122,  
PUC Utility Code: 125042 and Utility Type: Gas.

#### **Reason for Complaint**

Complainants, as current employees of Respondent at the Passyunk Gas Processing  
Plant ("Passyunk Plant"), have concerns regarding safety violations and other concerns  
regarding management at the plant:

7. During the past winter vaporization seasons (i.e., November – March), plant  
personnel have manipulated the readings of a temperature indicator (TE1019) to reduce the  
frequency of alarms and avoid the labor of insuring that the vaporization operation is safe. The  
vaporization process involves converting liquid natural gas (LNG) to vapor natural gas (VNG).  
LNG enters the system at -260 °F and is vaporized at a temperature between 40 °F and 80 °F.  
This process is achieved by indirectly heating the LNG. When the gas is vaporized, it is sent to  
the VNG common header, distribution line and the natural gas cage, an area where pressure is  
reduced. After the pressure is reduced, the gas is sent to the end user. TE1019 is downstream  
of the VNG common header and is placed in order to insure that the line is free of unwanted  
elements. During winter operations TE1019 may give a low temperature alarm due to external  
coldness. It is the plant personnel's responsibility to check the area and insure that the alert is  
due to external temperatures and not the presence of volatile LNG. To avoid frequent checking  
during the shift, irresponsible parties have wrapped a steam lance around the temperature  
indicator, artificially raising the temperature and negating the early warning capabilities of  
TE1019. By silencing the alarm, a worker can leave the Central Control Room or the property  
without drawing attention.

8. Similarly, one of the current LNG tanks has structural cracks that require  
engineering and other professional attention. However, PGW Gas Processing and/or Passyunk  
plant management has decided to weld the structurally cracks instead of providing structurally  
sound repairs. Similarly, Passyunk plant managements welded cracks to the boilers, which  
also pose potential for future mishaps and current unsafe conditions at Passyunk plant.

9. In September 2019, Ryan O'Donnell ("O'Donnell")(Caucasian), an Operation Supervisor, left the plant during his shift without telling anyone and took a company radio with him. During his away from the plant, he left the company radio at a Rite Aid at Broad Street and Snyder Avenue. A Rite Aid store employee used the radio and began calling the plant, which is how plant management and employees learned O'Donnell left the plant without permission and left the PGW radio there. In addition to his unauthorized leaving the plant, his actions were a safety violation since an Operation Supervisor is required to be at the plant at all times.

10. This action is not the first time O'Donnell left the Passyunk plant property without proper notification of plant personnel. On September 11, 2018, O'Donnell left the property in a company vehicle and was involved in a car accident. He did not inform the duty process operator or the working foreman about his whereabouts. Once again, had an emergency occurred at the plant, staff would have wasted valuable seconds looking for a missing member of the team.

11. In February 2018, Passyunk plant General Manager Brian McGuire ("McGuire")(Caucasian) snuck onto the property close to midnight without using his employee ID or informing the duty supervisor that he was on the property. He convinced the security guards to open the gates. Once inside, he turned off the lights of a company vehicle and snuck into a Central Control room. Entering the property without proper credentials is a safety violation and contributes to a culture of rule bending. The unsanctioned entry into the inner facility of a natural gas plant was not the most dangerous element of this violation. Driving a vehicle while inebriated, without lights, during the movements of trucks full of LNG could have caused an accident that would have endangered a large part of the City. PGW Gas Processing and other Passyunk plant personnel knew McGuire's actions were dangerous, unacceptable and hazardous. Two security officers involved in the security breach were terminated. However, McGuire, who catalyzed the event, remains in a leadership position.

12. In 2017, Passyunk plant General Supervisor David Martinez ("Martinez")(Caucasian Hispanic) demanded the operation supervisor and senior process operator on shift at the time follow him to Philadelphia International Airport and return his empty car to the PGW employee lot while he was on vacation. The Passyunk plant was left without two vital employees during essential operations.

13. On December 25, 2017, Christmas day, Ackie worked the day shift from 6:00 a.m. to 6:00 p.m. Foreman, Jose Ortiz ("Ortiz")(Caucasian Hispanic) also worked Christmas day 2017 on the day shift. Foreman Michael Tomczak ("Tomczak")(Caucasian) was scheduled to work on the evening shift from 6:00 p.m. to 6:00 a.m. However, when Ortiz checked out at 6:00 p.m., Tomczak was not present. Based on PGW policies, no foreman is to leave when a relieving foreman is not present. Such an offense is called job abandonment. Despite knowing this policy, on December 25, 2017, Ortiz left the plant with Tomczak not being present to relieve him. On December 25, 2017, O'Donnell and Goodwin worked the night shift from 6:0 p.m. to 6:00 a.m. Despite not being present at 6:00 p.m., Tomczak's time card showed him as being clocked in at 6:00 p.m. O'Donnell clocked Tomczak in on December 23, 2017 at 6:00 p.m., which amounts to thief of time and other work related offenses. For job abandonment, thief of time and other work related offenses committed by Ortiz, Tomczak and O'Donnell, the appropriate PGW disciplinary action should have been suspension and/or termination. None of the three received such disciplinary actions.

14. In the summer of 2016, McGuire, Martinez and O'Donnell committed another safety

violation involving an auto accident within the Passyunk plant. O'Donnell crashed a company vehicle in front of the CCTV building. He along with McGuire and Martinez gained access to plant's security video in order to insure that the accident was not caught on camera. Once they were sure the crash was not on the security video, they failed to report the accident to the proper authorities and removed the incriminating pages from the security log book.

15. The promotion and protection of employees who violate safety protocols is not the only evidence of the misplaced priorities of the PGW Gas Processing and Passyunk plant leadership.

16. On March 22, 2016, the public was deceived. The release of natural gas at Passyunk plant was not controlled as reported to the media. The truth is that a faulty override valve at 0-30 Gate Station allowed high pressure gas to enter Passyunk plant. This high pressure gas flowing through on above ground piping, exceeded the set point on the safety valve causing the valve to lift. The release gas migrated throughout the plant and was evident in the LNG control room. The LNG control room housed a 480V electrical bus. One shudders to think how many near misses the City will suffer before the combination of inexperience, recklessness and lack of accountability cause the unthinkable to happen.

17. The samples of irresponsible and dangerous behaviors mentioned in this letter are the result of rapid promotions and lack of experience, while more qualified and experienced racially protected class employees are not provided equal promotion opportunities. Martinez and O'Donnell have both received promotions without meeting posted job requirements. O'Donnell was promoted from shift supervisor to operations supervisor after four months. PGW's job listing states that an operations supervisor must have three to five years of experience as a shift supervisor. After spending about eighteen months as shift supervisor, Martinez was promoted to general supervisor, bypassing an entire rung on the Passyunk plant's ladder of responsibilities. Martinez did not spend one day in the position of Operation Supervisor. According to PGW's internal documents, one should have 3-5 years of experience as an Operations Supervisor before becoming General Supervisor. There is nothing in the work or education histories of Martinez or O'Donnell that can justify these drastic promotions. O'Donnell and Martinez do not have the educational background to understand the dangers of natural gas operation. They do not have enough work experience to appreciate the importance of adhering to procedures.

18. Finally, each complainant individually filed federal lawsuits in the U.S. District Court for the Eastern District of Pennsylvania against PGW, their employer, for race, color and national origin discrimination – retaliation, hostile work environment – continuing violations, disparate treatment and/or disparate impact. These action are docketed as 19-cv-4275 (Ackie), 19-cv-4279 (Rauceo), 19-cv-4428 (Chavarria) and 19-cv-4429 (Goodwin).

#### **Requested Relief**

19. Complainants seek enforcement of gas safety standards and correction of violations of such safety standards including, but not limited to, removal of unqualified management personnel and enforcement of fair and unbiased management promotions, enforcement actions (i.e., fines, etc) against PGW gas processing management for failure to follow safety protocols

and such other relief as the Commission deems just and proper.

**Protection from Abuse (PFA)**

20. There are no PFA orders that are currently in effect for any of the Complainants' personal safety or welfare.

**Prior Utility Contact**

21. This formal complaint is not an appeal from a decision of the PUC's Bureau of Consumer Services (BCS).

22. Complainants via their undersigned counsel has submitted correspondence on October 17, 2019 to PUC Chairwoman Gladys Brown Dutrieuille complaining of the same safety violations and other concerns, which was passed along to the Commissions Bureau of Investigation and Enforcement (I&E).

**Legal Representation**

23. See paragraph 5, *supra*.

Date: 10/23/19

**Respectfully submitted:**



Karin M. Gunter, Esquire

### Verification and Signature

I, Dwayne Ackie, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statement herein are made subject to the penalties of 18 Pa.C.s. § 4904 (relating to unsworn falsification to authorities).

  
\_\_\_\_\_  
Dwayne Ackie

10-22-19  
Date

I, Miguel J. Chavarria, Jr., hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statement herein are made subject to the penalties of 18 Pa.C.s. § 4904 (relating to unsworn falsification to authorities).

  
\_\_\_\_\_  
Miguel J. Chavarria, Jr.

10.23.2019  
Date

I, Maurice A. Goodwin, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statement herein are made subject to the penalties of 18 Pa.C.s. § 4904 (relating to unsworn falsification to authorities).

  
\_\_\_\_\_  
Maurice A. Goodwin

10/23/2019  
Date

I, Wayne Rauceo, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statement herein are made subject to the penalties of 18 Pa.C.s. § 4904 (relating to unsworn falsification to authorities).

  
\_\_\_\_\_  
Wayne Rauceo

10-22-19  
Date

**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	: : :	

**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  
PA Bar No.: 79852  
Law Office of Karin M. Gunter  
85 Old Cedarbrook Road  
Wyncote, PA 19095  
Phone: (215) 548-9992  
Fax: (215) 548-7277  
Email: Kgunterlaw2@gmail.com

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

v.

Philadelphia Gas Works

:  
:  
:  
:  
:  
:

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:

Karen O. Moury, Esquire  
Kristine E. Marsilio, Esquire  
Heather R. Olson, Esquire  
Eckert Seamans  
213 Market Street  
Harrisburg, PA 17101  
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Honorable Darlene Heep  
Pennsylvania Public Utility Commission  
Office of Administrative Law Judge  
801 Market Street, Suite 4063  
Philadelphia, PA 19107  
dheep@pa.gov

Graciela Christlieb, Esquire  
Philadelphia Gas Works  
800 W. Montgomery Avenue  
Philadelphia, PA 19122  
(215) 684-6164  
Graciela.Christlieb@pgworks.com

/s/ Karin M. Gunter

Karin M. Gunter, Esquire  
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Fax: (215) 548-7277  
Email: Kgunterlaw2@gmail.com

Date; March 13, 2020



Karin Gunter &lt;kgunterlaw2@gmail.com&gt;

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**Ackie et al v. PGW - Answer to Motion to Compel**

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Heep, Darlene &lt;dheep@pa.gov&gt;

Thu, Mar 19, 2020 at 11:20 AM

To: Lori Walter &lt;LWalter@eckertseamans.com&gt;, Karin Gunter &lt;kgunterlaw2@gmail.com&gt;

Cc: "Karen O. Moury" &lt;kmoury@eckertseamans.com&gt;, "graciela.christlieb@pgworks.com" &lt;graciela.christlieb@pgworks.com&gt;, "Raquel N. Guzman - Philadelphia Gas Works (raquel.guzman@pgworks.com)" &lt;raquel.guzman@pgworks.com&gt;

**COMPLAINANTS ' MOTION TO COMPEL ANSWERS AND DISMISS OBJECTIONS TO  
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS NOS. 3-8**

The Order will be sent from Harrisburg at some point. In the meantime, all parties are on notice and advised as follows:

1. That given the health directives currently in effect in the United States, all deadlines for submission of testimony are extended by 21 days.
2. That the hearing date will be rescheduled.
3. That counsel for the parties discuss and provide to the undersigned, no later than April 2, 2020, five proposed dates in July and August of 2020 for the hearing.
4. That the Motion is denied in in part and granted in part.
5. That Request Number 3 is over broad, and that Complainants have 3 business days to narrow the request to specific days or incidents and provide the modified

request to the Respondent.

6. That the Respondent provide responses to Request Number 3 to the Complainants within 14 days of receipt of the modified request.
7. That Requests for Production Requests 4 and 5 are limited to plant safety and operations matters and the Respondent provide responses/documents no later than April 9, 2020.
8. That for Request Nos. 6-9, Respondent provide the responses/documents no later than April 9, 2020.
9. Any requests for extension of time, and reason therefore, should be sent by email to the undersigned no later than 5 days prior to the deadline.
10. That the opposing party respond that there is no objection or clearly state the reasons for the objection to the extension within 2 business days of the request.

May you and your families stay well through all of this.

**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

**CONFIDENTIAL EXHIBIT “5”  
INTENTIONALLY REMOVED**

OCT 09 2020



SOVEREIGN  
SECURITY

October 5, 2020

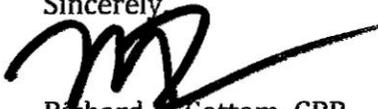
Karin M. Gunter, Esquire  
85 Old Cedarbrook Road  
Wyncote, PA 19095

Re: Dwayne Ackie v. PGW Subpoena

Dear Ms. Gunter,

Sovereign Security has no documentation regarding the incident involving Dwayne Ackie on February 22, 2018 and February 23, 2018 at the Philadelphia Gas Works Passyunk Gas Processing Plant. All Daily Security Logs, Security Incident Reports and all other documents are retained by the Philadelphia Gas Works. I apologize for the delay in response to the Subpoena.

Sincerely



Richard D. Cottom, CPP  
President

UNITED STATES DISTRICT COURT

for the

Eastern District of Pennsylvania

DWAYNE ACKIE,

Plaintiff

v.

PHILADELPHIA GAS WORKS, ET AL.

Defendant

Civil Action No. 19-cv-04275-GJP

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Sovereign Security, LLC

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

See Attachment

Place: 85 Old Cedarbrook Road Wyncote, PA 19095 Date and Time: September 30, 2020 at 1:00 p.m.

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place: Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 9/11/20

CLERK OF COURT

Kate Barkma

Signature of Clerk or Deputy Clerk

OR

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Karin M. Gunter, Esquire, who issues or requests this subpoena, are:

85 Old Cedarbrook Road, Wyncote, PA 19095, kgunterclaw@gmail.com (215) 548-9992

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**

**(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:
 

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

**DWAYNE ACKIE v. PHILADELPHIA GAS WORKS, et al.**  
**Civ.A.No.: 19-cv-04275-GJP**

**Documents, Electronically Stored Information or Objects:**

**All documents and things related to the investigation and/or reports made by Sovereign Security, LLC employees regarding, concerning and/or relating to any and all incidents that occurred on or about February 22, 2018 and February 23, 2018 at Philadelphia Gas Works Passyunk Gas Processing Plant involving PGW employees including, but not limited to, Brian McGuire.**

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_

on *(date)* \_\_\_\_\_

I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.: \_\_\_\_\_