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July 5, 2022

Via Electronic Filing

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

Re: Grays Ferry Cogeneration Partnership, and Vicinity Energy Philadelphia, Inc. v. Philadelphia Gas Works, Docket No. C-2021-3029259

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' ("PGW") Answer to the Motion of Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. to Dismiss Objections to the Interrogatories and Requests for Production of Documents, Set IX, and Compel Answers Thereto in the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Daniel Clearfield, Esquire

DC/lww
Enclosure

cc: Hon. Marta Guhl w/enc.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PGW's Answer to Complainants' Motion to Dismiss Objections to Set IX, upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Dated: July 5, 2022



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Grays Ferry Cogeneration Partnership, and	:	
Vicinity Energy Philadelphia, Inc.,	:	
Complainants,	:	Docket No. C-2021-3029259
	:	
v.	:	
	:	
Philadelphia Gas Works,	:	
Respondent.	:	

**ANSWER OF PHILADELPHIA GAS WORKS
TO THE MOTION OF GRAYS FERRY COGENERATION PARTNERSHIP
AND VICINITY ENERGY PHILADELPHIA, INC. TO DISMISS OBJECTIONS TO
THE INTERROGATORIES AND REQUESTS FOR PRODUCTION
OF DOCUMENTS, SET IX, AND COMPEL ANSWERS THERETO**

Pursuant to Section 5.342(g)(1) of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.342(g)(1), Philadelphia Gas Works (“PGW”) hereby files this Answer to the Motion of Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. (“Complainants”) to Dismiss PGW’s Objections to the Interrogatories and Requests for Production of Documents, Set IX, and Compel Answers Thereto (“Motion to Compel”).

PGW objects to the Complainants’ Interrogatories and Requests for Production of Documents, Set IX, Nos. 17, 18, and 19 (“Set IX Requests”) on a number of grounds: (1) unreasonably burdensome and requiring an unreasonable investigation; (2) overbroad and vague; and (3) not relevant. For the reasons discussed herein, PGW respectfully requests that the Commission sustain PGW’s Objections to the Complainants’ Set IX Requests and deny the Complainants’ Motion to Compel. In support thereof, PGW states as follows:

I. INTRODUCTION AND BACKGROUND

PGW was served with the above-captioned Formal Complaint on November 1, 2021. Complainants' filed the Direct Testimony of James L. Crist ("Crist") on April 22, 2022. PGW was served with the Complainants' Set IX Requests on June 21, 2022. PGW informed Complainants of its objections to these questions on June 24, 2022; no resolution resulted from that communication. On that same day, June 24, 2022, PGW served written Objections to the Complainants' Set IX Interrogatories.

On June 28, 2022, the Complainants filed their Motion to Compel requesting that PGW's Objections to the Set IX Interrogatories be dismissed and that PGW be compelled to provide responses. For the reasons discussed below, the Complainants' Motion should be denied.

II. LEGAL STANDARDS

In proceedings before the Commission, "a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." 52 Pa. Code § 5.321(c). It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. *Id.* In other words, it is ground for objection that the information sought does not appear reasonably calculated to lead to the discovery of admissible evidence.

Additionally, Section 5.361 of the Commission's regulations, 52 Pa. Code § 5.361(a), limits the scope of discovery as follows:

- (a) Discovery or deposition is not permitted which:
 - (1) Is sought in bad faith.
 - (2) Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or party.
 - (3) Relates to matter which is privileged.

- (4) Would require the making of an unreasonable investigation by the deponent, a participant or witness.

The Complainants bear the burden of demonstrating that their interrogatories meet the standard.¹

III. ANSWER AND ARGUMENT

A. Complainants' Set IX, Nos. 17, 18, and 19 are Unreasonably Burdensome and Require Unreasonable Investigation. 52 Pa. Code § 5.361(a).

The Complainants' Set IX Requests seek voluminous data related to specific PGW customers and No. IX-17 even requires PGW to produce each customer's load factor, which is not a data point but a calculation. As such, PGW objects to these requests as being unreasonable, burdensome, and requires unreasonable investigation. 52 Pa. Code § 5.361(a).

In the Motion to Compel, Complainants make the supposition that “no modern energy utility can function for long without knowing the annual consumption tendencies of its various *types of customers . . .*” Mot. to Compel at 3 (emphasis added). However, Complainants' Set IX Requests did not ask for the consumption tendencies of “types of customers.” Complainants Request No. IX-17 seeks consumption, load factor, and annual revenue “for *each* of [PGW's] industrial class customers.” *Id.*

The Complainants have not shown that these interrogatories would not create an unreasonable burden or require an unreasonable investigation by PGW. Specifically, Complainants' Request No. IX-17 requires PGW to: (1) identify its 50 largest customers; (2) pull from its records those customers' annual and peak demands; and (3) calculate each customer's individual annual load factors for four separate years (2018–2021). PGW does not maintain in the

¹ Pursuant to Section 332 of the Public Utility Code, as the moving party seeking answers to interrogatories, the Complainants bear the burden to prove that their interrogatories are within the permissible scope of discovery. 66 Pa. C.S. § 332(a).

normal course these data, despite Complainants' inappropriate assertion that PGW's objection "strains credulity." Mot. to Compel at 3. The Commission's rules limit discovery if the "discovery request requires that the answering party make a special study or analysis, if the study or analysis can[] reasonably be conducted by the party making the request." 56 Pa. Code § 5.361(b). To require PGW to conduct what is clearly a "special study" at this stage of the proceeding is clearly inappropriate and unfair and Complainants' unconcern about the unfairness and burdensomeness of yet another demand for a major study is what strains credulity.

For these reasons, PGW's objections to the Complainant's Set IX Requests should be sustained and Complainants' Motion to Compel should be denied.

B. Complainants' Set IX Requests are Vague and Overbroad

Request No. IX-17 seeks "data of annual consumption and peak day consumption, load factor, and annual revenue for each of the industrial class customers" This request is vague because neither "data" nor "industrial class customers" are defined terms in the definition section of Complainants Set IX Requests. PGW does not categorize industrial customers as a separate class because industrial customers can be served by various rate classes, such as Rate GS or Rate IT. Complainants' do not specify whether they seek information related to industrial customers taking service under PGW's Rate GS or Rate IT. Moreover, Complainants' do not specify the type of data to be provided (i.e., Dkth, Mcf, etc.). As a result, Request No. IX-17 is vague.

Request No. IX-18 is similarly vague because it fails to define the terms "data" and "customer class." Complainants' ask PGW to provide "customer class data." *See* Request No. IX-18. Complainants' wording of Request No. IX-18, however, is ambiguous because Complainants' do not clarify whether they seek data for a specific customer class or data for each one of PGW's rate classes.

Lastly, Request No. IX-19 is overbroad because Complainants' request PGW to "[l]ist all lines operated at 125 psig or greater."

For these reasons, PGW's objections to the Complainant's Set IX Requests should be sustained and Complainants' Motion to Compel should be denied.

C. Complainants' Set IX Requests are not relevant.

Complainants' Set IX Requests also seek information that is not reasonably calculated to lead to the discovery of admissible evidence because they are untimely. The Commission's rules provide that "[i]t is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." 52 Pa. Code § 5.321(c). Not only is the information sought by Complainants in their Set IX Requests inadmissible, but the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

Complainants' questions do not reference any part of PGW's rebuttal testimony or any new issue raised by PGW in that testimony. The Commission's rules prohibit a party from introducing rebuttal evidence that (1) "[i]s repetitive;" (2) "[s]hould have been included in the party's case-in-chief;" or (3) "[s]ubstantially varies from the party's case-in-chief." 52 Pa. Code § 5.243(e) (emphasis added).² Complainants do not specify how the information they seek in the Set IX Requests will lead to the discovery of admissible evidence other than broadly alleging that the information is needed to support their claims that "require, in part, an ability to compare PGW's treatment of its other customers to its demands of Vicinity." Mot. to Compel at 4. Information

² "The clear purpose of it [52 Pa. Code § 5.243(e)] is to avoid trial by ambush and the prevention of surprise can only be achieved if the parties are confined to the scope of their direct case." Pa. Pub. Util. Comm. v. UGI Utils., Inc., Docket No. R-00932862, 1994 Pa. PUC LEXIS 138, at *85 (May 23, 1994).

related to PGW's treatment of its other customers should have been included in the Complainants' case-in-chief.

For example, Complainants' case-in-chief compares the annual load factor and consumption of Grays Ferry with residential and commercial customers, only. *See* Statement JC-1 at 21. Specifically, in his Direct Testimony on behalf of the Complainants, Mr. Crist claimed that Grays Ferry's load factor is "70%, which is superior to the load profiles of residential or commercial customers" in an attempt to support his argument that Grays Ferry requires a special rate. Statement JC-1 at 21. Mr. Crist does not, however, compare Grays Ferry's load profiles to PGW's industrial customers, nor did Complainants propound discovery requests on PGW prior to filing Mr. Crist's direct testimony requesting data regarding the load profiles of the same. In fact, in response to PGW's Discovery Request Set V, No. 32, Mr. Crist admitted that he based his allegation that Grays Ferry's load factor is superior to PGW's residential and commercial customers on his experience that the typical load factors of commercial and residential customers are in the 40–60% and 25–40%, respectively.

PGW rebutted Mr. Crist's assertion in the Rebuttal Testimony of PGW witness John C. Zuk ("Zuk"). In his Rebuttal Testimony, Mr. Zuk explains that not only does load factor have little relationship to the costs to serve a transportation customer, but "[m]any of PGW's other industrial and commercial customers have comparable or even higher load factors." PGW St. 1R at 17. Complainants' have now initiated a fishing expedition through their Set IX Requests in order to try to obtain evidence to actually support the allegation Mr. Crist already made (and which PGW showed to be wrong) – information it should have reviewed prior to submitting the baseless assertions in Mr. Crist's testimony. Therefore, the information Complainants seek in their Set IX Requests are not reasonably likely to lead to the discovery of admissible evidence because

information related to other PGW customers' consumption, load factor, and/or revenue that was not included in Complainants' case-in-chief can no longer be considered admissible evidence. *See* 52 Pa. Code § 5.243(e).

Similarly, Complainants' Request No. IX-19 is neither relevant nor reasonably likely to lead to the discovery of admissible evidence because that request seeks information that Complainants should have requested prior to the submission of its direct testimony. In his Direct Testimony, Complainants' witness baldly asserted that GFCP/VEPI was deserving of a special rate because they were uniquely served by a high-pressure gas line. Complainants' St. No. 1 at 21. In his rebuttal testimony, Mr. Zuk pointed out that this assertion was again baseless, as PGW has several high-pressure gas lines throughout its system from which customers could be served. PGW St. No. 1R at 16. Now, Complainants are demanding that PGW produce the data that should have requested previously to determine whether its witness' assertion was factual: Request No. IX-19 requires PGW to "[l]ist all lines operated at 125 psig or greater and provide their usual operating pressure, and list customers served from each line, along with annual volumes for each customer." Again, this demand is not tied to any assertion in Mr. Zuk's testimony as it goes completely beyond simply asking for support for his rebuttal. In fact, Complainants never even requested support for Mr. Zuk's rebuttal assertion. Accordingly, this request too is untimely and not legally relevant because it seeks information that should have been included in Complainants' case in chief.

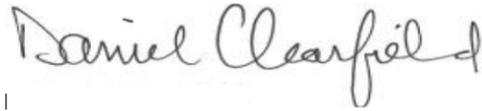
For these reasons, PGW submits that its objection to the Complainant's Set IX Requests should be sustained and Complainants' Motion to Compel should be denied.

IV. CONCLUSION

For the foregoing reasons, PGW respectfully requests that its Objections to the Complainants' Set IX Requests be sustained, and that the Complainants' Motion to Dismiss Objections and Compel Answers to their Set IX Requests be denied.

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Respectfully submitted,



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