

COMMONWEALTH OF PENNSYLVANIA



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April 26, 2023

**Via Electronic Mail Only**

The Honorable Eranda Vero  
The Honorable Arlene Ashton  
Office of Administrative Law Judge  
Pennsylvania Public Utility Commission  
801 Market Street  
Suite 4063  
Philadelphia, PA 19107

Re: Pennsylvania Public Utility Commission  
v.  
Philadelphia Gas Works  
Docket No. R-2023-3037933

Dear Judge Vero and Judge Ashton:

Enclosed please find the Office of Consumer Advocate's Motion to Compel Answer to OCA Interrogatory Set II, No. 27 in the above-referenced proceeding.

Copies have been served upon the parties as evidenced by the attached Certificate of Service.

Respectfully submitted,

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Enclosures:

cc: PUC Secretary Rosemary Chiavetta (via e-filing only)

Certificate of Service

\*344905

CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission :  
v. : Docket No. R-2023-3037933  
Philadelphia Gas Works :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate’s Motion to Compel Answer to OCA Set II No. 27, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 26<sup>th</sup> day of April 2023.

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission,	:	
	:	
v.	:	Docket No. R-2023-3037933
	:	
Philadelphia Gas Works	:	

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MOTION OF THE OFFICE OF CONSUMER ADVOCATE  
TO DISMISS OBJECTIONS AND TO COMPEL  
PHILADELPHIA GAS WORKS TO ANSWER INTERROGATORIES

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Pursuant to 52 Pa. Code Section 5.342, the Pennsylvania Office of Consumer Advocate (OCA) hereby respectfully requests that the Administrative Law Judge dismiss the objections of Philadelphia Gas Works, and Order the Company to timely reply to OCA Set II Interrogatory No. 27 in the above-referenced proceedings. The unresolved objection to OCA Set II Interrogatory No. 27 as served, is attached as Appendix A. In support of its Motion, the OCA sets forth the following:

**I. INTRODUCTION**

On February 27, 2023, Philadelphia Gas Works (PGW) filed for an \$85.8 million rate increase to distribution revenues. Included within the Company’s filing are proposed increased costs for customers to be allocated to various customer service programs and expenses, including costs to be collected for improving customer service. PGW St. 1 at 5.

On March 7, 2023, the OCA filed its Formal Complaint. The OCA has initiated an extensive review process to ensure that any increases in rates, and any proposed changes in tariff design and policies contained in the filings, are just and reasonable and otherwise consistent with

Pennsylvania law. In pursuit of these ends, the OCA served OCA Interrogatory Set II on April 4, 2023. On April 19, 2023, the Company filed its Objection.<sup>1</sup>

The interrogatory relevant to this Motion is attached as Attachment A to the unresolved objection. Accordingly, the OCA submits this Motion to Compel pursuant to 52 Pa. Code. § 5.342(g) to require PGW to provide an answer to OCA Set II, No. 27.

## **II. LEGAL STANDARD**

The burden is placed on the party objecting to discovery to establish that the information requested is not relevant or discoverable. *See Petition of the Borough of Cornwall for a Declaratory Order that the Provision of Water Service to Isolated Customers Adjoining its Boundaries Does Not Constitute Provision of Public Utility Service Under 66 Pa. C.S. § 102*, P-2015-2476211 at 6 (Order Sept. 11, 2015) citing *Koken v. One Beacon Insurance Co.*, 911 A.2d 1021, 25 (Pa. Cmwlth Ct. 2006). Relevancy depends upon the nature and facts of the individual case, and any doubts are to be resolved in favor of relevancy and permitting discovery. *Id.* For information to be relevant it must either tend to establish a material fact, tend to make a fact at issue more or less probable, or support a reasonable inference or presumptions regarding a material fact. *Id.* at 9-10, citing *Smith v. Morrison*, 47 A.3d 131, 37 (Pa. Super. Ct. 2012).

Section 5.321(c) of the Commission’s Rules of Administrative Practice and Procedure, 52 Pa. Code Section 5.321(c), specifically provides that “a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.” Discovery is permitted regardless of whether the information sought “relates to the claim or defense of the party seeking discovery or to the claim or defense of another party or participant.” *Id.* Information may be discoverable, even if it would be inadmissible at a hearing. “It is not

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<sup>1</sup> PGW communicated its intent to object to OCA Set II, No. 27 prior to filing its Objection. The OCA and PGW attempted to resolve the objection informally but were unable to come to a resolution.

grounds 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.*

The Commission has held that, “The material sought to be discovered need not be admissible. Rather, it must be reasonably expected to lead to the discovery of admissible evidence.” *J3 Energy Group, Inc. v. West Penn Power Co. and UGI Development Co.*, 2014 Pa. PUC LEXIS 406 at \*7 (Order Aug. 21, 2014). Thus, where evidence is reasonably calculated to lead to the discovery of admissible evidence and not privileged, it should be discoverable. Consistently, the Commission has allowed participants wide latitude in discovery matters. *Application of Nabil Nasr and Wael Hafez*, 2012 Pa. PUC LEXIS 1849 at \*12 (Order Nov. 28, 2012); *Pa. PUC. v. Peoples Natural Gas Co.*, 1986 Pa. PUC LEXIS 79 at \*17 (Order Aug. 26, 1986); and *Pa. PUC v. Equitable Gas Co.*, 1986 Pa. PUC LEXIS 110 at \*22 (Order May 16, 1986) (*Equitable Gas Co.*).

The Commission has stated that the relevancy test should be liberally applied when considering data requests. *Equitable Gas Co.* at \*22. The scope of discovery includes information that relates to any arguments that the OCA or other parties may present in support of their positions in this proceeding. The information sought here is discoverable within the Regulations and Commission practice and is required to be provided to the OCA pursuant to applicable discovery rules.

### **III. MOTION TO COMPEL**

#### **A. Introduction**

OCA Set II, No. 27 is designed to assist OCA witness Barbara Alexander’s investigation into the Company’s claimed expenses related to customer service and the requirements of Chapter 56 of the Public Utility Code. It is important to note at the outset that the OCA is not inquiring into

whether PGW should have the authority to assess liens onto its customers. The OCA is inquiring into information necessary to evaluate whether PGW is communicating its lien authority to customers in a way that does not inhibit customers' understandings of their Chapter 56 protections.

As the Commission favors the discoverability of evidence, the Company should be required to produce the information about PGW's training and policies governing its use of lien authority for residential customers, allowing the Administrative Law Judges (ALJs) to afford the information the proper weight in its consideration of the case.

**B. PGW Has Not Met Its Burden To Demonstrate That The Requested Information Is Outside The Scope Of The Proceeding and Irrelevant.**

PGW has objected to OCA Set No. II No. 27 as beyond the scope of the proceeding and irrelevant. PGW Objection at 1. PGW specifically argues that the interrogatory is beyond the scope of the proceeding because municipal liens may not be investigated as a part of this proceeding. PGW Objection at 2. PGW misunderstands the purpose of the OCA's interrogatory. The purpose of the OCA's interrogatory is not to investigate PGW's authority to issue liens as a part of this proceeding. As stated above, the objected-to interrogatory is intended to address how the Company communicates its lien processes to its employees to ensure that such communications instruct employees about the distinction between Pennsylvania Public Utility Code Chapter 56 (Chapter 56) and PGW's municipal lien authority. The co-existence of Chapter 56 and the Municipal Claim and Tax Lien Law (MCTLL) could create confusion about when PGW will rely on the rights and remedies of collecting overdue amounts pursuant to Chapter 56, and when it will implement its lien authority. The OCA's interrogatory is meant to discern whether PGW's internal training and policies are conducive to making this distinction clear to its customers, such that they understand when PGW's lien authority may be implemented as opposed to the Chapter 56 processes which fall under the Commission's jurisdiction.

PGW itself seems to acknowledge that an intersection between Chapter 56 and municipal lien authority exists through its agreement to answer the second part of OCA Set II, No. 27, which also addresses the overlap between lien authority and Chapter 56. While PGW is correct that the Commission does not have jurisdiction over the administration of PGW's municipal liens, the Commission does have jurisdiction over the termination processes reflected in Chapter 56 and the associated rights to negotiate payment plans, dispute bills, and determine quality of service via the Commission's formal and informal complaint processes.

Some other examples of how PGW's lien authority may relate to Chapter 56 collection practices include 1) whether and when PGW can or should stop its offering of a payment plan to a residential customer and issue a notice of a lien, and 2) whether a reconnection payment plan is precluded when PGW seeks to terminate service to a residential customer and issues a notice of a lien. OCA Interrogatory Set II, No. 27 is meant to gather information about how employees are instructed to implement these penalties and make these types of disclosures to customers, which, depending on how they are communicated, may cause customers not to pursue their Chapter 56 rights.

It is standard for rate case proceedings to include a review and resolution of consumer protection issues relevant to utility customers, and it is the duty of the Office of Consumer Advocate to ensure that consumer interests are represented and protected in these matters. The OCA's request for information about PGW's lien training and policies seeks to ensure PGW is communicating reasonable expectations to its customers for when PGW will rely on the customer rights and remedies for collecting overdue amounts and when PGW will implement its lien authority. The OCA submits that PGW's Objection to OCA Set II, No. 27 should be denied, and the Company should be compelled to respond.



#### IV. CONCLUSION

The OCA's Set II, No. 27 Interrogatory identified in the Company's Objection is directly relevant to the portions of the Company's filing pertaining to customer service and is within the scope of this proceeding. The information sought is reasonably calculated to lead to admissible evidence. For the reasons discussed above, the OCA respectfully requests that the Administrative Law Judges dismiss the Company's Objection and grant this Motion and Compel PGW to provide a complete and timely response to the OCA discovery at issue here.

Respectfully Submitted,

/s/ Mackenzie C. Battle

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY :  
COMMISSION : Docket No. R-2023-3037933  
:  
V. :  
:  
PHILADELPHIA GAS WORKS :

**PHILADELPHIA GAS WORKS’ OBJECTIONS  
TO THE OFFICE OF CONSUMER ADVOCATE’S  
INTERROGATORIES, SET II, NO. 27**

Philadelphia Gas Works (“PGW”) hereby objects to the Office of Consumer Advocate’s (“OCA”), Interrogatories Set II, No. 27. PGW has previously communicated to OCA its intention to object to this Interrogatory. Without waiver of these objections, PGW will attempt to respond to the Interrogatory as discussed below. The Interrogatory that PGW is objecting to is set forth in Attachment A hereto.

**OCA Set II, No. 27**

- 1. OCA Set II, No. 27 is beyond the scope of this proceeding and irrelevant. 52 Pa. Code § 5.321(c).**

The first portion of OCA Set II, No. 27 requests that PGW “Provide the internal training and policies governing PGW’s use of its lien authority for residential customers.” The second portion of OCA Set II, No. 27 requests that PGW “ identify how and when the lien authority is activated with respect to the pursuit of payment and collection practices required by Chapter 56 of the Commission’s rules.” OCA Set II, No. 27 seeks information which is not legally relevant to any issue in this proceeding (or is likely to arise in the proceeding) and is not reasonably calculated to lead to the discovery of admissible information. 52 Pa. Code § 5.321(c).

It is neither reasonable nor appropriate to investigate PGW's municipal liens and the lien process as part of this proceeding. The Municipal Claim and Tax Lien Law<sup>1</sup> ("MCTLL") authorizes the imposition of municipal liens by the City of Philadelphia ("City" or "Philadelphia")<sup>2</sup> to secure payment for unpaid natural gas services rendered by PGW at a specific property. The Commission does not have jurisdiction over the administration of PGW's municipal liens or its lien process. *See, e.g., Newman v. Philadelphia Gas Works*, PUC Docket No. C-2011-2273565, Opinion and Order entered March 29, 2012 (The Commission does not have jurisdiction to adjudicate a lien imposed by PGW); *Obioma Iro-Nwokeukwu v. Philadelphia Gas Works*, Docket No. C-2011-2247079, Final Opinion and Order adopting the Initial Decision dated January 20, 2015 (The Commission does not have jurisdiction over private contractual disputes). In addition, the Commission does not have jurisdiction to question a municipal lien, the perfecting of a municipal lien, or the process of reducing a municipal lien to a judgment (i.e. docketing the lien) in the Court of Common Pleas. *Id.* There are numerous additional cases

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<sup>1</sup> 53 P.S. §§ 7101, *et. seq.*, When PGW was placed under the Commission's jurisdiction in 2000, provisions were added to the Public Utility Code to ensure that PGW would have liens as an additional collection tool to assist PGW in improving its overall collection rates, in addition to, and not in place of the tools established by civil (collection) actions or by the rest of the Public Utility Code. *See* 66 Pa.C.S. § 1402, 1414(a) and 2212(n).

<sup>2</sup> Only the City, since it is a municipality, can file a municipal lien. PGW is a municipal utility that is wholly owned by the City. PGW consists only of the real and personal assets that are used to manufacture and deliver natural gas to entities within the City's borders. *Public Advocate v. PUC*, 674 A.2d 1056 (Pa. 1996). Because PGW does not meet the legal definition of an entity authorized to file a lien to enforce a municipal claim, it is the City that has the municipal claim which it can enforce by way of a lien on the property that was provided natural gas service. *See* 53 P.S. § 7101.

wherein the Commission has recognized its lack of jurisdiction in cases involving municipal liens and the municipal lien process.<sup>3</sup>

Moreover, the Supreme Court recently held in a proceeding regarding PGW’s collection practices under the MCTLL that PGW’s docketing of a municipal liens for unpaid gas bills has the same force and effect as a judgment that was obtained following a trial before a civil court.<sup>4</sup> Under settled law, and as the Supreme Court recognized,<sup>5</sup> the existence of any judgment (docketed municipal lien) on unpaid utility service balances ends the Commission’s jurisdiction, as any issues and claims related to the amounts owed by the customer are merged into the

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<sup>3</sup> Such cases include (but are not limited to): *Cornelia Strowder v. PGW*, Docket No. C-20028036, Final Opinion and Order entered December 30, 2002; *Debra Williams Lawrence v. PGW*, Docket No. C-20066672, Final Order entered January 22, 2007; *Tina L. Francis-Young v. PGW*, Docket No. C-2008-2029672, Final Order entered February 23, 2009; *Dung Phat, LLC v. PGW*, Docket No. C-2009-2135667, Final Order entered January 13, 2010; *Nathaniel Lewis Mooney v. PGW*, Docket No. C-2009-2134673, Final Opinion and Order entered January 13, 2010; *David Golan v. PGW*, Docket No. C-2009-2138115, Final Order entered February 4, 2010; *2020 West Passyunk Avenue Inc. v. PGW*, Docket No. C-2009-2138727, Final Order entered February 4, 2010; *Jean Charles v. PGW*, Docket No. C-2009-2138638, Final Order entered February 5, 2010; *Agron Vata v. PGW*, Docket No. C-2009-2149960, Final Order entered August 24, 2010; *William Petravich v. PGW*, Docket No. C-2010-2188984, Final Opinion and Order entered February 10, 2011; *Avner and Gail Yamin v. PGW*, Docket No. C-2011-2221883, Final Order entered June 29, 2011; *Ardelle Jackson v. PGW*, Docket No. C-2009-2119940 Final Opinion and Order entered July 1, 2011; *Joe Danihel v. PGW*, Docket No. C-2011-2270386, Final Order (Act 294) entered March 22, 2012 adopting the Initial Decision dated January 31, 2012; *Eric Carter v. PGW*, Docket No. C-2012-2299188, Final Order (Act 294) adopting the Initial Decision dated June 28, 2012; *John F. and Joanne M. McVey v. PGW*, Docket No. C-2011-2239859, Final Order (Act 294) entered January 8, 2014 adopting the Initial Decision dated November 22, 2013; *Hynn Yoo and Yu Shin Yoo v. PGW*, Docket No. C-2013-2369915, Final Order Act 294 entered July 10, 2014 adopting the Initial Decision dated April 7, 2014; *Malisa Tate v. PGW*, Docket No. C-2014-2428639, Final Order Act 294 entered February 13, 2015 adopting the Initial Decision dated December 24, 2014.

<sup>4</sup> *PGW v. PUC*, 249 A.3d 963 at 974 (Pa. 2021)(footnotes added). *See also Id.* at 973 (judgments (docketed municipal liens) are “the equivalent of a final resolution of a claim between parties.”); *Id.* at 970 (“By expressly stating that the docketed lien is to be treated like a judgment with regard to the underlying claim, the General Assembly has expressed its intent that docketing the lien have the same effect as a final determination of a dispute between parties without further proceedings that would generally be required to effectuate the result.”).

<sup>5</sup> *PGW v. PUC*, 249 A.3d at 967.

judgement.<sup>6</sup> “The claim or demand in its original form is at an end, and cannot again be the subject of litigation.”<sup>7</sup> In its merged form as a judgment, the docketed municipal lien may be enforced by judicial process, and it can be pleaded only in its merged form.<sup>8</sup> Accordingly, the question seeks discovery on non-jurisdictional activities (docketing a municipal lien) which is not legally relevant and is thus not appropriate discovery.

Notwithstanding, and without waiver of its above-stated objection, PGW will provide a response to the second part of OCA Set II, No. 27 that requests that PGW “identify how and when the lien authority is activated with respect to the pursuit of payment and collection practices required by Chapter 56 of the Commission’s rules.”

Respectfully submitted,

/s/ Sarah Stoner

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Dated: April 19, 2023

*Counsel for Philadelphia Gas Works*

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<sup>6</sup> *Lance v. Mann*, 360 Pa. 26, 60 A.2d 35 (1948).

<sup>7</sup> 28 PENNSYLVANIA LEGAL ENCYCLOPEDIA, JUDGMENT § 228, *citing*, *Miller v. Rohrer*, 127 Pa. 384, 18 A. 2 (1889); *Brenner, Trucks & Co. v. Moyer*, 98 Pa. 274 (1881); *Bell v. Allegheny County*, 184 Pa. 296, 39 A. 227 (1898); and, *Nelson v. Nelson*, 117 Pa. 278, 11 A. 61 (1887).

<sup>8</sup> *See, e.g., Wilmington Tr. v. Unknown Heirs*, 219 A.3d 1173 (Pa.Super. 2019); *EMC Mortg., LLC v. Biddle*, 114 A.3d 1057 (Pa.Super. 2015).

**Attachment A**

**OCA SET II INTERROGATORIES TO PGW**

**OCA Set II, No. 27**

Provide the internal training and policies governing PGW's use of its lien authority for residential customers. In your response, identify how and when the lien authority is activated with respect to the pursuit of payment and collection practices required by Chapter 56 of the Commission's rules.