

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2023-3037933
	:	
Office of Consumer Advocate	:	C-2023-3038846
Office of Small Business Advocate	:	C-2023-3038885
Philadelphia Industrial And Commercial Gas User Group	:	C-2023-3039059
Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc.	:	C-2023-3038727
James M. Williford	:	C-2023-3039130
	:	
v.	:	
	:	
Philadelphia Gas Works	:	

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

On February 27, 2023, Philadelphia Gas Works (“PGW” or “the Company”) 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 Office of Consumer Advocate (“OCA”) filed its Formal Complaint and initiated a review process into any rate increases proposed by PGW, and any proposed changes in tariff design and policies contained in the filings, in order to ensure that they are just and reasonable and otherwise consistent with Pennsylvania law.

On April 4, 2023, the OCA propounded OCA Interrogatory Set II on PGW.

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.”

On April 19, 2023, PGW filed its Objection to OCA Set II, No. 27, arguing that, pursuant to 52 Pa. Code § 5.321(c), OCA Set II, No. 27 is irrelevant and beyond the scope of this proceeding.¹ Objection at 1. According to PGW, the Municipal Claim and Tax Lien Law (“MCTLL”) authorizes the imposition of municipal liens by the City of Philadelphia (“City” or “Philadelphia”) to secure payment for unpaid natural gas services rendered by PGW at a specific property, and 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*, Docket No. C-2011-2273565 (Opinion and Order entered March 29, 2012). Moreover, PGW points out that a recent Supreme Court ruling held that PGW’s docketing of a municipal lien for unpaid gas bills has the same force and effect as a judgment that was obtained following a trial before a civil court. Objection at 3, citing *PGW v. PUC*, 249 A.3d at 967. Per the same Supreme Court ruling, 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 judgement. *Id.* Based on the foregoing, PGW concludes that the interrogatory in 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 it stated objection, PGW agrees to 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. See Objection at 4.

¹ The interrogatory relevant to this Motion is attached as Attachment A to the unresolved objection.

On April 26, 2023, OCA filed a Motion to Compel pursuant to 52 Pa. Code. § 5.342(g) to require PGW to provide an answer to OCA Set II, No. 27. In its Motion, OCA argues that PGW misunderstands the purpose of the OCA’s interrogatory. Motion at 4. OCA explains that the purpose of its interrogatory is not to investigate PGW’s authority to issue liens as a part of this proceeding. Instead, OCA Set II, No. 27 is intended to address how PGW 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. *Id.* OCA further explains that the co-existence of Chapter 56 and the 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. According to OCA, its 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. *Id.*

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 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). The Commission has also held that the relevancy test should be liberally applied when considering data requests. See, *Pa. PUC v. Equitable Gas Co.*, 1986 Pa. PUC LEXIS 110 at *22 (Order May 16, 1986)

Additionally, the party objecting to discovery bears the burden of establishing 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).

Upon review of PGW's Objection and OCA Motion to Compel, I find that PGW has failed to carry its burden of proving that the information requested through OCA Set II, No. 27 is not relevant or discoverable. I find that 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 pursuant to Chapter 56 and when PGW will implement its lien authority. The information sought through OCA Set II, No. 27 is reasonably calculated to lead to the discovery of admissible evidence and not privileged, it should be discoverable. Because the scope of permissible 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 Commission's regulations and practice and is required to be provided to the OCA pursuant to applicable discovery rules.

Consequently, I shall overrule PGW's Objection to OCA Set II, No. 27 and grant OCA's Motion to compel response of same. In accordance with the discovery modifications agreed upon by all the parties during the Prehearing Conference held on April 28, 2023 in this matter, PGW shall exercise its best efforts to provide written answers to OCA Set II, No. 27 by May 13, 2023, but no later than May 15, 2023.

APPENDIX A

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.

**R-2023-3037933 – PENNSYLVANIA PUBLIC UTILITY COMMISSION v.
PHILADELPHIA GAS WORKS**

Revised 5-1-2023

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