**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 : C-2023-3039059

User Group :

Grays Ferry Cogeneration Partnership and : C-2023-3038727

Vicinity Energy Philadelphia, Inc. :

James M. Williford : C-2023-3039130 :

v. :

:

Philadelphia Gas Works :

Grays Ferry Cogeneration Partnership and : C-2021-3029259

Vicinity Energy Philadelphia, Inc. : :

v. :

:

Philadelphia Gas Works :

**ORDER GRANTING MOTION OF GRAYS FERRY COGENERATION PARTNERSHIP AND VICINITY ENERGY PHILADELPHIA, INC. TO DISMISS THE OBJECTIONS OF THE PHILADELPHIA GAS WORKS TO INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS, SETS III AND IV, AND TO COMPEL ANSWERS THERETO**

On February 27, 2023, Philadelphia Gas Works (“PGW”) filed for an $85.8 million rate increase to distribution revenues. Included within PGW’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 3, 2023, Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. (“Vicinity”) 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 filing, in order to ensure that they are just and reasonable and otherwise consistent with Pennsylvania law.

On May 5, 2023, PGW amended and supplemented its February 27, 2023 filing in this matter to include a proposed new Tariff Rate (Rate GS-XLT) detailing proposed rates, rules and regulations pursuant to which PGW would provide gas service to Vicinity. The filing was made in accordance with the April 20, 2023 Order of the Public Utility Commission in Docket No. C-2021-3029259 (April 20, 2023 Order). The Commission’s April 20, 2023 Order, directed, *inter alia*, that the determination of the just and reasonable rate for the provision of gas transportation service by PGW to Vicinity be resolved by and in this rate proceeding.[[1]](#footnote-1)

On May 5, 2023, Vicinity served its Set III Interrogatories and Requests for Production of Documents on PGW (Vicinity Set III). On May 8, 2023, Vicinity served its Set IV Interrogatories and Requests for Production of Documents (Vicinity Set IV).

On May 16, 2023, PGW filed Objections to Vicinity Set III and Set IV (PGW Objections), indicating that PGW specifically objected to Modified Set III No. 3, 4 and 16 and Set IV No. 2.[[2]](#footnote-2)

On May 18, 2023, Vicinity filed a Motion to Dismiss the Objections of Philadelphia Gas Works to Interrogatories and Requests for Production of Documents Sets III and IV, and to Compel Answers thereto (Motion to Dismiss and Compel), indicating that the following Vicinity requests to PGW in Vicinity Set III are at issue:[[3]](#footnote-3)

3. Provide data of annual consumption and peak day consumption, load factor, and annual revenue for the largest 50 customers by year for the period 2018-2022.

4. Provide data of annual non-gas revenue (distribution charges) received from the largest 50 customers by year for the period 2018-2022.

16. Provide data of annual consumption and peak day consumption, load factor, and annual revenue for each of the industrial class customers by year for the period 2018-2022.

Also at issue is a request to PGW with respect to written testimony by Ms. Constance Heppenstall in Vicinity Set IV, No. 2 is: “Provide copies of any [Cost of Service Studies] for any utilities where direct allocation of costs was done.” *Id.*

The Motion to Dismiss and Compel significantly circumscribed the scope of the request for information and data included in the above-referenced portions of Vicinity Set III, reducing the request from five calendar years to calendar year 2022 only (Modified Set III). *Id.* Additionally, in the Motion to Dismiss and Compel, Vicinity clarified that as to the testimony of to Ms. Heppenstall in Vicinity Set IV, No. 2, Vicinity was “only requesting cost of service studies performed by Ms. Heppenstall where direct allocation was performed” (Modified Set IV). *Id.* at 3*.*

In support of the Motion to Dismiss and Compel, Vicinity argued that PGW should be compelled to provide the requested information because: (a) the scope of discovery is broad; (b) the need to perform a special study alone is not sufficient to prohibit discovery; (c) nowhere does PGW assert that it does not have the information or is unable to produce the information; and (d) PGW does not provide a credible assessment of the alleged burden retrieving the data.

Vicinity asserted that the information requested is relevant to Vicinity’s evaluation of the rates PGW has proposed for Vicinity, the allocation of costs to Vicinity’s service, and a host of other issues where the data regarding what other customers consume versus the dollars allocated to their rates. Vicinity argued that by refusing to provide the requested information, PGW sought to “declare the scope of the proceeding and what is necessary for other parties to present their case.” *Id.* at 4.

On May 22, 2023, PGW filed its Answer to the Motion to Dismiss and Compel (Answer). In its Answer, PGW agreed to provide the information requested in Modified Set IV, No. 2. Answer at 2. However, PGW reiterated its objections to Vicinity’s other requests, as modified and articulated by Vicinity in the Motion to Dismiss and Compel. *Id.* PGW also offered a compromise solution for Set III, Nos. 3 and 4. *Id.*

In the PGW Objections and Answer, PGW argues pursuant to 52 Pa. Code § 5.321(c), that GFCP/VEPI Set III, Nos. 3, 4 and 16 that Vicinity is seeking information that is irrelevant to this proceeding not reasonably calculated to lead to the discovery of admissible information.[[4]](#footnote-4) PGW Objections at 2. PGW also argues that the Vicinity requests at issue in the Motion to Dismiss and Compel are unreasonable, inappropriate and overbroad. PGW Objections at 2-3. Further, PGW asserts that responding to the request would impose a time consuming and burdensome task on PGW.

It is neither reasonable nor appropriate for PGW to be required to conduct a special study of the annual consumption and peak day consumption, load factor, annual and annual non-gas revenue for the 50 largest customers by year for a four-year period as requested in [Set III] Nos. 3 and 4. The requests contained [therein] would require PGW to conduct a special study that is overly burdensome and would unduly and unnecessarily tax PGW employees. Set IV, No. 16 requests annual consumption and peak day consumption, load factor, and annual revenue for *every industrial class customer* by year for a four-year period. Requesting detailed information for every customer in a class is clearly overbroad. Pulling the requested information for approximately 600-700 customers for a four-year period is unreasonable and would be overly burdensome, requiring a special study. PGW anticipates that the special study would be exceptionally time consuming as the voluminous information requested is not compiled in the regular course of business. [[5]](#footnote-5)

In the Answer, PGW acknowledged that Vicinity had reduced scope of the request in the Modified Set III from five years to one year and expanded on the arguments presented in the PGW Objections. The Answer focuses on the relevance of the information requested by Vicinity and the burden of providing the requested information to Vicinity. Answer at 2-4.

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).

As PGW itself stated in the Answer, “It is likely that GFCP/VEPI [is seeking] the information requested in Set III, Nos. 3, 4, and 16 so that GFCP/VEPI can compare its annual consumption and peak day consumption, load factor, annual revenue, etc. to that of other customers.” Answer at 2. However, PGW asserts that the individual customer usage data and information sought in Modified Set III, Nos. 3, 4 and 16 would not afford Vicinity a better understanding of the “allocation of costs” and “what other customers consume versus the dollars allocated to their rates.” Answer at 3. PGW also argues that such information is not relevant in this proceeding as PGW has conceded that GFCP/VEPI should have its own special rate. *Id*.

As noted above, this proceeding involves PGW’s request to amend the Commission-approved tariff governing the gas service rates payable by Vicinity for the first time in over 25 years. In addition, the Commission has ordered that all issues relating to any new tariff applicable to Vicinity be resolved in this case.[[6]](#footnote-6) Thus, this is the appropriate proceeding in which Vicinity may prosecute any claim or argument relating to the lawfulness and reasonableness of the rates proposed by PGW for gas service to Vicinity. Vicinity cannot do so without obtaining information and data relevant to its claims that is available only from PGW.

Upon review of PGW’s Objections, Vicinity’s Motion to Dismiss and Compel, and PGW’s Answer, I find that Vicinity’s request for information sought in Modified Set III, Nos. 3, 4 and 16 relates to the lawfulness, justness, and reasonableness of the rates, rules and regulations contained in the Tariffs proposed by PGW in this proceeding. I also find that PGW has failed to carry its burden of proving that the information and data requested through Modified Set III, Nos. 3, 4 and 16 is not relevant or discoverable.

In its Answer, PGW indicates that a special study would be required to respond to [Modified Set III] No. 16 and that such a study would be “exceptionally time consuming, engaging two to three people over a two-week period.”[[7]](#footnote-7) However, PGW initiated this proceeding which includes a request to increase rates that will generate $85.8 Million in addition revenues for PGW. It has the burden of proof in this matter as to all proposed changes in its tariffs and rates, including those payable by Vicinity. Further, Vicinity has significantly reduced the scope of its request to information and data requested to a single calendar year, resulting in a commensurate decrease in the burden on PGW of providing a response. Moreover, the Commission has directed the parties to address all issues relating to any change in rates for gas service payable by Vicinity to PGW in this proceeding, effectively making this proceeding the means through which Vicinity must present and pursue its claims relating to the rate at which it may obtain gas service from PGW.

While Vicinity’s request may require PGW to undertake a special study, in the context of this proceeding, I also find that PGW has failed to carry its burden of proving that providing the information and data requested through Modified Set III, Nos. 3, 4 and 16 would cause PGW unreasonable burden or expense or require PGW to make an unreasonable investigation. The information sought through Modified Set III, Nos. 3, 4 and 16 is reasonably calculated to lead to the discovery of admissible evidence and is not privileged, therefore, it is discoverable. Because the scope of permissible discovery includes information that relates to any arguments that the Vicinity 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 Vicinity pursuant to applicable discovery rules.

Consequently, I shall overrule PGW’s Objection to Vicinity Modified Set III, No. 3, 4 and 16 and grant Vicinity’s Motion to Dismiss and Compel. In light of PGW’s agreement with respect to Vicinity Modified Set IV, No. 2,[[8]](#footnote-8) I shall also overrule PGW’s Objection to grant Vicinity’s Motion to Dismiss and Compel.

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 Vicinity A Set II, No. 27 by June 5, 2023, but no later than June 7, 2023.

THEREFORE,

IT IS ORDERED:

1. That the Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. Motion to Dismiss the Objections of Philadelphia Gas Works to Interrogatories and Requests for Production of Documents Sets III and IV and to Compel Answers Thereto, as the requests to Vicinity Set III, No. 4, 5, and 16 and Vicinity Set IV No. 2 were modified therein, is granted.

2. That Philadelphia Gas Works’ Objection to the Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. Motion to Dismiss the Objections of Philadelphia Gas Works to Interrogatories and Requests for Production of Documents Sets III and IV and to Compel Answers Thereto, as the requests to Vicinity Set III, No. 4, 5, and 16 and Vicinity Set IV No. 2 were modified therein, is overruled.

3. That in accordance with this Order and the discovery modifications agreed upon by all the parties at the Prehearing Conference held on April 28, 2023 in this matter, Philadelphia Gas Works shall exercise its best efforts to provide written answers to Vicinity Set III, No. 4, 5, and 16, and Vicinity Set IV No. 2, as modified in the Grays Ferry Cogeneration

Partnership and Vicinity Energy Philadelphia, Inc. Motion to Dismiss the Objections of Philadelphia Gas Works to Interrogatories and Requests for Production of Documents Sets III and IV and to Compel Answers Thereto, by June 6, 2023, but no later than June 8, 2023.

Date: May 30, 2023 \_ \_\_\_/s/\_\_\_\_\_\_\_\_\_\_\_\_

Arlene Ashton

Administrative Law Judge

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

Revised: May 11, 2023

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1. April 20, 2023, Order at 51. The April 20, 2023, Order also directed PGW to file any proposed changes to the existing tariff governing the rates, rules and regulations governing gas service provided to Vicinity. [↑](#footnote-ref-1)
2. PGW Objections at 1. [↑](#footnote-ref-2)
3. Motion to Dismiss and Compel at 2. [↑](#footnote-ref-3)
4. The PGW Objections were incorporated into the Answer. Answer at 3. [↑](#footnote-ref-4)
5. As noted above, the Modified Set III limited Vicinity’s request to the year 2022. [↑](#footnote-ref-5)
6. *See* Commission April 20, 2023, Opinion. [↑](#footnote-ref-6)
7. Answer at 5-6. The Answer misidentified the Set number as IV rather than III. [↑](#footnote-ref-7)
8. Answer at 6. [↑](#footnote-ref-8)