**[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 :

Vicinity Energy Philadelphia, Inc. : :

v. : C-2021-3029259

:

Philadelphia Gas Works :

**ORDER GRANTING THE MOTION FOR EXTENSION OF POWER INTERFAITH**

Procedural Background

On February 27, 2023, Philadelphia Gas Works (PGW) filed proposed Supplement No. 105 to PGW Gas Supplier Tariff Pa. P.U.C. No. 1 and proposed Supplement No. 159 to PGW Gas Service Tariff Pa. P.U.C. No. 2 to become effective April 28, 2023. The filing contains proposed changes in rates, rules, and regulations calculated to produce $85.8 million (10.3%) in additional annualrevenues, an increase in residential customer’s bills using 71 Mcf/year from $125.38 to $137.73/month (9.9%). Within the general rate increase filing, PGW filed a Petition for Waiver seeking waiver of the application of the statutory definition of the fully projected future test year, so as to permit PGW to use a fully projected future test year beginning on September 1, 2023, in this proceeding.[[1]](#footnote-1)

By Order entered April 20, 2023, the proposed Tariffs were suspended by operation of law until November 28, 2023. The Commission ordered an investigation into the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in the proposed Tariffs. The Commission also ordered an investigation into the reasonableness of PGW’s existing rates, rules, and regulations.

A Prehearing Notice was issued, and a Prehearing Conference Order was entered on April 20, 2023, scheduling a telephonic prehearing conference in this matter for Friday, April 28, 2023, at 1:30 P.M.

On April 25, 2023, POWER Interfaith (POWER) filed a Petition to Intervene in this matter.

The prehearing conference was held as scheduled on April 28, 2023. On May 11, 2023, a Prehearing Order was issued memorializing certain procedural matters addressed at the prehearing conference. In addition to granting POWER’s Petition for Intervention, the Prehearing Order established the litigation schedule for this proceeding agreed to by the parties. Of relevance here are the dates relating to direct, rebuttal and surrebuttal testimony and evidentiary hearings and oral rejoinder, the key dates for which are as follows:

Direct testimony of other parties May 31, 2023

Rebuttal testimony June 26, 2023

Surrebuttal testimony July 7, 2023

Witness Cross-Examination Matrix July 7, 2023

Evidentiary hearings and Oral Rejoinder July 11-12, 2023 (telephonic)

Paragraph 14 of the Prehearing Order provided that the parties “shall engage in informal discovery whenever and wherever possible in an attempt to resolve any discovery disputes amicably [and if that] process fails, the parties have recourse to the Commission’s procedures for formal discovery, as herein modified. Prehearing Order. ⁋ 14.

After POWER and PGW were unable to resolve a discovery dispute, on June 15, 2023, POWER filed a Motion for Extension (Motion) requesting an extension of the discovery deadlines, including deadlines relating to PGW’s Set I interrogatories for POWER . . . until Thursday, June 22, 2023. Motion ⁋⁋ 3, 9. POWER’s Motion states that it would extend an agreement previously reached by POWER and PGW to pause all discovery deadlines, including deadlines for written objections, relating to PGW’s Set I interrogatories for POWER at least through Wednesday, June 14, 2323 to allow time to prepare for potential settlement discussions. Motion ⁋ 3. POWER indicated that the reason for the delay was the unavailability of Rabbi Julie Greenberg, who was described as the “lead on this case and intended interrogatory response witness” and averred that “her participation is essential to POWER’s engagement in this proceeding.” Motion ⁋ 1. POWER also detailed its unsuccessful efforts to reach an extension of its agreement with PGW that preceded the filing of the Motion. Motion ⁋⁋ 4-5, 7-8.

On June 15, 2023, PGW filed an Answer to the Motion (Answer), in which it indicated that it had objection to POWER’s request for a further extension of discovery deadlines relating to PGW’s Set I interrogatories by seven (7) calendar days until Thursday, June 22, 2023. Answer unnumbered paragraph at 1. However, in light of the June 26, 2023 deadline established in the Prehearing Order for service of PGW’s rebuttal testimony in response to POWER’s direct testimony in this proceeding, PGW requested that:

1) during the one-week period of extension of formal discovery deadlines POWER provide PGW with any and all responses, or partial responses, to interrogatories to which POWER has offered no objection; and 2) to avoid prejudicing PGW in providing rebuttal testimony, extend PGW’s deadline for serving rebuttal testimony to POWER’s direct testimony by seven (7) days to July 3, 2023.

Answer unnumbered paragraph at 1.

On June 15, 2023, I notified all parties via email that any party wishing to provide a response to the Motion would be required to do so no later than 4:00 P.M. and that a ruling on the Motion would be forthcoming as soon as possible. That same day, CAUSE-PA sent an email to me, ALJ Vero and all parties stating that CAUSE-PA supports POWER’s Motion. CAUSE-PA was the only party to provide input on the Motion prior to the 4:00 P.M. deadline.

On June 15, 2023, POWER submitted a request that it be allowed to respond to PGW’s Answer no later than noon on June 16, 2023.

On June 16, 2023, I notified all parties via email that POWER’s request that it be allowed to respond to PGW’s Answer no later than noon on June 16, 2023 was granted. The email also advised that any party wishing to be heard on the Motion, the Answer or any response thereto could submit input to me and ALJ Vero prior to 2:00 P.M. on June 16, 2023.

On June 16, 2023, POWER filed a timely response to PGW’s Answer (Response). In the Response, POWER averred that “the questions in PGW’s Set I, all targeted to POWER as organization and asking questions about POWER’s motives, donors, and previously expressed policy views, are logically distinct from questions relating to the merits of POWER’s timely-served direct testimony from outside experts.” Response ⁋ 8.

Also on June 16, 2023, PGW responded to POWER’s filing earlier the same day with a letter sent via email to POWER, the presiding officers and all other parties. (Letter Response).

After review of the pleadings and submissions by PGW, POWER and CHOICE-PA, in an effort to resolve this matter in a manner agreeable to the interested parties, I contacted all parties via email and scheduled a conference call for June 16, 2023.  POWER, PGW, CAUSE-PA and any other party wishing to participate were invited to participate in the call.  Counsel for PGW, POWER, CAUSE-PA, OCA and TURN participated in the call. The parties were unable to reach an agreement during the conference call. I encouraged the parties to continue their discussions amongst themselves and to notify me if they were able to reach an agreement and that if one was not reached on or before 7:30 on Monday, June 20, 2023, I would resolve the matter via Order. On the morning of June 20, 2023, counsel to PGW informed me via email that “Unfortunately, PGW and POWER were not able to reach a resolution of the matter.”   No other party provided further input before 7:30 on Monday, June 20, 2023. The Motion to Strike is ripe for disposition.

Disposition

In its Motion POWER seeks to delay its response PGW’s Set I interrogatories for POWER through June 22, 2022. POWER’s argument is tied to an injury sustained by the uncertain medical condition of Rabbi Julie Greenberg , the intended interrogatory response witness for the interrogatories. POWER states that Rabbi Greenberg was in a serious bike accident on Saturday, June 10 and that she is attempting to evaluate when she will be able to return to work. Motion ⁋ 3. POWER acknowledges that to allow time to prepare for potential settlement discussions, PGW had agreed to pause all discovery deadlines, including deadlines for written objections, relating to PGW’s Set I interrogatories for POWER at least through Wednesday, June 14, with normal timelines to resume Thursday, June 15 if the parties did not agree to extend it further. Id. POWER avers that it filed the Motion after further efforts to reach agreement with PGW were unsuccessful. Motion ⁋⁋ 5, 7-9.

In its Response, PGW’s indicated that it did not object to POWER’s request for a further extension to June 22, 2023 to respond to PGW’s Set I interrogatories, however, PGW asked that the Commission impose the following conditions on any Order granting the Motion:

1) during the one-week period of extension of formal discovery deadlines POWER provide PGW with any and all responses, or partial responses, to interrogatories to which POWER has offered no objection; and 2) to avoid prejudicing PGW in providing rebuttal testimony, extend PGW’s deadline for serving rebuttal testimony to POWER’s direct testimony by seven (7) days to July 3, 2023.

POWER contends that it would be “inequitable and unbalanced” for PGW to obtain a plenary extension for discovery and rebuttal preparation on all issues” and included a counter proposal requiring PGW to address the merits of POWER’s pre-served expert testimony on the normal rebuttal date and all other materials in supplemental rebuttal. Answer ⁋⁋ 7, 10. In the Letter Response, PGW contends that POWER’s counter proposal is “nether fair nr reasonable” noting that POWER’s proposal would result in PGW having just 1 day to review supplemental surrebuttal testimony by POWER. Letter Response at 1-2.

The June 20, 2023 email sent by counsel to PGW to the presiding officers and all parties (PGW email) indicates that PGW made yet another proposal to POWER on Sunday, June 19, 2023 but received no response from POWER. The “final proposal” included the following terms:

* PGW does not object to the granting of POWER’s request for a further extension of discovery deadlines relating to PGW’s Set I interrogatories to POWER by seven (7) calendar days until Thursday, June 22;
* To avoid prejudicing PGW in providing its rebuttal testimony, POWER agrees to not object to PGW reserving the right to serve supplemental rebuttal testimony 5 calendar days after receipt of the responses to POWER Set I interrogatories that are disputed;
* POWER will have 5 calendar days after service of PGW’s supplemental rebuttal testimony to serve its supplemental surrebuttal testimony; and
* If the supplemental rebuttal and surrebuttal testimony is not served prior to the evidentiary hearings, POWER agrees to not object if PGW requests a supplemental hearing regarding the matters addressed in PGW’s Set I interrogatories to POWER.

I applaud POWER and PGW for their efforts to resolve the matters at issue in the Motion; however, their inability to do so leaves the matter to the discretion of the presiding officers. 52 Pa. Code §5.483.

Commission records indicate that PGW Set I of Interrogatories was served on POWER on May 26, 2023. Rabbi Greenberg’s bicycle accident occurred on June 10, 2023, a full two weeks later. In addition, POWER’s Motion and PGW’s Response reveal that initially POWER and PGW agreed to pause all discovery deadlines to prepare for potential settlement discussion and to determine what information POWER could provide in response to PGW Set 1 interrogatories. Motion ⁋ 3, Response ⁋ 3. PGW avers that it was not made aware of Rabbi Greenberg’s unavailability until the Motion was filed on June 15, 2023. Response ⁋ 4. Thus, the Motion was not made until more than two weeks after POWER was aware of the information sought by the Set 1 interrogatories. POWER provides no explanation for its failure to promptly file an objection to the information requested by the Set 1 interrogatories as permitted under Commission regulations and instead waited to file the Motion. See 52 Pa. Code § 5.342

POWER’s Answer notes that “PGW has had the full and normal discovery period, unaffected by any delays, to conduct discovery addressed to POWER’s expert witnesses and their pre-served expert testimony” and contends that the issues addressed in PGW’s Set 1 Interrogatories relate to POWER’s “motives, donors, and previously expressed policy views.” Answer ⁋⁋ 2, 8. Although POWER argues that there is a logical distinction between its experts and their testimony on the one hand, and more general information about its operations and activities, on the other, it does not cite any legal authority that supports the use of such a distinction as a rationale for the extension of time for discovery. In fact, to the extent that the information requested in PGW’s Set 1 Interrogatories relates to POWER’s past and current operations, it should be readily and easily available to POWER. Furthermore, although POWER repeatedly references Rabbi Greenberg’s health as a basis for its Motion, it has not established that she is the only individual with the authority or capability of responding to PGW’s Set 1 Interrogatories.

In light of the above and PGW’s agreement to allow POWER until June 22, 2023 to respond to PGW’s Set 1 Interrogatories, I will grant that portion of the Motion.

PGW and POWER have each presented multiple alternative proposals for the timing of their respective responses to the information provided by POWER in response to PGW’s Set 1 Interrogatories. Likewise, they have each pointed to the compressed timeline and advanced stage of these proceedings as a critical factor in the preparation of their case prior to the commencement of evidentiary hearings on July 11, 2023. Moreover, both POWER and PGW contend that their positions are reasonable and grounded in fairness.

In light of the amount of time that has passed since PGW’s Set 1 Interrogatories were first served on POWER, the limited time before the commencement of evidentiary hearings, and the limited scope of the information to be provided by POWER, the parties should be able to respond with alacrity to information provided or requested by the other. Accordingly, as to any exchange following POWER’s response to the Set 1 Interrogatories, each party will be ordered to provide its reply to the other no more than 4 calendar days after their most recent receipt of information.

THEREFORE,

IT IS ORDERED:

1. That the Motion for Extension filed by POWER Interfaith on June15, 2023, to extend the discovery deadline for POWER to respond to PGW’s Set I interrogatories by 7 days to June 22, 2023 is granted.

2. That Philadelphia Gas Works shall have the right to serve supplemental rebuttal testimony as to any disputed response by POWER to PGW’s Set I interrogatories until 4 days after receipt of POWER’s responses.

3. That POWER shall have the right to address PGW’s supplemental rebuttal testimony in supplemental surrebuttal testimony until 4 days after receipt of PGW’s supplemental rebuttal testimony.

Date: June 20, 2023 \_ \_\_\_/s/\_\_\_\_\_\_\_\_\_\_\_\_

Arlene Ashton

Administrative Law Judge

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

*Revised: June 20, 2023*

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1. The Petition for Waiver is not separately docketed and shall be considered within the proceeding before the Office of Administrative Law Judge. [↑](#footnote-ref-1)