**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 :

ERRATA

A review of the document issued in the above-captioned proceeding on

July 3, 2023, revealed an error in the document. Specifically, the formatting of the document was incorrect and indicated resolved comments on pages 17 and 18.

This change does not alter the procedural rules outlined in the Prehearing Order.

Date: July 5, 2023 \_ \_\_\_/s/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Arlene Ashton

Administrative Law Judge

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Philadelphia Gas Works :

**ORDER GRANTNG THE MOTION OF PHILADELPHIA GAS WORKS TO DISMISS OBJECTIONS OF POWER INTERFAITH AND COMPEL COMPLETE RESPONSES**

**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, Philadelphians Organized to Witness Empower and Rebuild (P.O.W.E.R.), Inc. (POWER) filed a Petition to Intervene in this proceeding (Petition to Intervene).

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.”[[2]](#footnote-2)

On May 26, 2023, PGW served PGW-POWER-I-1-26 Set I Interrogatories on POWER in this proceeding (Set 1 Interrogatories).

On June 15, 2023, POWER filed a Motion for Extension (Motion for Extension) requesting an extension of the discovery deadlines, including deadlines relating to PGW’s Set I interrogatories for POWER. On June 15, 2023, PGW filed an Answer to the Motion for Extension agreeing to a further extension of discovery deadlines relating to PGW’s Set I interrogatories and requesting that certain limitations be imposed on the delivery of supplemental rebuttal testimony and supplemental surrebuttal testimony.

On June 20, 2023 an Order was issued granting the Motion for Extension, extending the discovery deadline for POWER to respond to PGW’s Set I interrogatories by 7 days to June 22, 2023, and imposing limitations on the timing of delivery of supplemental rebuttal testimony and supplemental surrebuttal testimony.

On June 22, 2023, POWER served Written Objections to the Set I Interrogatories (Written Objections). Also on June 22, 2023, POWER served partial responses to 16 of the 26 interrogatories included in PGW Set 1 (Partial Responses).

On June 26, 2023, PGW filed a Motion to Dismiss the objections of Power and Compel Complete Replies to PGW set I Interrogatories (Motion).

On June 29, 2023, Power filed an Answer to the Motion to Compel (Answer).

The Motion to Compel is ripe for disposition.

**Disposition**

PGW’s Motion seeks to dismiss POWER’s Objections and to compel POWER to provide full and complete answers to the Set 1 Interrogatories, arguing that POWER’s Objections are “baseless and improper, and should be dismissed.”[[3]](#footnote-3) PGW observes that Commission regulations “specifically provide that ‘a participant may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action."[[4]](#footnote-4) PGW also notes that Commission regulations permit discovery “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.’"[[5]](#footnote-5)

In support of the Motion, PGW also points to Commission rulings involving the discovery rules, noting that; (1) information may be discoverable, even if it would be inadmissible at a hearing;[[6]](#footnote-6) and (2) it is insufficient to object to discovery based on the belief that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.[[7]](#footnote-7) Throughout the Motion, PGW highlights the “wide latitude” granted to parties engaged in discovery under the Commission’s rules and regulations, and Commission decisions.[[8]](#footnote-8)

In support of the Motion and its position that POWER’s Objections should be dismissed and compelled to provide the requested information, PGW repeatedly and consistently asserts the following four-pronged rationale:

(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 POWER assert that it does not have the information or is unable to produce the information; and (d) POWER does not provide a credible assessment of the alleged privilege or burden of retrieving the information.[[9]](#footnote-9)

POWER also served Partial Responses to 16 of Set 1 interrogatories.[[10]](#footnote-10) POWER served Written Objections to the Set 1 Instructions and all 26 Set 1 interrogatories. POWER providing additional analysis and discussion of the objections raised in the Written Objections in its Answer.

In contrast to the Motion, which consistently and repeatedly presents the four arguments identified above as the basis for PGW’s, POWER’s Written Objections and Answer provide a question-by-question analysis and discussion of POWER’s. POWER argues that the Set 1 Interrogatories are “plainly inappropriate on the basis of relevance, undue burden and [various] forms of privilege.”[[11]](#footnote-11) POWER also asserts that “certain of PGW’s Set I interrogatories are so inappropriate and intrusive that they are appropriate to disallow on the basis that they infringe the First Amendment rights of POWER.”[[12]](#footnote-12)

The issues arising out of POWER’s objections may be grouped into three categories: (a) issues arising out of the Instructions that accompanied the Set I Interrogatories (Set 1 Instructions); (b) issues involving POWER’s participation in the proceeding; and (c) specific objections. The arguments presented by PGW and POWER as to each category are discussed in turn below.

Issues Relating to Set I Instructions

POWER objects to the Set 1 Instructions on the grounds of lack of relevance, lack of reasonable calculation to lead to admissible relevant evidence, causing an unreasonable and undue burden, and requiring an unreasonable investigation.[[13]](#footnote-13) POWER explains its reasoning for this objection in the Answer, at least in part, averring that the use of the terms “identify” and “identity” in the Set 1 Interrogatories would require disclosure of an individual’s

full name, present or last known address, present or last known telephone number, present or last known place of employment, position or business affiliation, his or her position or business affiliation at the time in question, and a general description of the business in which he or she is engaged.[[14]](#footnote-14)

POWER asserts that having “agreed to provide the name, job title, and business address of the person answering each interrogatory on behalf of POWER, PGW should be required to explain why the proffered information is insufficient and provide specific argument detailing why the requested information is relevant to the subject matter of this [proceeding].[[15]](#footnote-15)

POWER’s arguments in support of its objections to the Set 1 Instructions are deeply flawed. First, POWER’s argument is circular. POWER appears to draw a distinction between an objection to the Set 1 Instructions and an objection to any of the 26 Set 1 Interrogatories; however, POWER does not articulate the logic or other basis for distinguishing between the two. For example, how is POWERS’s “undue burden” objection to the Set 1 Instructions, in and of themselves, different from an POWERS’s “undue burden” objection to interrogatories I-1, I-6, I-8 or I-9? The logic for the distinction is not apparent in the Written Objections or the Answer. For example, POWER does not indicate that the distinction was made in the instructions to avoid repeating the same objection as to multiple individual interrogatories. If there is no difference, what is the purpose or objective of the objection to the instruction?

POWER cites no authority to support its argument above that PGW must explain why POWER’s Partial Responses are insufficient. As the proponent of the objection, POWER must demonstrate the defect in the interrogatory that renders it beyond the scope of permissible discovery. It cannot shift that burden to PGW, nor can it expect PGW or the Presiding Officers to hazard a guess as to POWER’s intent.

In addition, the objection is defective from another perspective. As written by POWER, the qualifications to its objection to the Set 1 Instruction also require PGW or the Presiding Officers to hazard a guess as to what information POWER seeks to exclude from the scope of discovery. Here, I refer to the phrase “to the extent that” which appears twice in the objection. This phrase effectively circumscribes and limits the scope of the objection to data and information that: (1) exceed the requirements of Commission rule and regulations regarding interrogatories and the responses to same; and/or (2) is protected by privilege (including but not limited to attorney-client privilege and work product privilege), confidentiality, status as proprietary information, reasonable expectation of privacy, or the First Amendment of the United States Constitution.[[16]](#footnote-16)

As the proponent of the objection, POWER has the burden and responsibility to articulate the information it seeks to protect with the objection. Yet, nowhere does POWER identify, describe or explain the information it seeks to protect by the objection. By failing to do so, POWER fails to provide sufficient information on which the objection may be granted. Further, POWER cannot delegate or shift the responsibility for doing so to PGW or the Presiding Officers or expect either to guess at POWER’s intent.

Another problem relating to POWER’s objection to the Set 1 Instructions lies in POWER’s effort to expand the scope of privilege in this proceeding to include what it terms “First Amendment privilege.”[[17]](#footnote-17) POWER does so despite acknowledging that discovery is necessary “to develop the factual record necessary to support informed decision-making by the Commission,”[[18]](#footnote-18) recognizing that Commission’s regulations and rulings provide for “reasonable discovery” in rate cases,[[19]](#footnote-19) and citing to Commission regulations limiting the scope of discovery and providing protection from unreasonable, invasive requests and ensuring that “matter which is privileged” is excluded from discovery.[[20]](#footnote-20) Inexplicably, after devoting nearly three full pages to this effort,

POWER later backtracks and states that the Commission “need not reach the issue of First Amendment privilege”[[21]](#footnote-21) and that POWER’s objections to the Set 1 Instructions were made “to the extent that any additional reason may be needed” beyond those based on relevance, undue burden and other forms of privilege.”[[22]](#footnote-22) Given POWER’s willingness to side-step any objection based on First Amendment grounds and the other grounds for its objections noted in the Written Objections and the Answer, POWER’s objection base on First Amendment grounds will not be considered here or as to individual objections to specific interrogatories.

As the proponent of the objection, POWER has the burden and responsibility to articulate the information it seeks to protect with the objection. POWER fails to indicate with any detail what information it seeks to protect through its objection to the Set 1 Instructions. In addition, the objection to the Set 1 Instructions seems to rest on little more than POWER’s opinion and broadly worded generic statements. In addition, POWER acknowledges that its Written Objections detail and discuss on a question-by-question basis “all the applicable objections for each question.”[[23]](#footnote-23)

In opposing POWER’s objection to the Set 1 Interrogatories, PGW asserted its four-pronged rationale, summarized here:

(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 POWER assert that it does not have the information or is unable to produce the information; and (d) POWER does not provide a credible assessment of the alleged privilege or burden of retrieving the information.[[24]](#footnote-24)

In light of the above, POWER’s objections to the Instructions, POWER’s objections to the Set 1 Instructions, will be denied as to the Set 1 Interrogatories as a whole and as to each of the 24 interrogatories in which they were reiterated.[[25]](#footnote-25)

Issues Relating to POWER’s Participation in the Proceeding

PGW contends that the Set 1 Interrogatories are designed to solicit information necessary to confirm the accuracy of facts and circumstances used by POWER to support its participation in the proceeding, including data and information on POWER’s members and whether its members “would be directly affected by the proceeding” and “not adequately represented by other parties.”[[26]](#footnote-26) PGW also contends that POWER’s responses to the interrogatories will enable PGW to assess and raise questions regarding “the relevance, materiality, standing and credibility of POWER’s averments as well as its compliance with 52 Pa. Code §§ 5.72-5.75.”[[27]](#footnote-27) Further, PGW argues that POWER ‘s allegation that this proceeding will impact its members and their gas bills, and the reliability, quality, and safety of their gas service, itself establishes the relevance of interrogatories.[[28]](#footnote-28)

In contrast, POWER contends that PGW’s Motion makes “a blanket claim that a purpose of the Set 1 [Interrogatories] is to test POWER’s standing.”[[29]](#footnote-29) POWER also argues that “it is unclear what PGW means by its desire to investigate the ‘materiality,’ ‘relevance,’ and ‘credibility’ of POWER’s statements in its Petition to Intervene.”[[30]](#footnote-30) POWER in addition, alleges that interrogatories on topics such as POWER’s donors, its case strategy discussions, its connections to and communications with any environmental coalitions among others “do not relate to any information that PGW needs to establish that it is providing safe and reliable gas service”[[31]](#footnote-31) POWER avers that because such inquiries do not relate in any way to the provision of gas service” they should be not be required to respond to interrogatories on such topics.

I perceive several errors in POWER’s argument. First, POWER’s argument regarding standing is misplaced. The Motion to Compel does not raise the issue of standing; therefore, the issue need not be addressed in this Order.

First and foremost, PGW’s Motion relates to POWER’s objections. The Motion does not raise any issue with respect to POWER’s standing. Therefore, any discussion of that topic is beyond the scope of the Motion and this Order.

Second, Section 5.321(c) contemplates and explicitly approves of the use of interrogatories relating to “any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense.”[[32]](#footnote-32) That same Section also recognizes that certain information sought by an interrogatory may not be admissible in at a hearing.[[33]](#footnote-33) However, the last sentence of subparagraph (c) of Section 5.321 explicitly provides that the inadmissibility of information at a hearing is not a ground for objection as long as the information sought by the interrogatory “appears reasonably calculated to lead to the discovery of admissible evidence.”[[34]](#footnote-34)

The Set 1 Interrogatories probe issues relating to POWER’s status and authority to represent the interests of individuals and groups who would be affected by the proceedings and the sources and basis for arguments it presents and positions it takes in this proceeding. They fall well within the scope of discovery permitted under Section 5.321 and Commission rulings. The rationale set forth above is applicable to all Set 1 Interrogatories to the extent they relate to any aspect of POWER’s participation in the proceeding.

Specific Objections

POWER objected to the Set 1 Instructions and many of the Set 1 Interrogatories on multiple grounds, including relevance and/or information not reasonably calculated to lead to admissible evidence relevance, undue burden, undue investigation, vagueness of the interrogatory and/or assertion of privilege. These objections by POWER fall into the third category of “other arguments and issues” and will be addressed in turn.

Relevance and/or Information Not Reasonably Calculated to Lead to Admissible Evidence

POWER objects to Set 1 Interrogatories I-1, and I-6 through I-26 on grounds of relevance and and/or information not reasonably calculated to lead to admissible evidence. Interrogatory I-1 relates to individuals answering or providing information used to answer the Set 1 Interrogatories. In support of its objection, POWER asserts “the information sought by these questions[[35]](#footnote-35) is not itself relevant, because POWER’s process for responding to interrogatories is not a material fact that must be resolved in the Commission’s investigation in this proceeding.[[36]](#footnote-36) POWER notes that when providing its Partial Response to Interrogatory I-1 it included the name and contact information for the person answering the question for POWER.[[37]](#footnote-37) POWER argues that it is unclear why PGW would need the contact information or ‘present location’ of other individuals involved in developing POWER’s responses to these interrogatories because PGW has “the full unabridged right to issue discovery to POWER in this Proceeding by serving its attorneys.”[[38]](#footnote-38)

POWER also argues that “These questions are also not reasonably calculated to lead to admissible relevant evidence. To be reasonably calculated to lead to relevant evidence, there must be some articulation of a relevant evidentiary goal and of how the question will lead towards the production of that relevant evidence.”[[39]](#footnote-39) POWER agrees that disclosure of such information may be appropriate “where the subject of discovery is a Commission-regulated utility seeking approval for an application and the internal workings of the utility may be relevant to the proceeding.”[[40]](#footnote-40) However, POWER opines that posing such a question to an intervenor such as POWER is “excessive and disproportionate to the needs of [this] case.”[[41]](#footnote-41)

In response to these objections by POWER, PGW also asserted its four-pronged rationale, which states:

(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 POWER assert that it does not have the information or is unable to produce the information; and (d) POWER does not provide a credible assessment of the alleged privilege or burden of retrieving the information.[[42]](#footnote-42)

In addition, PGW argued that by calling on PGW to articulate a “relevant evidentiary objective” POWER seeks to impose a hurdle for the proponent of interrogatories that is not found in the language of any of the Commission’s discovery regulations. [[43]](#footnote-43)

POWER cites no authority for the imposition of such a requirement.[[44]](#footnote-44)

The Commission’s discovery regulations establish the scope of discovery and place reasonable limits on discovery. These regulations also provide a mechanism for resolving disputes arising during discovery. Not only does POWER fail to cite any authority to support the imposition of a new hurdle for parties serving interrogatories, POWER‘s argument runs counter to framework for discovery established in Commission regulations and repeatedly and consistently upheld by the Commission. The argument is without merit and will not prevail here. This rationale is equally applicable in all instances in which POWER’s objection to a Set 1 Interrogatories in which POWER calls on PGW to articulate a “relevant evidentiary objective” for an interrogatory.[[45]](#footnote-45)

*Undue Burden / Undue Investigation*

POWER asserts that responding to the Set 1 Instructions and Interrogatories I-1, I-6, I-8 and I-9, I-12 through I-16, I-19 through 22, and I-25 and I-26 place an undue burden on POWER and would require POWER to undertake an undue investigation. [[46]](#footnote-46) In support of its objection, POWER states that it “is a small nonprofit with limited resources, and its ability to participate meaningfully in this Proceeding depends on its ability to focus its engagement on matters that are actually relevant and material to the Proceeding.”[[47]](#footnote-47) POWER argues that it “can and should be freed from the burden of excessive and disproportionate discovery in order to focus on defending its actual claims in this Proceeding as reflected in its expert testimony.”[[48]](#footnote-48) POWER alleges that PGW is attempting to impair POWER’s ability to defend its claims in this proceeding by forcing POWER to expend additional resources on responding to “inappropriate discovery requests” such as Interrogatories I-1, I-8 and I-9.[[49]](#footnote-49)

Here, again, PGW asserted its four-pronged rationale to oppose the objection, arguing that:

(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 POWER assert that it does not have the information or is unable to produce the information; and (d) POWER does not provide a credible assessment of the alleged privilege or burden of retrieving the information.[[50]](#footnote-50)

In the Motion, PGW observes that “nowhere does POWER assert that it does not have the information or is unable to produce the information [requested in I-1 through I-6].”[[51]](#footnote-51) PGW also argued that “POWER does not provide a credible assessment of the alleged privilege or burden of retrieving the information.”[[52]](#footnote-52)

POWER has produced no evidence of bad faith on the part of PGW. Likewise, other than its own opinion, POWER has not produced any evidence to support its claim that in serving the Set 1 Interrogatories or any interrogatory included therein, PGW endeavored to impair POWER’s ability to defend its claims in this proceeding. POWER’s participation in this proceeding is entirely voluntary. It sought and was granted permission to intervene in this proceeding.

When seeking approval to intervene in this proceeding, POWER represented that it “is well-positioned to participate in this proceeding because it has previously intervened in and participated as an active party in the Philadelphia Gas Commission’s proceedings to review PGW’s proposed FY 2023 Capital Budget, FY 2023 Operating Budget, and FY 2024 Capital Budget.”[[53]](#footnote-53) Based on this representation, it is reasonable to infer that POWER was fully aware of its resources and any constraints that might hinder or prevent its full participation in this proceeding when it filed the Petition to Intervene. The participation in this proceeding that POWER sought when filing the Petition to Intervene was granted. Since filing the Petition to Intervene, POWER has consistently been ready, willing and able to fully participate in this proceeding and nothing in the record would suggest otherwise.

The right to participate in this proceeding comes with the obligation to comply with the laws and regulations that govern its conduct. POWER cannot avoid those obligations based on a claim of undue burden supported by nothing more than its own opinion. Accordingly, POWER’s objection to the Set 1 Instructions and Interrogatories I-1, I-6, I-8 and I-9, I-12 through I-16, I-19 through 22, and I-25 and I-26 on grounds that they place an undue burden on POWER and/or would require POWER to undertake an undue investigation will be denied.

*Privilege and Confidential, Proprietary and/or Sensitive Information*

POWER cited privilege in its objections to the Set 1 Instructions and Interrogatories I-1, I-6 through I-9, I-12 through I-19, I-21 and I-22, and I-25-26.[[54]](#footnote-54) POWER’s Written Objection to Interrogatory I-1 reads as follows:

POWER also objects to this question to the extent that it seeks access to information protected by privilege (including but not limited to attorney-client privilege and work product privilege), confidentiality, status as proprietary or sensitive information, reasonable expectation of privacy, or the First Amendment of the United States Constitution.[[55]](#footnote-55)

POWER repeated this same objection and reiterated its arguments pertaining to the First Amendment and/or relevance and undue burden with respect each of such Interrogatories.[[56]](#footnote-56)

PGW argues that the Set I Interrogatories seek to obtain discovery regarding matters “not privileged.”[[57]](#footnote-57) PGW also contends that “POWER does not provide a credible assessment of the alleged privilege or burden of retrieving the information.”[[58]](#footnote-58)

POWER is correct that generally, the scope of discovery is limited by privilege, including attorney-client privilege.[[59]](#footnote-59) However, I agree with PGW’s statement that POWER failed to provide a credible assessment of the alleged privilege or burden of retrieving the information. POWER’s Answer filed in response to the Motion does not contain data or additional information that in any way clarifies the nature, source or focus of its objection to those interrogatories on the basis of privilege. Here, POWER repeated asserts an objection based on privilege, but it provides little more than its own opinion and vague general statements to support the objection.[[60]](#footnote-60) In the absence of facts to supported by any evidence clarifies the nature, source or focus of its objection, the objections is too vague and lack sufficient detail to be sustained. To do rule otherwise on the facts presented here would all but nullify PGW’s right to discovery in this matter. For these reasons, POWER’s privilege objections to the Set I Interrogatories will be denied.

*Confidential, Proprietary and/or Sensitive Information Confidential Turning*

With the exception of interrogatories relating to POWER’s formation, organizational status, list of officers and directors, and the percentage of officers and directors who reside in Philadelphia or are PGW customers, POWER raised the following objection to all Set 1 Interrogatories.[[61]](#footnote-61)

POWER also objects to this question to the extent that it seeks access to information protected by privilege (including but not limited to attorney-client privilege and work product privilege), confidentiality, status as proprietary or sensitive information, reasonable expectation of privacy, or the First Amendment of the United States Constitution.[[62]](#footnote-62)

In addition to its argument that the Set 1 Interrogatories fall within the scope of discovery permitted under Commission regulations, as part of the Four Point Rationale, PGW averred that “nowhere does POWER assert that it does not have the information or is unable to produce the information [and] POWER does not provide a credible assessment of the alleged privilege or burden retrieving the information.”[[63]](#footnote-63) In support of its request for information concerning financial sources and resources of POWER, PGW also observes that as a nonprofit organization, POWER is required to file annual financial reports with federal and state authorities.[[64]](#footnote-64) In addition, PGW avers that it is entitled to examine POWER’s policies concerning PGW, their source and authors, the underlying facts and circumstances related to such policies, including but not limited to those published by POWER on its website.[[65]](#footnote-65)

POWER’s Answer does little to clarify the foundation or basis for its objections to the interrogatories on the grounds of confidentiality, status as proprietary or sensitive information, reasonable expectation of privacy. For example, with respect to financial information, POWER asserts:

The details of how POWER raises funds and from whom and the details of all the expenditures POWER makes all comprise highly sensitive business information. Since PGW has identified no relevance of this information to any claim in this case, it should not be allowed to compel production of such sensitive information.[[66]](#footnote-66)

As to its unpublished policy-related communication with third parties, POWER asserts that it should be shielded from discovery by PGW “due to the sensitive nature of such communications and the reasonable expectation of privacy that others may have regarding such communications.”[[67]](#footnote-67) These sweeping statements by POWER fail to provide sufficient detail to establish or identify the specific information or data it seeks to protect.

Here, too, POWER has failed to provide a credible assessment of the information it seeks to protect or the burden of retrieving the information. POWER’s Answer filed in response to the Motion does not contain data or additional information that in any way clarifies the nature, source or focus of its objection to those interrogatories based on a duty of confidentiality, the proprietary or sensitive status of the information, the basis for reasonable POWER’s expectation of privacy, or its authority to defend such an expectation of privacy on behalf of third parties. POWER repeatedly asserts an objection, but it provides little more than its own opinion and vague general statements to support the objection. In the absence of facts supported by any evidence that clarifies the nature, source or focus of its objection, the objections is too vague and lack sufficient detail to be sustained. To rule otherwise on the facts presented here would effectively nullify PGW’s right to discovery in this matter. For these reasons, POWER’s objections to the Set I Interrogatories based on a duty of confidentiality, the proprietary or sensitive status of the information, the basis for reasonable POWER’s expectation of privacy, or its authority to defend such an expectation of privacy on behalf of third parties will be denied.

*Vagueness*

POWER objected to several Set 1 Interrogatories on the ground that the interrogatory, or some portion thereof, is “vague” and “overbroad.”[[68]](#footnote-68) In its objection to interrogatory I-1, Power argued that it is vague and overbroad “because when it asks for information on any person ‘providing any information used to answer,’ it does not specify providing to who or used by who.”[[69]](#footnote-69)

POWER also objected to interrogatory I-6, arguing that “The term “affiliate” is not defined (illustrative examples are provided but no definition), and the vagueness of the instruction to “describe the affiliation” and the lack of definition of what it means to “participate” in an “affiliation” is also vague and overbroad.”[[70]](#footnote-70)

POWER’s Answer expanded on the reasoning supporting the objection, stating PGW’s failure to clarify this term is inappropriate because the term has a wide range of potential meanings. It could sweep in all manner of affiliations and associations that POWER as an advocacy organization may have, including participation and membership in political, policy, and religious coalitions and caucuses.”[[71]](#footnote-71) Notwithstanding its multiple objections to the term “affiliate,” POWER confirmed that in the Written Objections it had provided “all of the requested corporate entity information regarding POWER itself and confirmed that no affiliate of POWER is involved in this Proceeding.”[[72]](#footnote-72)

POWER also raised vagueness in its objections to interrogatories I-8 (relating to PGW documents or records used to prepare answers to the Set 1 Interrogatories) and I-9 (relating to individuals who provided information to assist in answering the Set 1 Interrogatories). With respect to interrogatory I-8, POWER indicated that its objection was two-fold. First, because “when [the interrogatory] asks for information on any documents ‘used or referred to,’ it does not specify by who.”[[73]](#footnote-73) Second, because the interrogatory “does not explain what is meant by the ‘originator’ of a document.”[[74]](#footnote-74)

With respect to interrogatory I-9, POWER indicated that it objected to the interrogatory because:

When the question requests the names of each person “who was spoken to” it does not specify spoken to by who and when the question requests the names of each person “who provided information” it does not specify who was being given information. It refers to the “present location” and “address” for individuals but does not explain the difference, or whether a business address or residential address is sought.[[75]](#footnote-75)

The words vague and overbroad do not appear in the Motion. However, PGW again pointed to the Four Point Rationale to support of its argument that the Set I Interrogatories are “well within the scope of this proceeding and are relevant to the subject matter of this proceeding.”[[76]](#footnote-76)

POWER’s Answer explains the foundation for its objection to Interrogatory I-6.[[77]](#footnote-77) In doing so, the Answer also reveals the prism through which POWER views the Set 1 Interrogatories, including Interrogatory I-8 and I-9. Where it finds vagueness or ambiguity, POWER does not resolve the ambiguity by reference to a widely-recognized and accepted standard and framing and tailoring its response accordingly.[[78]](#footnote-78) Instead, POWER responds using its own judgment, without ever defining the term POWER itself found intolerably vague and offensive.[[79]](#footnote-79) POWER pointedly notes that “in a spirit of cooperation “ it provided a partial response to the interrogatory which included all of the requested corporate entity information *regarding POWER itself* *and POWER had confirmed* that it had no affiliate of POWER is involved in the Proceeding.

Here too, PGW relied upon the Four Points Rationale to support the Motion.

Commission regulations expressly prohibit discovery which is sought in bad faith.[[80]](#footnote-80) While a party may object to discovery made in bad faith, POWER made no such allegation as to any of the Set I interrogatories.

Having received the Set 1 Interrogatories, POWER is obligated to either make a suitable objection or provide an appropriate response. POWER’s objection that Interrogatories I- 6, I-8 and I-9 are vague and overbroad, without evidence of a reasonable and accepted alternative standard other than POWER’s own judgment, the objection cannot be sustained, and POWER’s response cannot be found appropriate. The objection will be dismissed.

As noted above, the parties, including POWER agreed to a litigation schedule for this proceeding on May 11, 2023. PGW served the Set 1 Interrogatories on May 26, 2023. The record in this matter indicates that PGW and POWER voluntarily suspended the litigation schedule to allow for settlement talks, with the deadlines temporarily suspended until June 15, 2023. Just prior to the June 15, 2023 expiration of the voluntary suspension, POWER filed a motion to extend the date for delivery of its responses to the Set Interrogatories. PGW agreed to the POWER’s extension request. The Order on POWER’s Motion for Extension issued June 20, 2023 gave POWER an additional week beyond the agreed litigation schedule i.e., until June 22, 2022 to serve its responses to the Set Interrogatories. The litigation schedule was otherwise unchanged and Surrebuttal testimony in this proceeding is due on July 7, 2023. POWER has had over one month to collect and assemble its responses to the Set Interrogatories. At no point has POWER argued that it does not have the information necessary to provide full and complete responses to the Set Interrogatories. POWER’s inability or failure to deliver full and complete responses to the Set 1 Interrogatories cannot and will not be allowed to disrupt the litigation schedule for this proceeding established by all the parties, nor may PGW be prejudiced by further delay in its review of those responses necessary for the preparation of its Surrebuttal testimony. For these reasons, POWER will be ordered to deliver full and complete responses to the Set 1 Interrogatories no later than 9:00 AM on July 5, 2023.

THEREFORE,

IT IS ORDERED:

1. That the Motion to Dismiss the objections of Power Interfaith and Compel Complete Replies to PGW set I Interrogatories is granted.

2. That Philadelphians Organized to Witness Empower and Rebuild (P.O.W.E.R.), Inc. shall file full and complete answers to Interrogatories PGW-POWER Set I-1 through I-26 no later than 9:00 AM on July 5, 2023.

Date: July 3, 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)
2. Prehearing Order ¶ 14. [↑](#footnote-ref-2)
3. Motion Section I. at 2. [↑](#footnote-ref-3)
4. Motion Section II. A. at 4, citing 52 Pa. Code § 5.321(c). [↑](#footnote-ref-4)
5. *Id.* [↑](#footnote-ref-5)
6. Motion Section II. A. at 4, citing *Application of Nabil Nasr and Wael Hafez*, Docket No. A-2012- 2295813, 2012 Pa. PUC LEXIS 1849 (Order issued Nov. 28, 2012) at 12. [↑](#footnote-ref-6)
7. *Id.* [↑](#footnote-ref-7)
8. Motion Section II. A. at 4, citing *Application of Nabil Nasr and Wael Hafez*, Docket No. A-2012- 2295813, 2012 Pa. PUC LEXIS 1849 (Order issued Nov. 28, 2012) at 12. [↑](#footnote-ref-8)
9. Motion Section III. at 7. [↑](#footnote-ref-9)
10. POWER submitted its First Partial Responses on June 9, 2023 and its Second Partial Responses on June 22, 2023. Answer Section 1. B. at 4. All references to Partial Responses in this Order are to POWER’s Second Partial Responses. [↑](#footnote-ref-10)
11. Answer Section I. A. at 2. [↑](#footnote-ref-11)
12. Answer Section I. A. at 1-4. [↑](#footnote-ref-12)
13. Written Objections at 2. Neither POWER nor PGW supplied a copy of the Set 1 Instructions to the Presiding Officers. [↑](#footnote-ref-13)
14. Answer Section I. A. at 11. [↑](#footnote-ref-14)
15. *Id.* citing Partial Responses, at 2 [↑](#footnote-ref-15)
16. *Id.*

    [↑](#footnote-ref-16)
17. Answer Section I. A. at 1-4. [↑](#footnote-ref-17)
18. Answer Section I. A at 1, citing 6 Pa. C.S. §§ 1301, 2212. [↑](#footnote-ref-18)
19. *Id.* [↑](#footnote-ref-19)
20. *Id.* [↑](#footnote-ref-20)
21. *Id.* [↑](#footnote-ref-21)
22. Answer Section I. A. at 3-4. [↑](#footnote-ref-22)
23. Answer Section I. B at 5. [↑](#footnote-ref-23)
24. Motion Section III. at 7. Rather than repeatedly reproducing these four paragraphs, they are referred to herein as the “Four Pronged Rationale” for the Motion. [↑](#footnote-ref-24)
25. *See* Objections at 2-11, 14-48. In the two instances where the objection to the Set 1 Instructions was not raised i.e., Interrogatory # 7 (relating to tests or studies concerning electricity generated by natural gas) and #26 (relating to POWER’s membership in local, state, or national organizations or coalitions), POWER provide no response based on other objections. [↑](#footnote-ref-25)
26. Motion Section II. B. at 5. [↑](#footnote-ref-26)
27. *Id.*

    [↑](#footnote-ref-27)
28. Motion Section II. C. at 5. [↑](#footnote-ref-28)
29. Answer Section I. C.at 5. [↑](#footnote-ref-29)
30. Answer Section I. B.at 7. [↑](#footnote-ref-30)
31. Answer Section I. B.at 8. [↑](#footnote-ref-31)
32. 52 Pa. Code § 5.321(c). [↑](#footnote-ref-32)
33. *Id.* [↑](#footnote-ref-33)
34. *Id*. [↑](#footnote-ref-34)
35. Answer Section II. A. at 11. POWER asserted the same rationale for its objection to Set 1 Interrogatories I-1, I-8 and I-9. See Answer Section II. A. at 10-14. [↑](#footnote-ref-35)
36. Answer Section II.A.at 11. [↑](#footnote-ref-36)
37. *Id.* [↑](#footnote-ref-37)
38. *Id*. at 12. [↑](#footnote-ref-38)
39. *Id*. [↑](#footnote-ref-39)
40. *Id*. [↑](#footnote-ref-40)
41. *Id*. [↑](#footnote-ref-41)
42. Motion Section III. at 7. Rather than repeatedly reproducing these four paragraphs, they are referred to herein as the “Four Pronged Rationale” for the Motion. [↑](#footnote-ref-42)
43. Motion Section III at 7. [↑](#footnote-ref-43)
44. Answer Section II b. 10 – 14. [↑](#footnote-ref-44)
45. This include Interrogatories I-6 through I-26. [↑](#footnote-ref-45)
46. POWER did not assert that responding would require it to undertake an undue investigation, only that it was unduly burdensome. [↑](#footnote-ref-46)
47. Answer Section II. B. at 12. [↑](#footnote-ref-47)
48. *Id.* at 14. [↑](#footnote-ref-48)
49. *Id.* POWER did not make any allegation of bad faith against PGW in its Written Objections or its Partial Responses. The specter of the possibility of such an allegation first appears in the Answer. [↑](#footnote-ref-49)
50. Motion Section III. at 7. Rather than repeatedly reproducing these four paragraphs, they are referred to herein as the “Four Pronged Rationale” for the Motion. [↑](#footnote-ref-50)
51. Motion Section III at 8. [↑](#footnote-ref-51)
52. *Id.* [↑](#footnote-ref-52)
53. Id. ⁋ 9. [↑](#footnote-ref-53)
54. **Written Objections cite to be supplied** POWER’s objections and arguments relating to infringement of First Amendment rights arising out of the Set I Interrogatories were discussed above under the heading *Issues Relating to Set I Interrogatory Instruction* and will not be repeated here*.* [↑](#footnote-ref-54)
55. Written objections at 5. [↑](#footnote-ref-55)
56. Answer at 10, 12, 13, 16, 17, 30, 32, 34, 42, 44 and 48. POWERs elaborated on its arguments pertaining to the First Amendment in some but not all of its objections to the specified interrogatories. Having reviewed and rejected POWER’s First Amendment objections above, they will not be reiterated here. [↑](#footnote-ref-56)
57. Motion Section I at 2-3.

    [↑](#footnote-ref-57)
58. Id. at 7. [↑](#footnote-ref-58)
59. *See* Answer Section I. A. at 1, citing 52 Pa. Code § 5.361(a)(3) and 52 Pa. Code § 5.323(a). [↑](#footnote-ref-59)
60. See Answer Section 1.A. at 1, citing 52 Pa. Code § 5.361(a)(3) and 52 Pa. Code § 5.323(a).

    For example, in Section II of the Answer, POWER discusses attorney-client privilege; however, it indicates no details that would demonstrate that counsel to POWER was present or participated in any of the discussions with respect to which the privilege asserted. Answer Section II. at 13. As indicated above, POWER states that the Commission “need not reach” POWER’s First Amendment arguments; however, it repeatedly asserts various forms of First Amendment privilege and does so without providing any details as to nature or the scope of the information or activity it seeks to provice. See e.g., the discussion in Answer Section II. B., Section VII. B. and Section XI. [↑](#footnote-ref-60)
61. The topics were the subject of Interrogatories I-2 through I-4, I-10 and I-11, I-23 and I-24. See Written Objections at 6-8, 19-22, and 45-46. [↑](#footnote-ref-61)
62. Written Objections at 5. [↑](#footnote-ref-62)
63. Motion Section II., Section III. at 7- 8, 10-14. [↑](#footnote-ref-63)
64. Motion Section III. At 10. [↑](#footnote-ref-64)
65. Motion Section III. At 12. [↑](#footnote-ref-65)
66. Answer Section VI. A. at 23. [↑](#footnote-ref-66)
67. Answer Section XI at 34. [↑](#footnote-ref-67)
68. The interrogatories include I-1, I-6, I-8 and I-9. *See* Written Objections at 5, 10, 15 and 17. [↑](#footnote-ref-68)
69. Written Objections at 5. [↑](#footnote-ref-69)
70. *Id.* at 10. [↑](#footnote-ref-70)
71. Answer Section III. B. at 15. In addition, POWER offered that its “perspective is that the requested corporate entity details relating to POWER, and any affiliates are not relevant, and the interrogatories are not reasonably calculated to lead to any relevant admissible evidence because this information is not a material fact for any issue in this Proceeding.” Id. [↑](#footnote-ref-71)
72. Partial Response, at 7. [↑](#footnote-ref-72)
73. Written Objections at 14. [↑](#footnote-ref-73)
74. Id. [↑](#footnote-ref-74)
75. Written Objections at 17. [↑](#footnote-ref-75)
76. Motion Section II. (unnumbered paragraph ) at 3. [↑](#footnote-ref-76)
77. See Answer Section III. B. at 15. [↑](#footnote-ref-77)
78. POWER also found ambiguity in the Set 1 Instructions which failed to define the term “affiliates.” and took a similar approach. Despite its uncertainty regarding the definition of “affiliate,” in the Answer, POWER stated that it “went to significant lengths to produce as much information as possible concerning *itself* and also confirmed that it has no affiliates involved in this Proceeding.” Answer Section II. A. at 11 (emphasis added). This too is an instance of POWER failing to identify and use a reasonable widely accepted standard and relied solely on its judgment. [↑](#footnote-ref-78)
79. Partial Responses, at 7. [↑](#footnote-ref-79)
80. 52 Pa. Code § 5.361(a)(1). [↑](#footnote-ref-80)