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June 12, 2025

**Via Electronic Filing**

Matthew L. Homsher, Secretary  
Pennsylvania Public Utility Commission  
400 North Street  
Harrisburg, PA 17120

Re: PA Public Utility Commission, et al., v. Philadelphia Gas Works  
2025 PGW Base Rate Case – Docket No. R-2025-3053112

Dear Secretary Homsher:

Enclosed for electronic filing please find Philadelphia Gas Works' ("PGW") Motion to Dismiss the Objections of Energy Justice Advocates and Compel Complete Replies to PGW's Set II Interrogatories with regard to the above-referenced matters. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

*Renardo L. Hicks*

Renardo L. Hicks

RLH/jls  
Enclosure

cc: Hon. Eranda Vero w/enc.  
Cert. of Service w/enc.

## CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of **PGW's Motion to Dismiss the Objections of Energy Justice Advocates and Compel Replies to PGW's Set II, Interrogatories** upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Date: June 12, 2025

*/s/ Renardo L. Hicks* \_\_\_\_\_  
Renardo L. Hicks, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY	:	
COMMISSION	:	
	:	Docket No. R-2025-3053112
v.	:	
	:	
PHILADELPHIA GAS WORKS	:	

**PHILADELPHIA GAS WORKS’  
MOTION TO DISMISS THE OBJECTIONS OF ENERGY JUSTICE ADVOCATES  
AND TO COMPEL COMPLETE REPLIES TO PGW SET II INTERROGATORIES**

Pursuant to 52 Pa. Code §§ 5.321, 5.342, and 5.349, Philadelphia Gas Works (“PGW”) hereby respectfully requests that Administrative Law Judge Vero (“ALJ” or “Presiding Officer”) dismiss the objections to discovery by intervenors Energy Justice Advocates (“EJA”) and compel EJA to provide full and complete answers to PGW Set II Interrogatories Nos. 11 through 13. PGW served the Set II Interrogatories on EJA on May 27, 2025 (relevant portion attached hereto as Exhibit 1), and EJA served Objections to PGW Set II Interrogatories Nos. 11 through 13 on June 5, 2025 (Exhibit 2). Based upon discussions between counsel on May 30, 2025, PGW and EJA disagree as to the permissibility of the questions in PGW Set II Interrogatories Nos. 11 through 13. Therefore, PGW now moves to compel EJA to provide full and complete answers to PGW-EJA Set II Nos. 11 through 13.

This Motion discusses: 1) the content of the PGW-EJA Set II Interrogatories at issue; 2) why EJA’s generalized objections are inadequate to prevent PGW’s relevant and timely discovery requests; 3) why the rationale from the July 14, 2020 order of the Administrative Law Judges (“ALJs”) in PGW’s 2020 rate case (“2020 ALJ Order”) does not apply here because the PGW-EJA Set II Interrogatories seek the *factual and legal basis* for specific witness testimony, not the *legal analysis or theories of the Intervenor for participation in this proceeding*; and 4)

why EJA should be compelled to provide complete answers as an active party participating in this proceeding.<sup>1</sup>

## **I. PGW-EJA SET II INTERROGATORIES**

PGW submits that EJA's objections to the Set II interrogatories are baseless, improper, and should be dismissed. PGW respectfully requests that the Commission issue an Order dismissing the objections of EJA and compelling EJA to completely answer each of the interrogatory questions in PGW-EJA Set II Nos. 11 through 13.

In support of this request, and as evidenced in Exhibit 1, the PGW-EJA Set II interrogatories at issue seek to obtain discovery regarding the following matters, not privileged, which are patently relevant to the subject matter of this proceeding:

- Identify the PA PUC's specific statutory and regulatory authority to require the City of Philadelphia to establish a "Coordinated stakeholder involvement to develop an energy blueprint for the City that establishes a timeline for building sector decarbonization goals and joint responsibilities and roles." (PGW-EJA Set II-11)
- Identify the PA PUC's specific statutory and regulatory authority to implement requirements on PGW for "identifying, evaluating, implementing cost recovery." (PGW-EJA Set II-12)
- Provide the PA PUC's specific statutory and regulatory authority to require PGW to engage in long-term planning in coordination with PECO. (PGW-EJA Set II-13)

As discussed further below, PGW-EJA Set II interrogatories request information regarding specific averments made in the May 21, 2025, direct testimony of EJA witness Dr. Dorie K. Seavey (relevant portion attached hereto as Exhibit 3). These interrogatories seek clarity concerning statements within Dr. Seavey's testimony that directly relate to the question of PGW's compliance with the Commission's regulations and obligations under Section 1501 of the

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<sup>1</sup> As of the date of the filing of this Motion, PGW has received and provided responses to nine (9) sets of discovery propounded by EJA in this proceeding.

Public Utility Code. As such, the discovery sought is wholly relevant to the outcome of this matter.

**II. PGW’S RESPONSES TO EJA’S GENERALIZED OBJECTIONS  
DEMONSTRATE WHY EJA’S OBJECTIONS MUST BE OVERRULED**

EJA objects to each of the interrogatories referenced above for several common reasons, including that the PGW-EJA Set II interrogatories: 1) seek access to information protected by privilege (including but not limited to attorney-client privilege and work product privilege); 2) are not relevant and not reasonably likely to lead to admissible relevant evidence; and 3) cause an unreasonable and undue burden on EJA.<sup>2</sup>

PGW submits that the interrogatory questions in PGW-EJA Set II Nos. 11 through 13 are well within the scope of discovery in this proceeding and relevant to the subject matter of this proceeding. The information sought is *not* privileged and *does not* impose an unreasonable burden on EJA. As set forth in more detail below, EJA’s objections are improper and should, therefore, be dismissed.

A. Standard for Review

The Commission’s rules and regulations allow wide latitude to parties engaged in discovery. Section 5.321(c) of the Commission’s Rules of Administrative Practice and Procedure 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.”<sup>3</sup> 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.”<sup>4</sup> Information

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<sup>2</sup> See Exh. 2 at 2–3.

<sup>3</sup> 52 Pa. Code § 5.321(c).

<sup>4</sup> *Id.*

may be discoverable, even if it would be inadmissible at a hearing.<sup>5</sup> It is not a valid basis 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.<sup>6</sup> The Commission has issued a number of decisions interpreting the scope of its discovery rules—including a decision of the presiding ALJ in a similar discovery dispute between PGW and POWER Interfaith in PGW’s 2023 rate proceeding<sup>7</sup>—and it has consistently allowed participants wide latitude in discovery matters.<sup>8</sup> Based on the standards set forth above, EJA’s Objections to PGW’s Set II Interrogatories should be overruled and EJA should be compelled to completely answer the questions propounded in PGW-EJA Set II Nos. 11 through 13 as part of the routine discovery process in this matter.

B. PGW-EJA Set II Interrogatories Raise Reasonable Issues of Relevance, Materiality, and Credibility

The direct testimony of Dr. Seavey serves as the basis for the information sought by PGW-EJA Set II Interrogatories Nos. 11 through 13, and therefore, exploration of the support for Dr. Seavey’s testimony is plainly relevant to this proceeding and permissible under the Commission’s rules.

As to PGW-EJA Set II Interrogatory No. 11, Dr. Seavey testified that PGW should engage in “[c]oordinated stakeholder involvement to develop an energy blueprint for the City [of Philadelphia] that establishes a timeline for building sector decarbonization goals and joint

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<sup>5</sup> *Application of Nabil Nasr and Wael Hafez*, Docket No. A-2012-2295813, 2012 Pa. PUC LEXIS 1849 (Order issued Nov. 28, 2012) at 12.

<sup>6</sup> *Id.*

<sup>7</sup> *See Pa. Pub. Util. Comm’n v. PGW*, Docket No. R-2023-3037933; ORDER GRANTING THE MOTION OF PHILADELPHIA GAS WORKS TO DISMISS OBJECTIONS OF POWER INTERFAITH AND COMPEL COMPLETE RESPONSES; July 3, 2023 (attached hereto as Exhibit 5).

<sup>8</sup> *See Pa. Pub. Util. Comm’n v. Peoples Natural Gas Co.*, 62 Pa. P.U.C. 56, 1986 Pa. PUC LEXIS 79 (Aug. 26, 1986); *Pa. Pub. Util. Comm’n v. Equitable Gas Co.*, 61 Pa. P.U.C. 468, 1986 Pa. PUC LEXIS 110 (May 16, 1986).

responsibilities and roles.”<sup>9</sup> Dr. Seavey further testified that possible stakeholders include the City of Philadelphia, the Commonwealth of Pennsylvania, PECO, ratepayer advocates and advocates for low-income utility customers, and “any other stakeholders that choose to intervene in the docket.”<sup>10</sup> However, Dr. Seavey’s testimony does not reference any basis (legal or otherwise) for the Commission to require PGW to engage in such activities. The foundational authority relied upon by Dr. Seavey for these recommendations in her direct testimony is relevant to her credibility as a witness and relates to the question of PGW’s regulatory compliance. PGW-EJA Set II Interrogatory No. 11 examines the basis for Dr. Seavey’s statement and raises questions regarding the relevance, materiality, and credibility of EJA’s averment. As a result, EJA’s objection to PGW-EJA Set II Interrogatory No. 11 should be dismissed and EJA should be compelled to answer the question propounded as part of the discovery process in this matter.

As to PGW-EJA Set II Interrogatory No. 12, Dr. Seavey testified that as part of a “revised and/or expanded regulatory framework,” the Commission should “provid[e] guidance and requirements for identifying, evaluating, [and] implementing cost recovery” for non-pipeline alternatives.<sup>11</sup> The basis for Dr. Seavey’s statement to that effect is relevant to her credibility as a witness and bears on PGW’s compliance with Pennsylvania law and the Commission’s regulations. PGW-EJA Set II Interrogatory No. 12 examines the relevance, materiality, and credibility of Dr. Seavey’s testimony on that issue. As a result, EJA’s objection to PGW-EJA Set II Interrogatory No. 12 should be dismissed and EJA should be compelled to answer the question propounded as part of the discovery process in this matter.

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<sup>9</sup> Exh. 3 at 68.

<sup>10</sup> *Id.* at 68–69.

<sup>11</sup> *Id.* at 69.

As to PGW-EJA Set II Interrogatory No. 13, Dr. Seavey testified that “[i]t is best practice for utilities to cooperate and coordinate on integrated distribution planning that considers and plans for long-term gas and electric infrastructure in an integrated fashion to ensure ratepayer monies are spent as effectively as possible.”<sup>12</sup> Dr. Seavey’s testimony to that effect was in response to the conclusion that PGW “does not engage in any form of long-term planning in coordination with Philadelphia’s electric utility, PECO.”<sup>13</sup> The basis for Dr. Seavey’s determination as to “best practice” (and PGW’s compliance with such) must be further explored and is relevant to her credibility as a witness. PGW-EJA Set II Interrogatory No. 13 examines that claim and raises questions regarding the relevance, materiality, and credibility of EJA’s averments on that issue. As a result, EJA’s objection to PGW-EJA Set II Interrogatory No. 13 should be dismissed and EJA should be compelled to answer the question propounded as part of the discovery process in this matter.

C. The PGW-EJA Set II Interrogatories are not Prohibited by the 2020 ALJ Order

In its opposition to the PGW-EJA Set II Interrogatories, EJA alleges that “PGW had issued very similar questions in its 2020 rate case, and these questions were ruled impermissible.”<sup>14</sup> However, it is important to note that in the 2020 ALJ Order (attached hereto as Exhibit 4) both the interrogatories and the 2020 ALJ Order related to questions regarding the legal theories of the Intervenor for participation in that case – not the authority of the Commission, as requested here, upon which the Intervenor’s witness relies as the basis for the Commission to require PGW to undertake specific recommendations proposed by EJA witness Seavy in her direct testimony. This important distinction shows that not only are the

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<sup>12</sup> *Id.* at 66–67.

<sup>13</sup> *Id.* at 66 (citing Exh. DKS-5, PGW Interrogatory Responses, Response to EJA-IX-5).

<sup>14</sup> Exh. 2 at 1.

interrogatories at issue *not* “very similar” to the questions that the 2020 ALJ Order ruled impermissible, but also, these questions bear directly on a crucial issue in this case—whether PGW is abiding by the statutory requirement in Section 1501 of the Public Utility Code to provide safe and reasonable service. Additionally, PGW-EJA Set II Interrogatory Nos-11-13 request that EJA’s witness provide the authority to support the specific proposals that she advances in her testimony - not the legal theory or analysis of the Intervenor. Identifying the factual and legal basis behind specific proposals advanced in EJA’s witness’s testimony is not privileged legal analysis, and EJA cannot rely on the 2020 ALJ Order to support a claim of attorney/client privilege. However, if EJA does claim attorney/client privilege regarding documents otherwise within the scope of discovery, PGW submits that they should be required to provide a privilege log regarding such documents.

Similar to the reasoning advanced by EJA’s instant objections, the 2020 ALJ Order addressed the contention that PGW was impermissibly and prematurely “requesting . . . legal arguments while other parties can enjoy the benefits of a complete factual record before producing their arguments regarding the legal basis of their direct testimony.”<sup>15</sup> Notably, the 2020 ALJ Order sustained the objections to PGW’s interrogatories on the grounds that: 1) the questions improperly required the proponents to divulge their legal theories and analysis “before the record is fully formed and the parties brief the issues”; 2) PGW had not demonstrated that the questions were intended to produce relevant evidence “for the purposes of a factual basis in this case”; and 3) allowing the requests would violate the proponents’ due process rights and place an unfair burden on them.<sup>16</sup>

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<sup>15</sup> Exh. 4 at 10.

<sup>16</sup> *Id.* at 11.

None of those reasons are applicable here: 1) PGW’s requests were propounded *after* EJA filed its direct testimony and the disputed interrogatories specifically request information regarding the basis under which EJA’s witness recommends that specific proposals be adopted by the Commission in this proceeding; 2) PGW has demonstrated that EJA’s responses to PGW-EJA Set II Interrogatory Nos. 11-13 are relevant and could very likely lead to relevant and admissible evidence, concerning whether PGW is abiding by the statutory requirement in Section 1501 of the Public Utility Code to provide safe and reasonable service; 3) allowing PGW to receive responses to these discovery requests, concerning specific proposals included in the direct testimony of EJA’s witness, for the basis or authority which supports those recommendations, do not implicate the proponents’ due process rights or place an unfair burden on them. Consequently, the concerns and reasoning of the 2020 ALJ Order are not applicable here.

Prior to issuing the 2020 ALJ Order, the presiding ALJs had already denied PGW’s motion *in limine* regarding the opposing parties’ direct testimony—meaning that at the time of the 2020 ALJ Order, the ALJs had already determined “the proper scope of issues to be considered” in the proceeding and whether the direct testimony that served as the basis for PGW’s requests “fits within that scope.”<sup>17</sup> Here, the proper scope of the relevant issues, and whether EJA’s direct testimony fits within that scope, are not yet resolved.

Another crucial difference between the instant proceeding and the 2020 proceeding is that in the 2020 matter, the ALJs determined that PGW had impermissibly sought *the intervenors’ legal theories and analysis*.<sup>18</sup> In the instant matter, the PGW-EJA Set II Interrogatories do not seek Intervenors’ legal theories or analysis – we seek the factual and legal basis under which

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

EJA’s witness advances specific proposals in EJA Statement No. 1—not the underlying legal theory or analysis of the Intervenors. Further, EJA has not shown that the questions at issue are beyond the scope of discovery in this proceeding.

Exploring the basis for Dr. Seavey’s testimony supporting her assertion that “PGW appears to be lacking in analysis and planning” is exceedingly relevant to the issue of whether PGW is abiding by the statutory requirement in Section 1501 of the Public Utility Code to provide safe and reasonable service. Again, PGW does not seek Intervenor’s “legal theories or analysis” which the 2020 ALJ Order declared impermissible; instead, PGW seeks non-analytical evidence that there exists (or does not exist) authority for the Commission to compel PGW to adopt specific proposals advanced by EJA witness Dr. Seavey in her direct testimony. In addition, the 2020 ALJ Order did not address the issue of whether the information sought was privileged, and PGW asserts that a request for references to publicly available legal authority and “best practice” *would not* require EJA to produce privileged legal analysis.

As a party to this matter, PGW is entitled to examine the source and authority behind Dr. Seavey’s assertions—including the underlying statutes, facts and circumstances which support her testimony related to “best practices”—to determine whether there is, or is not, a factual and legal basis for the Commission to adopt Dr. Seavey’s recommendations. Consequently, EJA’s responses to the PGW Set II interrogatories are relevant to the core issue of whether PGW is meeting its obligations under Section 1501 of the Public Utility Code.

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.”<sup>19</sup> That same section also recognizes

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<sup>19</sup> 52 Pa. Code § 5.321(c).

that certain information sought by an interrogatory may not be admissible in at a hearing.<sup>20</sup> However, the last sentence of subparagraph (c) of Section 5.321 explicitly provides that the inadmissibility of information at a hearing is not grounds for objection as long as the information sought by the interrogatory “appears reasonably calculated to lead to the discovery of admissible evidence.”<sup>21</sup>

PGW’s Set II Interrogatories probe issues relating to EJA’s assertions in its testimony, as well as the sources and basis for arguments it presents and positions it takes in this proceeding. These requests fall well within the scope of discovery permitted under Section 5.321 and Commission rulings. The instant circumstances are materially different from those upon which the 2020 ALJ Order was predicated, and nothing within the 2020 ALJ Order explicitly prohibits PGW from seeking the requested information here. The factual support for Dr. Seavey’s testimony is far from privileged legal analysis and PGW’s request for evidence of that support is a reasonable request.

Accordingly, EJA’s objections to the PGW-EJA Set II Interrogatories at issue must be overruled.

### **III. PGW’S SPECIFIC RESPONSES TO EJA’S SPECIFIC OBJECTIONS DEMONSTRATE WHY EJA’S OBJECTIONS MUST BE OVERRULED**

As set forth herein, PGW’s specific responses to EJA’s generalized list of objections demonstrates why EJA’s objections to PGW-EJA Set II must be overruled.

#### **PGW-EJA Set II No. 11**

EJA objects to PGW-EJA Set II No. 11, which asks EJA to identify the specific legal authority that provides the Commission with the ability to require the City of Philadelphia to establish a “[c]oordinated stakeholder involvement to develop an energy blueprint for the City

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

that establishes a timeline for building sector decarbonization goals and joint responsibilities and roles.”<sup>22</sup> EJA objects to PGW-EJA Set II No. 11 as: a) seeking privileged and confidential legal research, legal theories, and work product protected from discovery; b) seeking irrelevant information not reasonably calculated to lead to the discovery of admissible evidence; and c) causing unreasonable annoyance, embarrassment, oppression, burden, and expense.<sup>23</sup>

EJA should not be permitted to assert generalized objections and must be compelled to provide the requested information pursuant to Commission rules because: a) the scope of discovery is broad; b) EJA’s burden connected with responding to this request is unproven and not sufficient to prohibit discovery; c) the request does not seek privileged information and/or legal analysis and instead, simply seeks clarification as to EJA’s reliance on publicly available authority; and d) nowhere does EJA assert that it does not have the information or is unable to produce the information.

As discussed above, PGW Set II Interrogatories are designed to solicit information necessary to confirm the accuracy of facts and circumstances alleged in EJA’s direct testimony. PGW is not asking EJA to produce legal analysis or privileged documents, but instead, only to provide reference to the authority that purportedly supports Dr. Seavey’s claims in her testimony. The rationale from the 2020 ALJ Order does not apply, as described *supra*. EJA’s responses to the interrogatories will enable PGW to assess and raise questions regarding the relevance, materiality, and credibility of EJA’s averments on the issue of coordinated stakeholder involvement.

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<sup>22</sup> Exh. 2 at 2.

<sup>23</sup> *Id.* at 2–3.

### **PGW-EJA Set II No. 12**

EJA objects to PGW-EJA Set II No. 12, which asks EJA to identify the specific authority giving the Commission the ability to implement requirements on PGW related to “identifying, evaluating, [and] implementing cost recovery.”<sup>24</sup> EJA’s objections to PGW-EJA Set II No. 12 are the same as its objections to PGW-EJA Set II Nos. 11 and 13.<sup>25</sup>

Again, EJA must be compelled to provide the requested information because: a) the scope of discovery is broad; b) EJA’s burden connected with responding to this request is unproven and not sufficient to prohibit discovery; c) the request does not seek privileged information and/or legal analysis and instead, simply seeks clarification as to EJA’s reliance on publicly available authority; and d) nowhere does EJA assert that it does not have the information or is unable to produce the information.

PGW-EJA Set II No. 12 seeks information necessary to confirm the accuracy of facts and circumstances alleged in EJA’s direct testimony—specifically, that PGW must “identify[], evaluat[e], [and] implement[] cost recovery.” This question does not necessitate production of privileged legal analysis and instead only calls for a citation to publicly available authority to support Dr. Seavey’s statement on this issue. EJA’s response will allow PGW to assess and raise questions regarding the relevance, materiality, and credibility of Dr. Seavey’s testimony on the issue of PGW’s obligation to engage in cost recovery measures.

### **PGW-EJA Set II No. 13**

EJA objects to PGW-EJA Set II No. 13, which asks EJA to identify the specific authority giving the Commission the ability to—as Dr. Seavey testifies—require that PGW engage in

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<sup>24</sup> *Id.* at 2.

<sup>25</sup> *Id.* at 2–3.

long-term planning in coordination with PECO.<sup>26</sup> EJA’s objections to PGW-EJA Set II No. 13 are the same as its objections to PGW-EJA Set II Nos. 11 and 12.<sup>27</sup>

As to this objection, PGW renews its argument that: a) the scope of discovery is broad; b) EJA’s burden connected with responding to this request is unproven and not sufficient to prohibit discovery; c) the request does not seek privileged information and/or legal analysis and instead, simply seeks clarification as to EJA’s reliance on publicly available authority; and d) nowhere does EJA assert that it does not have the information or is unable to produce the information.

PGW-EJA Set II No. 13 seeks information necessary to confirm Dr. Seavey’s testimony that PGW fails to adhere to the “best practice” of “cooperat[ing] and coordinat[ing] on integrated distribution planning that considers plans for long-term gas and electric infrastructure in an integrated fashion.”<sup>28</sup> This question merely asks for the proof behind Dr. Seavey’s significant contention, in the form of a reference to publicly available authority, and nothing within the question requires EJA to disclose privileged legal analysis. EJA’s response will allow PGW to assess the relevance, materiality, and credibility of Dr. Seavey’s testimony on “best practice” and PGW’s coordination with PECO.

#### IV. CONCLUSION

Because EJA’s responses to the PGW Set II Interrogatories Nos. 11-13 are relevant to the core issue of whether PGW is meeting its statutory obligations under Section 1501 of the Public Utility Code, PGW is entitled to examine the source and authority behind Dr. Seavey’s assertions—including the underlying statutes, facts and circumstances which support her

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<sup>26</sup> *Id.* at 2.

<sup>27</sup> *Id.* at 2–3.

<sup>28</sup> Exh. 3 at 66–67.

testimony related to specific matters presented in her testimony—to determine whether there is, or is not, a factual and legal basis for the Commission to adopt Dr. Seavey’s recommendations

WHEREFORE, pursuant to 52 Pa. Code §§ 5.321, 5.342, and 5.349 and for all the reasons set forth above, PGW respectfully requests that the Presiding Officer: a) overrule the objections to discovery by EJA, including by finding that PGW’s Set II Interrogatories Nos. 11-13 are well within the scope of permissible discovery; b) find the rationale and conclusions of the 2020 ALJ Order do not apply to the instant matter; c) compel EJA to provide full and complete answers to Interrogatories PGW-EJA Set II Nos. 11 through 13 at a time established by the Commission; and c) grant any other relief deemed appropriate under the circumstances.

Date: June 12, 2025

Respectfully submitted,

*Renardo L. Hicks*

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# **EXHIBIT 1**

**PGW SET II INTERROGATORIES AND REQUESTS FOR DOCUMENTS  
ADDRESSED TO EJA**

**CONTESTED INTERROGATORIES**

11. Identify the PA PUC’s specific statutory and regulatory authority to require the City of Philadelphia to establish a “Coordinated stakeholder involvement to develop an energy blueprint for the City that establishes a timeline for building sector decarbonization goals and joint responsibilities and roles.” (p. 68)

12. Identify the PA PUC’s specific statutory and regulatory authority to implement requirements on PGW for “identifying, evaluating, implementing cost recovery.” (p. 69)

13. Provide the PA PUC’s specific statutory and regulatory authority to require PGW to engage in long-term planning in coordination with PECO. (p. 66)

# **EXHIBIT 2**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, et  
al.

v.

Philadelphia Gas Works

Docket No. R-2025-3053112  
Docket No. C-2025-3053827  
Docket No. C-2025-3053978  
Docket No. C-2024-3054216

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**WRITTEN OBJECTIONS  
OF THE ENERGY JUSTICE ADVOCATES  
TO PGW'S SET II INTERROGATORIES  
NOS. 11-13**

**June 5, 2025**

## **I. Background**

POWER Interfaith, Sierra Club, Physicians for Social Responsibility Pennsylvania, Clean Air Council, Vote Solar, PennEnvironment, and the Pennsylvania Public Interest Research Group (collectively, the “Energy Justice Advocates” or “EJA”) respectfully submit these Written Objections to the Set II Interrogatories of Philadelphia Gas Works (“PGW”) Nos. 11-13 (the “Contested Interrogatories,” attached hereto as Attachment A) in the above-captioned proceeding (“Proceeding”) of the Pennsylvania Public Utility Commission (“Commission”).

EJA spoke with PGW on May 30, 2025 to discuss EJA’s objections to these Set II Interrogatories. EJA explained that PGW had issued very similar questions in its 2020 rate case, and these questions were ruled impermissible. That same day, EJA provided to PGW via email a copy of the Administrative Law Judges’ (“ALJs”) Order denying PGW’s motion to compel responses to those questions<sup>1</sup> and asked if PGW would agree to withdraw the Contested Interrogatories. EJA and PGW continued to discuss potential resolutions but were unable to resolve the objections.

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<sup>1</sup> Order on Motion to Dismiss Objections, PA PUC Docket R-2020-3017206 (July 14, 2020), *available at* <https://www.puc.pa.gov/pdocs/1670039.docx>.

## **II. The Contested Interrogatories**

### **PGW-II-11, PGW-II-12, and PGW-II-13<sup>2</sup>**

PGW-II-11	Identify the PA PUC’s specific statutory and regulatory authority to require the City of Philadelphia to establish a “Coordinated stakeholder involvement to develop an energy blueprint for the City that establishes a timeline for building sector decarbonization goals and joint responsibilities and roles.” (p. 68)
PGW-II-12	Identify the PA PUC’s specific statutory and regulatory authority to implement requirements on PGW for “identifying, evaluating, implementing cost recovery.” (p. 69)
PGW-II-13	Provide the PA PUC’s specific statutory and regulatory authority to require PGW to engage in long-term planning in coordination with PECO. (p. 66)

The Contested Interrogatories, reproduced above, request EJA to answer several of PGW’s legal questions concerning aspects of EJA’s expert testimony. EJA objects on multiple grounds.

EJA objects to answering these questions because they impermissibly seek information protected by privilege. As a rule, discovery is not permitted that “relates to matter which is privileged.”<sup>3</sup> The Commission’s rules go on to expressly provide that “discovery may not include disclosure of the mental impressions of a party’s attorney or his conclusions, opinions, memoranda, notes, summaries, legal research or legal theories.”<sup>4</sup> PGW’s requests, however, would encompass privileged and confidential legal research, legal theories, and work product that are protected from discovery by the rules of this Commission.<sup>5</sup>

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<sup>2</sup> Since the three Contested Interrogatories are similar, they will be considered together.

<sup>3</sup> 52 Pa. Code § 5.361(a)(3); *see also* 52 Pa. Code § 5.321(c) (parties “may obtain discovery regarding “any matter, *not privileged*, which is relevant to the subject matter involved in the pending action”) (emphasis added).

<sup>4</sup> 52 Pa. Code § 5.323(a).

<sup>5</sup> 52 Pa. Code § 5.361(a)(3).

EJA also object on the grounds that these questions are not relevant because they are not “reasonably calculated to lead to the discovery of admissible evidence,” or any factual evidence at all.<sup>6</sup> To the contrary, PGW’s requests for the legal authorities concern pure questions of law which belong to the briefing period, not the discovery period. The guiding standard for discovery is that it must be “reasonably calculated to lead to the discovery of admissible evidence.”<sup>7</sup> As inquiries concerning the mental impressions and legal theories of the EJA’s counsel, these interrogatories will not and cannot contribute to establishing a single fact of relevance for the development of the evidentiary record regarding PGW’s proposed rates.

EJA also objects to these questions on the grounds that answering them would cause “unreasonable annoyance, embarrassment, oppression, burden [and] expense,”<sup>8</sup> because doing so would require EJA to produce legal research and legal theories relating to their case, for no valid evidentiary purpose, well in advance of the briefing deadlines set out in ALJ Vero’s Prehearing Order.<sup>9</sup>

### **III. Conclusion**

For the reasons explained above, the Energy Justice Advocates respectfully object to the Contested Interrogatories. Should PGW wish to further discuss potential resolutions to these objections, the Energy Justice Advocates are available to do so.

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<sup>6</sup> 52 Pa. Code § 5.321(c).

<sup>7</sup> *Id.*

<sup>8</sup> 52 Pa. Code § 5.361(a)(2).

<sup>9</sup> Prehearing Order, PA PUC Docket R-2025-3053112, at 4 (Apr. 14, 2025).

Dated: June 5, 2025

Respectfully submitted,

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**ATTACHMENT A.**

**CONTESTED INTERROGATORIES**

PGW-II-11	Identify the PA PUC’s specific statutory and regulatory authority to require the City of Philadelphia to establish a “Coordinated stakeholder involvement to develop an energy blueprint for the City that establishes a timeline for building sector decarbonization goals and joint responsibilities and roles.” (p. 68)
PGW-II-12	Identify the PA PUC’s specific statutory and regulatory authority to implement requirements on PGW for “identifying, evaluating, implementing cost recovery.” (p. 69)
PGW-II-13	Provide the PA PUC’s specific statutory and regulatory authority to require PGW to engage in long-term planning in coordination with PECO. (p. 66)

# **EXHIBIT 3**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, et  
al.

v.

Philadelphia Gas Works

Docket No. R-2025-3053112  
Docket No. C-2025-3053827  
Docket No. C-2025-3053978  
Docket No. C-2025-3054216

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**DIRECT TESTIMONY  
OF  
DR. DORIE K. SEAVEY  
ON BEHALF OF THE  
ENERGY JUSTICE ADVOCATES**

**May 21, 2025**

1 commitments, PECO and PGW's activities, state and federal resources, and  
2 community feedback.

- 3 4. Improve affordability mechanisms to ensure that low to moderate income ("LMI")  
4 customers are protected from rising bills over the long term to the greatest degree  
5 possible.

6  
7 **Q. What are considered to be the core elements of long-term planning for gas utilities  
8 in the U.S, today?**

9 A. In my opinion, the core elements are: infrastructure planning reform, regulatory  
10 framework updates, and affordability protections.

11  
12 **Q. How would you apply those elements to PGW?**

13 A. I would structure the elements to address the areas where PGW appears to be lacking in  
14 analysis and planning and where greater regulatory guidance may be necessary.

15 Specifically, I recommend the following elements:

- 16 1. Sound energy demand projections that integrate gas and electricity. PGW has factored  
17 in declining gas utilization into its FPFTY and through FY 2031 (at roughly a 2%  
18 annual decline) but is silent on the future implications of declining demand for  
19 PGW's financial viability and for the affordability of its services. Furthermore, PGW  
20 states that it does not engage in any form of long-term planning in coordination with  
21 Philadelphia's electric utility, PECO.<sup>151</sup> It is a best practice for utilities to cooperate  
22 and coordinate on integrated distribution planning that considers and plans for long-

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<sup>151</sup> Exh. DKS-5, PGW Interrogatory Responses, Response to EJA-IX-5.

1 term gas and electric infrastructure in an integrated fashion to ensure ratepayer  
2 monies are spent as effectively as possible.<sup>152</sup>

- 3 2. Consideration of an expanded “solution set” for remediating legacy gas facilities and  
4 evidence-based frameworks for risk-based project selection. PGW’s remediation  
5 strategy for leak-prone pipe relies heavily on pipe replacement. This heavy reliance  
6 may have been appropriate for a context in which the gas system could be presumed  
7 to continue in perpetuity. In today’s changed context, that foundational assumption no  
8 longer holds. Therefore, the remediation solutions set should be broadened to include  
9 options for advanced leak repair technologies that extend the useful life of pipes,  
10 pipeline decommissioning or derating, thermal energy networks, and other non-  
11 pipeline alternatives<sup>153</sup> It is critical that the risk-based project selection framework be  
12 designed to identify not only the most emergent and highest-risk pipe segments, but  
13 also pipeline segments with estimated replacement dates in the medium-term, with  
14 sufficient time to develop and implement non-pipeline alternatives.
- 15 3. Updated gas planning policies regarding allowable new gas system growth. A long-  
16 term proceeding would allow PGW and the Commission to recalibrate, if necessary,  
17 policies regarding line extensions. Jurisdictions around the country are grappling with  
18 the fact that line extensions may no longer be cost effective or compatible with state

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<sup>152</sup> Mark LeBel et al, *Opportunities for Integrating Electric and Gas Planning*, at 11, Lawrence Berkeley National Laboratory (Jan. 2025), [https://eta-publications.lbl.gov/sites/default/files/2025-01/opportunity\\_integrate\\_electric\\_gas\\_planning\\_20241223\\_final\\_2025jan06.pdf](https://eta-publications.lbl.gov/sites/default/files/2025-01/opportunity_integrate_electric_gas_planning_20241223_final_2025jan06.pdf) (noting “[l]ower energy system costs and improved affordability” as a benefit of integrated gas and electric infrastructure planning).

<sup>153</sup> RMI and National Grid, *Non-Pipeline Alternatives: Emerging Opportunities in Planning for U.S. Gas System Decarbonization* (May 2024), [https://www.nationalgridus.com/media/pdfs/other/CM9904-RMI\\_NG-May-2024.pdf](https://www.nationalgridus.com/media/pdfs/other/CM9904-RMI_NG-May-2024.pdf).

1 climate goals. For example, the California Public Utilities Commission eliminated gas  
2 line extension subsidies (including allowances and other subsidized payback options)  
3 in 2022,<sup>154</sup> and in order to incentivize all-electric new construction, also eliminated  
4 electric line extension subsidies to any property also connecting to the gas system in  
5 2023.<sup>155</sup> Similarly, Colorado passed S.B. 23-291 in 2023 eliminating incentives for  
6 gas line extensions.<sup>156</sup> Placing the costs of extending the gas distribution system on  
7 the builder seeking to do so, rather than socializing these costs to all ratepayers, is  
8 consistent with climate and affordability policies like Philadelphia’s.<sup>157</sup>

- 9 4. Coordinated stakeholder involvement to develop an energy blueprint for the City that  
10 establishes a timeline for building sector decarbonization goals and joint  
11 responsibilities and roles. Possible stakeholders include: the City of Philadelphia, and  
12 any interested offices therein, such as the Office of Sustainability; the  
13 Commonwealth, and any state administrative agencies or staff, such as Commission

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<sup>154</sup> Exh. DKS-36, Decision, Cal. Pub. Util. Comm’n, Docket No. 22-09-026, Phase III Decision Eliminating Gas Line Extension Allowances, Ten-Year Refundable Payment Option, and Fifty Percent Discount Payment Option Under Gas Line Extension Rules (Sep. 20, 2022).

<sup>155</sup> Exh. DKS-37, Decision, Cal. Pub. Util. Comm’n, Docket No. 23-12-037, Decision Eliminating Electric Line Extension Subsidies for Mixed-Fuel New Construction and Setting Reporting Requirements (Dec. 21, 2023).

<sup>156</sup> Colo. Rev. Stat. Ann. § 40-3.2-104.3(2)(a) (“A gas utility shall not provide an applicant with an incentive, including a line extension allowance, to establish gas service to a property.”).

<sup>157</sup> See, e.g., Exh. DKS-14, City of Philadelphia, Office of Sustainability, Alleviating Energy Poverty in Philadelphia at 6, 19 (July 1, 2024) (identifying “[e]nergy efficient houses, with affordable and clean heating and cooling” as a “fundamental aspect of housing quality and achieving emissions reductions” and identifying “advocat[ing] for stronger efficiency-related and clean energy standards for new construction and retrofit projects” as an “immediate” priority action in its Energy Poverty Alleviation Strategy); Exh. DKS-38 City of Philadelphia, Office of Sustainability, Philadelphia Climate Action Playbook, at 3, 13–14, 44 (Jan. 2021) (committing to carbon neutrality by 2050 and finding that 75% of Philadelphia’s carbon emissions come from buildings and industry, including “fugitive emissions from oil and natural gas systems.”).

# **EXHIBIT 4**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2020- 3017206
	:	
	:	
Office of Consumer Advocate	:	C-2020-3019161
Office of Small Business Advocate	:	C-2020-3019100
Philadelphia Industrial and Commercial Gas User Group	:	C-2020-3019430
v.	:	
	:	
Philadelphia Gas Works	:	

**ORDER ON PHILADELPHIA GAS WORKS’ MOTION TO DISMISS THE OBJECTIONS  
OF ENVIRONMENTAL STAKEHOLDERS’ TO ITS INTERROGATORIES, SET I**

**HISTORY OF THE PROCEEDING**

On February 28, 2020, PGW filed Supplement No. 128 to PGW’s Gas Service Tariff – PA. P.U.C. No. 2 (Supplement No. 128) and Supplement No. 85 to PGW’s Supplier Tariff – Pa. P.U.C. No. 1 (Supplement No. 85) to become effective April 28, 2020, seeking a general rate increase calculated to produce \$70 million (10.5%) in additional annual revenues. At that time, PGW also filed a Petition for Waiver seeking waiver of the application of the statutory definition of the fully projected future test year (FPFTY) so as to permit PGW to use a FPFTY beginning on September 1, 2020 (its fiscal year) in this proceeding.

By Order entered April 16, 2020 (Suspension Order), the Pennsylvania Public Utility Commission (Commission or PUC) instituted an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase. Supplement No. 128 and Supplement No. 85 were suspended by operation of law until November 28, 2020, unless permitted by Commission Order to become effective at an earlier date. The Suspension Order did not consider the Petition for Waiver.

The Commission's Bureau of Investigation and Enforcement (BIE) filed a Notice of Appearance. Three formal complaints have been filed: The Office of Consumer Advocate (OCA); the Office of Small Business Advocate (OSBA); and the Philadelphia Industrial and Commercial Gas Users Group (PICGUG).

The matter was assigned to the Office of Administrative Law Judge (OALJ), Administrative Law Judges Darlene Heep and Marta Guhl, to schedule such hearings as necessary to develop a record in this proceeding.

A Telephonic Prehearing Conference was held on Tuesday, May 5, 2020, at which time multiple issues were address. A Prehearing Order was issued which granted the Petitions to Intervene, and Petition for Waiver.

On May 14, 2020, a Telephonic Public Input Hearings Notice was issued which indicated that telephonic public input hearings were scheduled for June 2 and 3, 2020, at 1:00 p.m. and 6:00 p.m. each day.

On June 2 and 3, 2020, the telephonic public input hearings were held as scheduled. Members of the public and legislators provided testimony regarding the pending PGW filing.

On June 2, 2020, Meenal Ravel offered testimony at the 1:00 p.m. public input hearing and then submitted her statement as an exhibit on the same date. On June 3, 2020, State Senator Sharif Street offered testimony on behalf of his constituents at the 1:00 p.m. public input hearing and submitted his statement as an exhibit on the same date.

Via electronic mail dated June 8, 2020, we provided the exhibits to the parties and indicated that any objections to the exhibits have to be submitted by June 15, 2020. As of this date, no party has submitted an objection to the exhibits. Based on the fact that no party has objected to the public input hearing exhibits and they are relevant to the proceedings, the exhibits were entered into the record.

On June 9, 2020, PGW filed objections to interrogatories of Environmental Stakeholders. On June 12, 2020, Environmental Stakeholders filed a Motion to Dismiss the objections of PGW.

PGW specifically objected to interrogatories seeking information regarding PGW's Energy Sense Program, other energy efficiency programs and environmental concerns, objecting that these matters were addressed in the PGW Demand Side Management implementation Plan and the Universal Service and Energy Conservation Plan proceedings and that the Commission does not have jurisdiction over certain environmental claims. The Environmental Stakeholders responded that the interrogatories and responses are relevant to whether the rate sought in the instant proceeding is just and reasonable.

Non-company parties submitted direct testimony on June 15, 2020.

A hearing on the Environmental Stakeholders' Motion to Dismiss PGW objections was held on June 25, 2020. Rulings on the objections and motion were made on the record at the time of the hearing. PGW objections to interrogatories regarding electrification as alternatives to proposed infrastructure work included in rate calculations were sustained. All other objections were overruled.

On June 24, 2020, PGW filed a Motion *in Limine* Regarding the Testimony Submitted by Environmental Stakeholders. On June 25, 2020, PGW filed a Motion *in Limine* Regarding Testimony Submitted by the Office of Consumer Advocate Regarding Universal Service Programs (OCA Motion) and a Motion *in Limine* Regarding Testimony Submitted by TURN, et al. Regarding Universal Service Programs (TURN Motion).

On June 30, 2020, OCA filed an Answer of the OCA Motion; CAUSE-PA filed an Answer of CAUSE-PA in Opposition to PGW's TURN Motion; TURN filed an Answer of the TURN Motion; and Environmental Stakeholders filed an Answer in Opposition to PGW's Motion *in Limine*.

On June 26, 2020, the Environmental Stakeholders filed Objections to PGW's Set I of Interrogatories, Nos. 6, 8-10, and 17-18.

On July 2, 2020, PGW filed a Motion to Dismiss the Objections of Sierra Club and Clean Air Council (Environmental Stakeholders) to the Company's Set I of Interrogatories.

On July 9, 2020, the Environmental Stakeholders filed an Answer to PGW's Motion to Dismiss.

At this point, the Motion to Dismiss is now ripe for a decision.

### DISCUSSION

Section 5.321(c) of the Commission's Rules of Administrative Practice and Procedure, 52 Pa.Code §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 ground 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.* Consistently, the Commission has allowed participants wide latitude in discovery matters. *Pa. Pub. Util. Comm'n. v. The Peoples Natural Gas Company*, 62 Pa. P.U.C. 56 (August 26, 1986); and *Pa. Pub. Util. Comm'n. v. Equitable Gas Company*, 61 Pa. P.U.C. 468 (May 16, 1986).

Regarding the limitation of scope of discovery and deposition, the Commission's regulations provide:

Discovery or deposition is not permitted which:

- (1) Is sought in bad faith.
- (2) Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or party.
- (3) Relates to matter which is privileged.
- (4) Would require the making of an unreasonable investigation by the deponent, a party or witness.

52 Pa.Code § 5.361.

The discovery at issue are PGW interrogatories, as follows:

**PGW Interrogatories Set 1, Nos. 6, 8-10, and 17-18:**

6. Provide the statutory authority under which the PA PUC can require a natural gas utility to produce a Climate Business Plan (CBP) and authorize rates based on the CBP.
8. Provide statutory authority under which the PA PUC can order PGW to investigate the potential for non-pipeline alternatives.
9. Provide statutory authority under which the PA PUC can direct PGW to reduce fossil fuels.
10. Provide statutory authority under which the PA PUC has jurisdiction over issues pertaining to greenhouse gas emissions.
17. Provide the statutory authority under which the PUC may direct PGW to switch its customers to electric service.
18. Provide the statutory authority under which PGW ratepayers can be required to subsidize a customer's switch from natural gas to electric service.

**Parties' Arguments**

The Environmental Stakeholders (ES) lodged the same objections to all the interrogatory questions. Specifically, the Environmental Stakeholders argue that these requests are impermissible because they seek information protected by privilege. The Environmental

Stakeholders note that discovery is not permitted that “relates to matter which is privileged.”<sup>1</sup> The Commission’s rules go on to expressly provide that “discovery may not include disclosure of the mental impressions of a party’s attorney or his conclusions, opinions, memoranda, notes, summaries, legal research or legal theories.”<sup>2</sup> The Environmental Stakeholders assert that PGW’s requests would impermissibly require its counsel to disclose privileged and confidential legal research and legal theories that are protected from discovery by the rules of the Commission.<sup>3</sup> (ES Objections at 2).

Further, the Environmental Stakeholders maintain that the requests are not relevant because they are not “reasonably calculated to lead to the discovery of admissible evidence,” or any evidence at all.<sup>4</sup> The Environmental Stakeholders contend that PGW’s requests for the statutory bases of various recommendations concern pure questions of law which belong not to the discovery period, but to briefing. The Environmental Stakeholders state that the standard for discovery is that it must be “reasonably calculated to lead to the discovery of admissible evidence.”<sup>5</sup> The Environmental Stakeholders argue that the inquiries concerning the mental impressions and legal theories of the Environmental Stakeholders’ counsel will not contribute to establishing a single fact for the development of the evidentiary record regarding PGW’s proposed rates. (ES Objections at 2-3).

Lastly, the Environmental Stakeholders also assert that the requests are unduly burdensome<sup>6</sup> because they require Environmental Stakeholders to produce legal research and legal theories relating to their case well in advance of the briefing deadlines set out in this proceeding. (ES Objections at 3).

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<sup>1</sup> 52 Pa.Code § 5.361(a)(3); *see also* 52 Pa.Code § 5.321(c) (parties “may obtain discovery regarding “any matter, not privileged, which is relevant to the subject matter involved in the pending action”).

<sup>2</sup> 52 Pa.Code § 5.323(a).

<sup>3</sup> 52 Pa.Code § 5.361(a)(3).

<sup>4</sup> 52 Pa.Code § 5.321(c).

<sup>5</sup> *Id.*

<sup>6</sup> 52 Pa.Code § 5.361(a)(2).

PGW argues that it is not seeking attorney work product or legal conclusions, opinions, or theories. PGW contends that it is seeking for the Environmental Stakeholders to identify the statutory basis for the claims and recommendations made by the Environmental Stakeholders in their pre-served Direct Testimony. PGW maintains that the Pennsylvania Rules of Civil Procedure also codify the attorney work product privilege and prohibit the “disclosure of the mental impressions of a party’s attorney or his conclusions, opinions, memoranda, notes, summaries, legal research or legal theories.” Pa. R.C.P. 4003.3. PGW notes that the Rules of Civil Procedure further provide, “Except as otherwise provided by these rules, it is not ground for objection that the information sought involves an opinion or contention that relates to a fact or the application of law to fact.” PGW cites to Pa. R.C.P. 4003.1(c) and the Note related to this provision.<sup>7</sup> (PGW Motion to Dismiss at 4-5).

PGW asserts that it seeks the information regarding the legal basis for claims and recommendations raised by the Environmental Stakeholders in their pre-served Direct Testimony. PGW noted that it has filed a Motion *in Limine*<sup>8</sup> seeking to exclude from this proceeding the portions of the Environmental Stakeholders’ pre-served testimony that serves as the basis for these discovery requests. PGW maintains that these interrogatories target contentions that it “reasonably suspects may be the proper subjects of early dismissal” of the

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<sup>7</sup> *Note:* Interrogatories that generally require the responding party to state the basis of particular claims, defenses or contentions made in pleadings or other documents should be used sparingly and, if used, should be designed to target claims, defenses or contentions that the propounding attorney reasonably suspects may be the proper subjects of early dismissal or resolution or, alternatively, to identify and to narrow the scope of claims, defenses and contentions made where the scope is unclear.

The referenced note was written by the Pennsylvania Civil Procedural Rules Committee. <http://www.pacourts.us/courts/supreme-court/committees/rules-committees/civil-procedural-rules-committee>. Notes contain directional or referential statements or citations to authority and are often located within the rule text itself. *See* 86 Pa. B.A. Q. 47. While notes and explanatory comments are not part of the Rules, they may be used in construing the Rules. In *Laudenberger v. Port Authority of Allegheny County*, 436 A.2d 147, 151 (Pa. 1981), the Supreme Court of Pennsylvania explained that explanatory notes “indicate the spirit and motivation behind the drafting of the rule, and they serve as guidelines for understanding the purpose for which the rule was drafted.” *See also Sherrill v. Port Auth. of Allegheny Cty.*, 556 A.2d 450 (Pa. Super. 1989); *Commonwealth v. 2338 N. Beechwood St. Phila.*, 134 A.3d 507 (Pa.Cmwlth. 2016).

<sup>8</sup> The Motion *in Limine* was granted in part and denied in part in an Order dated July 7, 2020.

issues raised by the Environmental Stakeholders. Further, PGW contends that the discovery requests will help to “narrow the scope of the claims [...] and contentions” raised by the Environmental Stakeholders and to clarify which legal standards the Environmental Stakeholders are challenging through their pre-served testimony. PGW indicates that the discovery requests will permit it a reasonable opportunity to develop a factual record to respond to any mixed questions of law and fact or policy. (PGW Motion to Dismiss at 6).

Further, PGW also argues that it has consistently sought to exclude from this proceeding issues pertaining to Climate Business Plans, non-pipeline alternatives, the reduction of fossil fuels, greenhouse gas emissions, and electrification. PGW maintains that the Environmental Stakeholders has raised the issues in their direct testimony that they pre-filed. PGW asserts that it is preposterous for the Environmental Stakeholder to now challenge its interrogatories which seeks information related to these issues. (PGW Motion to Dismiss at 7-8).

Finally, PGW states that the Commission’s regulations do not prohibit discovery merely because it would require some investigation. PGW notes that the standard is “*unreasonable*” burden. PGW maintains that Set I, Nos. 6, 8-10, and 17-18 should not require any legal research. As noted above, PGW contends it is not requesting a legal analysis or for the Environmental Stakeholders to produce every source that supports a legal position. PGW indicates that it is seeking the Environmental Stakeholders’ view of the jurisdiction for these issues that the Environmental Stakeholders have already raised and should already know this information. (PGW Motion to Dismiss at 8-9).

In its Answer to the Motion to Dismiss, the Environmental Stakeholders also argue that PGW’s requests to “[p]rovide the statutory authority” under which the Commission can act on various recommendations in the Direct Testimony are in violation of Sections 5.323(a) and 5.321(c), because the Environmental Stakeholders do not have an opinion on the Commission’s statutory powers other than what they may have been advised by counsel in privileged and confidential attorney-client discussions. Moreover, the Environmental Stakeholders also asserts that the requests seek an advisory opinion from the Environmental

Stakeholders as to purely legal questions and PGW has its own lawyers to assist it in understanding the scope of the Commission's statutory authority. The Environmental Stakeholders maintains that PGW's requests are inappropriate, and there is no Commission case or section of the Public Utility Code or regulations that support its requests. (ES Answer at 5).

The Environmental Stakeholders also argue that PGW's reliance on the Rules of Civil Procedure is misplaced because it deals with civil litigation which is a different adjudicative process. The Environmental Stakeholders asserts that PGW's reliance on the Explanatory Note is also misplaced because the Commission never adopted anything like it anywhere in its regulations which reflects the differences between civil litigation and a Commission proceeding. Specifically, the Environmental Stakeholders note that in civil litigation: 1) a plaintiff files a pleading detailing its legal claims at the start of the proceeding, and 2) a defendant is entitled to file a motion to dismiss or motion for summary judgment to resolve some or all of the claims prior to the close of discovery. (ES Answer at 6).

The Environmental Stakeholders note that in a Commission proceeding like the current rate case, parties engage in discovery first, to develop a complete factual record, and then parties submit their legal arguments. The Environmental Stakeholders asserts that in a rate case such as this one, during the discovery stage there are no legal "claims, defenses or contentions made in pleadings or other documents" that could possibly warrant legal interrogatories like the PGW requests. Moreover, the Environmental Stakeholders maintain that legal arguments are made after discovery is complete, during discovery there is no possible way to obtain early dismissal or narrowing of legal arguments which simply have not been made yet. (ES Answer at 6-7).

The Environmental Stakeholders note that they have vigorously defended the relevance of their recommendations and Direct Testimony, and PGW does not provide any citation for where such a claim can be found in the Objections of the Environmental Stakeholders. The Environmental Stakeholder state that the threshold criterion for the relevance for a discovery request is that it must contribute to establishing a fact that is admissible to the record, and the PGW requests do not contribute to establishing any fact. The Environmental

Stakeholders argue that the Supreme Court of Pennsylvania has instructed, “[i]t is well established that the fundamental consideration in determining the admissibility of evidence is whether the proffered evidence is relevant to the fact sought to be proved. Evidence is relevant if it tends to make a fact at issue more or less probable.”<sup>9</sup> The Environmental Stakeholders asserts that PGW, in its Motion to Dismiss, does not attempt to identify any “admissible evidence”<sup>10</sup> – or even any fact at all – that its requests are calculated to discover. (ES Answer at 8-9).

The Environmental Stakeholders also argue that PGW is singling them out by requesting their legal arguments while other parties can enjoy the benefits of a complete factual record before producing their arguments regarding the legal basis of their direct testimony. The Environmental Stakeholders assert that this is both unduly burdensome and a violation of its due process rights to a fair proceeding that follows the procedures set forth in the Commission’s regulations. The Environmental Stakeholders maintain that the Commission’s regulations are designed to enable a fair and equitable process by enabling all parties to a proceeding to review the complete factual record for the proceeding before submitting their legal arguments in the briefing period that follows discovery.<sup>11</sup> The Environmental Stakeholders contend that this process makes sense, because it enables all parties to be fairly heard on pertinent issues in the case at the same time and for legal briefing to be enriched by the complete factual record. The Environmental Stakeholders state that PGW’s requests seek to subvert the orderly and fair process provided in the Corrected Prehearing Order and the discovery process is for the focused and efficient development of the factual record to assist the Commission in its decision making. (ES Answer at 10-11).

The Environmental Stakeholders also note in their Answer that an independent basis for the denial of PGW’s Motion to Dismiss is that it is both unnecessary and moot, because the request can serve no identifiable purpose at this point in the proceeding. The Environmental Stakeholders indicate that PGW already filed a Motion *in Limine* seeking to exclude substantial

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<sup>9</sup> *Martin v. Soblotney*, A.2d 1022, 1024 (Pa. 1983).

<sup>10</sup> 52 Pa. Code § 5.321(c).

<sup>11</sup> 52 Pa. Code § 5.502(f) (main briefs will be filed and served within 20 days after filing of the transcript, unless otherwise ordered by the presiding officer).

portions of its Direct Testimony, and to narrow the scope of issues to be considered in this proceeding. The Environmental Stakeholders state that the Motion *in Limine* was resolved on July 7, 2020, via an Order issued by the presiding officers. The Environmental Stakeholders maintains that the proper scope of issues to be considered in this proceeding and whether its Direct Testimony fits within that scope has already been determined. The Environmental Stakeholder also note that in the normal course of litigating this proceeding, they have provided ample discussion of their views on pertinent legal issues. As such, the Environmental Stakeholders argue that the only function identified by PGW for the request has already been fulfilled, leaving PGW's Motion to Dismiss unnecessary and moot. (ES Answer at 11-12).

### **Ruling**

In this matter, we agree with the Environmental Stakeholders. The requests from PGW appear aimed at obtaining the Environmental Stakeholders' legal theories and analysis before the briefing period. We agree with the Environmental Stakeholders that this request will mean that they have to divulge this information before the record is fully formed and the parties brief the issues in this case.

Further, there is nothing in the Motion to Dismiss that points to any relevant evidence that this request is intended to produce for the purposes of a factual basis in this case. These requests appear to be another attempt by PGW to revisit issues that the company raised in its Motion *in Limine* related to the Environmental Stakeholders' Direct Testimony.

Moreover, these requests are burdensome and in direct opposition to due process considerations. There is nothing in the Commission's regulations related to discovery that would allow this type of request. To require the Environmental Stakeholders to provide their legal theory of the case at this point is not allowed in Commission proceedings, which clearly differ from general civil litigation. Allowing the requests would violate the Environmental Stakeholders' due process rights and would place an unfair burden on them. As such, the objections to PGW's Interrogatories Set I, Nos. 6, 8-10, and 17-18 are sustained and PGW's Motion to Dismiss is denied.

