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March 22, 2022

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120

Re: Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. v. Philadelphia Gas Works; Docket No. C-2021-3029259; **COMPLAINANTS' ANSWER TO PHILADELPHIA GAS WORKS' MOTION TO DISMISS OBJECTIONS AND COMPEL RESPONSES TO SET II INTERROGATORIES**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc.'s Answer to Philadelphia Gas Works' Motion to Dismiss Objections and Compel Responses to Set II Interrogatories in the above-captioned proceeding. Copies have been served in accordance with the attached Certificate of Service.

Should you have any questions, please feel free to contact me directly.

Very truly yours,

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*Counsel for Grays Ferry Cogeneration
Partnership and Vicinity Energy Philadelphia,
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BRB/jld
Enclosures

cc: Administrative Law Judge Marta Guhl (via electronic mail – mguhl@pa.gov)
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Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Grays Ferry Cogeneration Partnership and	:	
Vicinity Energy Philadelphia, Inc.	:	
Complainants,	:	
	:	Docket No. C-2021-3029259
v.	:	
	:	
Philadelphia Gas Works,	:	
Respondent.	:	

**GRAYS FERRY COGENERATION PARTNERSHIP
AND VICINITY ENERGY PHILADELPHIA, INC.’S
ANSWER TO PHILADELPHIA GAS WORKS’ MOTION TO DISMISS OBJECTIONS
AND COMPEL RESPONSES TO SET II INTERROGATORIES**

Pursuant to 52 Pa. Code § 5.342, Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. (collectively “Vicinity”) submits this Answer to Philadelphia Gas Works’ (“PGW”) Motion to Dismiss Objections and Compel responses to Set II Interrogatories and Requests for Production of Documents filed on March 17, 2022 (“Motion”). In support of this Answer, Vicinity respectfully asserts as follows:

I. INTRODUCTION

1. On February 23, 2022, PGW served Vicinity with Interrogatories and Request for Production of Documents Set II.

2. On March 7, 2022, Vicinity interposed the below stated Objections to Set II Nos. 4-17, and 24-29. Vicinity contends that such discovery into Vicinity’s ability to pay PGW’s demanded unjust and unreasonable rates, the amount of steam and gas used or produced by Vicinity and the associated pricing, Vicinity’s sales and business activities, and the workings of Vicinity’s tariff is irrelevant and not reasonably tailored to lead to the discovery of admissible

evidence. The Complaint alleges PGW has violated the Public Utility Code; the requests are nothing more than a fishing expedition beyond the scope of discovery in this matter.

3. On March 17, 2022, PGW filed the above-mentioned Motion to Compel.

4. Also on March 15, 2022, Vicinity produced responses to the remainder of PGW-II.

II. ARGUMENT

5. Vicinity notes that PGW, while being entitled to pursue discovery under the Commission's regulations, has propounded over 60 interrogatories, many multi-part, across two sets served just days apart primarily seeking irrelevant financial and competitively sensitive data on Vicinity's operations that is irrelevant to whether PGW violated the Public Utility Code as alleged in the Complaint. Vicinity further notes that it has not yet produced its direct case in chief and continued irrelevant discovery from PGW at this early stage serves only distract, harass, and expend Vicinity's resources in an effort to hinder Vicinity's preparation of its direct testimony, which is due April 22, 2022.

6. Vicinity provided the below objections to PGW-II Nos. 4-17, 24-29 on March 7, 2022. Due to the nature of PGW's Motion, Vicinity is providing its objections, which align with its objections to PGW Set I, as **Attachment A**. Vicinity asks Your Honor to consider the objections as if set forth in full.

A. Answer To PGW's Motion To Compel Set II Nos. 4-17

Vicinity's Objections

7. Vicinity objected to PGW Set II Nos. 4-6 and 7-14 and 15-17 under separate but related bases. *See* Attachment A. In its Motion to Compel, PGW addressed these objections as a single group. Vicinity notes that it objected to Nos. 4-6 on the basis that Vicinity's ability to pay is irrelevant to the relief sought and disposition of this matter and falls outside the scope of permissible discovery which amounts to nothing more than a fishing expedition which is not

allowed. *See* Attachment A at page 2-5. Additionally, Vicinity objected to Nos. 7-14 on the related basis that the amount of steam produced or delivered, and the amount of gas purchased are irrelevant to this matter, as this is not an investigation or ratemaking proceeding for Vicinity, as well as these matters being objectionable for reasons similar to Nos. 4-6 above relating to Vicinity’s ability to pay. *See* Attachment A at Page 5-6. Finally, Vicinity objected to Nos. 15-17 on the basis that the requests seek information regarding various provisions contained in Vicinity’s Commission-approved tariff and rates charged by Vicinity to its customers. *See* Attachment A at page 7-9. While Vicinity does not agree with PGW’s rationale for grouping Nos. 15-17 with 4-14, Vicinity nonetheless maintains its objection as previously stated for Nos. 15-17 -- Vicinity’s Commission-approved tariff is not under investigation, and it is deemed *prima facie* reasonable.

Answer to Motion to Compel

8. While explicitly acknowledging that rates are not made and set based on a customer’s ability to pay in Pennsylvania, but rather primarily based on cost of service,¹ PGW again² argues that Vicinity’s ability to “absorb” or “offset” the cost impacts of PGW’s rates is nonetheless relevant.³ As discussed below, PGW’s distinction is one without a difference – whether Vicinity can “absorb” or “offset” PGW’s demanded rates is the same as whether PGW has the “ability to pay” which is not and cannot be a principle of setting and assigning rates, and ultimately has no relevance to this proceeding. PGW further contradicts itself and argues, based on a material overstatement and exaggeration of the contents of the Complaint (where Vicinity merely summarized the impacts of PGW’s actions taken as a whole), that because Vicinity alleged

¹ *See* Motion at Page 1; *See also* Motion at ¶ 11: “There is no dispute that rates are not based on a customer’s ability to pay, but rather are primarily based on the cost of service. *See Lloyd v. Pa. P.U.C.*, 904 A.2d 1010 at 1020-21 (Pa. Cmwlth. 2006).”

² PGW made these same arguments when seeking to Compel Responses to PGW-I.

³ Motion at page 9 and ¶ 15.

a “price squeeze,” Vicinity’s ability to “absorb” or “offset” PGW’s unreasonable rate increase would mitigate any impact of the increased rates, and thus the discovery is relevant to this matter.⁴ It is not. PGW’s theory is not supported under the plain language of the Complaint and is not relevant to the disposition of this matter, nor is the discovery reasonably calculated to lead to admissible evidence. Finally, PGW renews its self-raised arguments related to PGW Set II Nos. 4-17 on matters never pleaded by Vicinity, and previously denied by Your Honor, to assert that because Vicinity has alleged conduct which violates of the Sherman Act, the discovery is relevant.⁵ As discussed below, Your Honor’s oral ruling denying PGW’s Preliminary Objections and the plain language of the Complaint clearly show otherwise, and discovery on topics covered by the Sherman Act is not relevant to this matter or disposition of violations under the Public Utility Code.

A. PGW’s contradictory argument on the relevance of Vicinity’s “ability to pay” rephrased as “absorb” or “offset” or whether Vicinity “can avoid” the impact has no merit, and the discovery remains irrelevant to this matter.

9. PGW’s first theory in seeking to compel responses to Set II, which mirrors its theory argued in its Motion to Compel PGW Set I, contradicts PGW’s fundamental agreement with Vicinity that a ratepayer’s ability to pay is not relevant to the rates demanded in this matter.⁶ In short, PGW asks Your Honor to compel the discovery simply because Vicinity described the operational background of both Grays Ferry and VEPI in the complaint. However, whether Grays Ferry and VEPI can “absorb” or “offset” any cost increase is not relevant to whether PGW may demand unreasonable rates from Vicinity after 2022. PGW goes on to argue for the relevance of the discovery based on the nature of the service provided by PGW to Vicinity and the fact that

⁴ Motion at ¶ 12-13.

⁵ Motion at page 1-2.

⁶ See Motion at ¶ 11.

PGW's two prong tactic of raising rates to Vicinity while incentivizing customers to leave Vicinity's steam service for natural gas, taken as a whole, presents itself as "what can only be referred to as a price squeeze" on Vicinity due to PGW's competitive interests. Motion at page 2; *See related* Complaint at page 5; *see also* Complaint at ¶ 26. Indeed, Vicinity's statement that PGW's conduct is, as a whole, "what can only be referred to as a price squeeze"⁷ is not an allegation for which relief is sought under the complaint – it merely describes the result of the combination of PGW's unreasonable proposed rates with PGW's conduct of incentivizing transitions from steam service to natural gas service.

10. The contradictory argument in PGW's Motion on Vicinity's "ability to pay," rephrased *this time* as whether Vicinity "can avoid" an impact of a rate increase (read "absorb" or "offset") is simply a rephrasing of PGW's argument in its Motion to Compel PGW-I:

15. But, notwithstanding the need for such an increase, Grays Ferry ***can avoid*** any alleged "competitive" harm by declining to pass on any required increase to VEPI and, in turn, VEPI has not demonstrated that VEPI's steam customers need to bear the full increase. PGW knows of no legal requirement that Grays Ferry pass on such rate increase for its "waste" steam. Grays Ferry may well be able to, or should, absorb any increase in gas rates in view of its primary use of steam to generate electricity as a revenue offset to the overall cost of steam production. Thus, Grays Ferry's operations and financial results have a direct impact on the otherwise unsupported claim that it will simply pass along the increase to its regulated affiliate VEPI.

16. Accordingly, the objected to questions are designed to elicit information about ***whether Grays Ferry should or would, in fact, pass on any otherwise required increase***. Therefore, information regarding the revenues, losses, sales and quantity associated with the production of steam by Grays Ferry, as well as the amount of gas purchased by Grays Ferry to support its steam production operations is relevant. *See* PGW Set II, Nos. 4-14.

⁷ Complaint at ¶ 26.

Motion at ¶ 15-16. (emphasis added). This argument is, without doubt, a distinction without a difference. What a customer *can pay* is irrelevant to setting rates.⁸ While it appears that PGW has pivoted from its poor reframing the issue of Vicinity’s ability to “absorb” or “offset” increases that it made in its Motion to Compel Set I, PGW nonetheless seeks the same result for and purpose for PGW Set II Nos. 4-17. Simply put, discovery into whether Vicinity “can avoid” or whether Grays Ferry “should or would... pass on any otherwise require increase” is the same as discovery into Vicinity’s ability to “absorb” or “offset” the increase in rates that has nothing to do with the relief sought regarding the unreasonable rates demanded by PGW – the subject of the Complaint.

11. Further, at Paragraph 16 of the Motion, PGW plainly states whether Grays Ferry’s “should or would... pass on any otherwise required increase” (read “ability to pay”) is a rate setting consideration PGW wants to use in supporting its discovery request. Further, PGW again argues as it did in its Motion to Compel Set I:

For example, the information requested by PGW could reveal that Grays Ferry’s current revenues far exceed its current expenses and, therefore, **Grays Ferry would have the wherewithal to absorb any natural gas transportation increase and not pass it onto VEPI.**

Motion at ¶ 17. (emphasis added). Grays Ferry’s ability to pay, absorb, or offset increased costs is not relevant to this proceeding or the unreasonable rates demanded by PGW, and as discussed below, the relationship between Grays Ferry and VEPI is governed by Commission-approved affiliated interest agreements and contracts, *which were produced to PGW* in response to PGW-I No. 31 (contract agreements) and No. 32 (Commission approved affiliated interest agreements).

⁸ See Motion at ¶ 11.

12. PGW's first theory, which is in direct contradiction to its own agreement that rate making principles in Pennsylvania do not consider a customer's ability to pay, lacks all merit, and PGW-II Nos. 4-17 remain irrelevant. Your Honor should sustain Vicinity's objections stated above and dismiss PGW's Motion as well as the same arguments raised by PGW in its Motion to Compel Set I.

B. Whether Grays Ferry or VEPI may have the ability to "absorb" or "offset" the unreasonable rates demanded by PGW is wholly irrelevant to whether PGW violated the Public Utility Code as alleged in the Complaint.

13. Even if PGW's repeat theory from its Motion to Compel Set I was not a self-contradicting, distinction-without-a-difference, PGW grossly exaggerates what the Complaint states regarding the alleged consequences of the rate increase on VEPI's public utility customers and purposefully casts a false light on the matters subject to the Complaint. Such exaggerations cannot change the plain language of the Complaint, and indeed cannot allow PGW to go on a fishing expedition for irrelevant matters far outside any relief sought.

14. First, PGW contends that Complainants' themselves "have argued that the consequences of an increase in charges *to Grays Ferry* will (allegedly) have a deleterious impact *upon VEPI's customers.*" Motion at ¶ 12. PGW goes on to argue that Vicinity made this an issue in the proceeding, citing Paragraph 26 of the Complaint. In the Complaint, however, Vicinity made no such allegation. The Motion cites paragraph 26 of the Complaint which discusses the impact of the unreasonable rates demanded by PGW, coupled with PGW's competitive actions to discount and subsidize its natural gas service to make steam less competitive. *See* Complaint at ¶ 26. Ignoring that context, PGW misrepresents (as it similarly did in its Motion to Compel Set I) this paragraph as alleging that a PGW rate increase *will have to be passed dollar-for-dollar on to* VEPI's utility customers, rather than what the Complaint actually says:

PGW is aware that even a modest increase in the rate Grays Ferry pays for natural gas delivery will increase the rates VEPI must charge steam customers to recover its costs, thereby making VEPI's steam service less competitive with PGW's discounted and subsidized natural gas service.

Complaint at ¶ 26.

15. The Complaint has not alleged a specific impact or dollar-for-dollar recovery⁹ of any rate increase that PGW's unreasonable rates would have on VEPI's steam customers. Paragraph 26 merely acknowledges the fact that PGW is aware that an increase to gas delivery charges would impact VEPI's steam rates, notably at the Commission's discretion in a future VEPI base rate case.

16. Rather than simply a dollar-for-dollar impact which PGW seems to argue,¹⁰ the relationship between Grays Ferry and VEPI is governed by a legally binding contract and Commission-approved affiliated interest agreements which contain the formula rate for steam sales between Grays Ferry and VEPI that includes the price of fuel. **Critically**, Vicinity provided these contracts and Commission-approved affiliated interest agreements to PGW in response to PGW-I Nos. 31 and 32. Therefore, as Vicinity is legally required to follow its contractual agreements and Commission-approved affiliated interest agreements, further consideration of and discovery on Vicinity's ability to pay is irrelevant and unlikely to lead to the discovery of admissible evidence. Worse, raising such issues in this proceeding would ultimately be a collateral attack on the Commission's prior approval of said affiliated agreements provided in response to PGW Set I No. 32.

17. Further, PGW's argument in support of its discovery on Vicinity's ability to absorb or offset the rate impact on VEPI's steam customers again, as it did in its Motion to Compel Set I,

⁹ Motion at Page 2.

¹⁰ Motion at Page 2.

misses a key and critical factor which PGW would have Your Honor ignore – the Public Utility Commission is the ultimate decision maker as to whether increases in costs to VEPI *can be passed on to customers in a general base rate proceeding*. VEPI’s last rate case was filed and approved at Docket No. R-2021-3024060. PGW cannot turn this complaint proceeding into a de-facto rate case and rate investigation of VEPI under the Public Utility Code to collaterally attack VEPI’s Commission-approved rates¹¹ in order to justify PGW’s unreasonable rate demand subject to this Complaint. Indeed, this is not a VEPI general base rate proceeding – the books of VEPI are not under investigation as they were at Docket No. R-2021-3024060. If PGW wanted to contest, examine, or investigate VEPI’s rates and ability to absorb and offset costs of natural gas, it could have sought to participate in VEPI’s base rate case. It did not. PGW cannot call into question the Commission-approved rates and affiliated interest agreements as *a defendant* to a complaint proceeding for its own unreasonable and unjust conduct and rates.

18. Therefore, Your Honor should grant Vicinity’s objections and deny PGW’s Motion to Compel discovery into Vicinity’s ability to absorb or offset any rate increase as irrelevant to the disposition of this Complaint.

C. PGW’s fourth attempt to introduce antitrust violations in this matter has no merit and cannot form the basis of discovery – the Complaint does not allege antitrust violations, but rather violations of the Pennsylvania Public Utility Code.

19. As PGW did in its Answer and New Matter,¹² its Preliminary Objections,¹³ and in its Motion to Compel Set I in this matter, PGW for a fourth time contends that Complainants are

¹¹ *PA PUC v. Vicinity Energy Philadelphia, Inc.*, Docket No. R-2021-3024060, Order (Order entered August 26, 2021).

¹² See PGW’s Answer and New Matter at Page 29-31.

¹³ See PGW’s Preliminary Objections at Page 3, 7-8. Your Honor orally denied on the record at the Prehearing Conference on January 13, 2022.

asserting an antitrust violation.¹⁴ As Your Honor is aware, Vicinity has pleaded no such violation of the Sherman Act or antitrust violations in this Complaint as clearly stated in Vicinity's Answer to PGW's Preliminary Objections at ¶ 16.¹⁵ PGW is correct that the Commission lacks jurisdiction over such matters. As Your Honor has rejected PGW's prior arguments misconstruing the allegations in the Complaint, such arguments must be rejected. Discovery into never pleaded violations is clearly not relevant to this proceeding and will not lead to the discovery of admissible evidence. Vicinity has pleaded PGW is in violation of the Public Utility Code, and as such the scope of the complaint before this Commission does not include PGW's own assessment of whether PGW has violated the Sherman Act or committed other antitrust violations not plead by Vicinity.

20. Therefore, Your Honor should dismiss PGW's Sherman Act arguments and deny discovery as irrelevant and unlikely to lead to the discovery of admissible evidence as presented above in Vicinity's objections to PGW-II Nos. 4-17.

B. Answer to PGW's Motion to Compel PGW Set II Nos. 15-17*, 24-25, 28* and 29.

21. PGW's Motion to Compel next addresses Nos. 24-25, and 29. Motion at page 11. However, Vicinity notes that its next objections were to a broader set – Nos. **15-17**, 24, 25, **28**, and 29. See Attachment A at page 7-9. Vicinity will address PGW's Motion to Compel as related to Nos. 24-25, and 29, noting that Nos. 15-17, and 28 also fall into this category for Your Honor's disposition.

¹⁴ Motion at ¶ 20.

¹⁵ Vicinity's Answer to PGW's Preliminary Objections, paragraph 16 states: "Denied. PGW's characterizations of the Complaint are denied. Nowhere in the Complaint does Vicinity aver that the Commission has jurisdiction to enforce the Sherman Act. [fn omitted] Rather, the Complaint avers that PGW's conduct violates the Public Utility Code. Accordingly, PGW's contention that the Commission lacks jurisdiction to adjudicate the actual claims made in the Complaint must be rejected."

22. Vicinity objected to PGW Set II Nos. 15-17, 24, 25, 28, and 29 on the basis that the requests are irrelevant and unlikely to lead to the discovery of admissible evidence as they seek information regarding portions of VEPI's Commission-approved tariff and rates charged by VEPI to its customers. Attachment A at page 7-9. Vicinity argued that VEPI's tariff, rates and terms contained therein is not related to any relief sought by Vicinity and that this matter is not an investigation into the justness and reasonableness of VEPI's tariff or rates. *Id.*

23. PGW's Motion to Compel Nos. 24-25, and 29 argued that:

Information regarding VEPI's flex or customized rates, or its ability to charge customers rates other than those authorized in its Tariff, is also relevant and/or could lead to relevant information related to the issue raised by the Complainants alleging a "price squeeze." As discussed, the Complainants' allegations are premised on the assumption that any price increase to Grays Ferry is unreasonable because, they allege, it will potentially induce more VEPI customer to switch from steam service to natural gas service provided by PGW. Even if the Complainants do not have the financial wherewithal to absorb these additional costs without passing them through to VEPI's tariff customers (as described in subsection A), the information requested in Set II, Nos. 24-25 could demonstrate that VEPI has the authority and legal ability to offer more favorable rates to customers that express a desire to switch from steam to natural gas.

Motion at ¶ 22. As is clear, PGW is again pursuing Vicinity's ability to pay PGW's demanded rates through its Motion to Compel Nos. 24-25, and 29. As discussed above, Vicinity's ability to pay, or to accept less than full tariff rates from its customers, is irrelevant to the disposition of this matter, and such discovery is not permissible as it addresses matters that cannot be considered in setting rates in Pennsylvania.

24. Additionally, Vicinity notes that VEPI's tariff speaks for itself. The tariff is publicly available and contains all the terms and conditions for which VEPI may charge customers. Vicinity is willing to provide PGW with its publicly available tariff, and with the contracts between

Grays Ferry and VEPI which Vicinity produced responsive to PGW-I No. 31 and the affiliated interest agreements Vicinity produced responsive to PGW-I No. 32, PGW has all the information needed that “could demonstrate that VEPI has the authority and legal ability to offer more favorable rates to customers the express a desire to switch from steam to natural gas.” Motion at ¶ 22.

25. Therefore, Your Honor should deny PGW’s motion to compel PGW Set II Nos. 15-17, 24, 25, 28, and 29 on the basis that the requests are irrelevant and unlikely to lead to the discovery of admissible evidence and that PGW has already been provided with the information requested or the information is equally available to PGW in the public domain.

C. Answer to PGW’s Motion to Compel Set II Nos. 26-28.

26. PGW’s Motion to Compel lastly addresses Nos. 26-28 in its Motion. Motion at page 12-13. Vicinity notes that its objections were to Nos. 26-27. *See* attachment A at page 6-7. However, Vicinity will address PGW’s Motion to Compel as related to Nos. 26-28 below for Your Honor’s disposition.

27. Vicinity objected to PGW Set II Nos. 26-28 on the basis that the requests are irrelevant and unlikely to lead to the discovery of admissible evidence as they seek information regarding Vicinity’s sales, business development, and lobbying activities which has no relevance to the relief sought in the Complaint. *See* Attachment A at page 7. Vicinity further noted that this matter is not an investigation into the justness and reasonableness of Vicinity’s sales and marketing practices. *Id.* Therefore, Vicinity maintains these requests are irrelevant and unlikely to lead to the discovery of admissible evidence.

28. In its Motion to Compel, PGW argued that Nos. 26-28 are relevant as they related to allegations of PGW's "predatory actions" where PGW is "targeting VEPI's [steam] customers" in an effort to incentivize customers to "leave VEPI in favor of PGW." Motion at ¶ 25. PGW goes on to argue that the information "will enable PGW to further explore whether VEPI can respond to any PGW price increase by undertaking to attempt to attract additional customers so as to offset any potential losses from customers who might be induced to switch to PGW." Motion at ¶ 26. While this argument seems to be a shocking admission by PGW that it is indeed increasing the rates it charges Vicinity in an effort to gain a competitive advantage in violation of 66 Pa. C.S. §§ 1501 & 1502, Vicinity maintains that its sales, business development, and lobbying activities have no relevance to any matter to be decided in this proceeding – namely whether PGW's actions have violated the Public Utility Code.

29. Further, PGW argues for the relevance of Nos. 26-28 on the basis that PGW should be able to explore whether VEPI is targeting PGW's customers in violation of the Public Utility Code. Motion at ¶ 26. Such an argument lacks all merit – VEPI is not subject to a Complaint, and VEPI does not provide any service *to PGW* for which VEPI could cause competitive harm to PGW's operations. These interrogatories are also a fishing expedition and should not be permitted.

30. Therefore, Your Honor should dismiss PGW's Motion to Compel Set II Nos. 26-28.

IV. CONCLUSION

WHEREFORE, Vicinity respectfully requests that Your Honor deny PGW's Motion to Compel responses to PGW-II Nos. 4-17, and 24-29 as irrelevant to the Complaint and relief sought, and unlikely to lead to the discovery of admissible evidence under 52 Pa. Code § 5.321(c).

Respectfully submitted,



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DATED: March 22, 2022

ATTACHMENT A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Grays Ferry Cogeneration Partnership and	:	
Vicinity Energy Philadelphia, Inc.	:	
Complainants,	:	
	:	Docket No. C-2021-3029259
v.	:	
	:	
Philadelphia Gas Works,	:	
Respondent.	:	

**GRAYS FERRY COGENERATION PARTNERSHIP
AND VICINITY ENERGY PHILADELPHIA, INC.’S OBJECTIONS
TO PHILADELPHIA GAS WORKS’ SET II INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to 52 Pa. Code § 5.342, Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. (collectively “Vicinity”) submits these Objections to Philadelphia Gas Works’ (“PGW”) Set II Interrogatories and Requests for Production of Documents. As explained below, Vicinity objects to PGW-II Nos. 4-17, and 24-29, as such discovery is irrelevant for a multitude of reasons and is not reasonably tailored to lead to the discovery of admissible evidence regarding the Complaint and the proposed rates PGW has demanded of Vicinity and are nothing more than a fishing expedition beyond the scope of discovery in this matter.

Under 52 Pa. Code § 5.341(c), a party may propound interrogatories that relate to matters that can be inquired into under Section 5.321. Section 5.321(c) provides that a party is entitled to obtain discovery of any matter not privileged that is relevant to a pending proceeding and reasonably calculated to lead to the discovery of admissible evidence. 52 Pa. Code § 5.321(c). In

addition, under Section 5.323, discovery may not include disclosure of legal research or legal theories. 52 Pa. Code § 5.323(a).

PGW-II Nos. 4-17, and 24-29, as separated categorically below, seek information that is irrelevant and beyond the scope of discovery in this matter. Therefore, in accordance with the Commission's regulations, Vicinity formally objects as follows:

I. OBJECTION TO PGW-II NOS. 4-6

1. PGW-II Nos. 4-6 provide:

- 4) Please provide, (by month, if available) for the last five (5) years to the present, the revenues from the sale of steam to Vicinity.
- 5) Please provide, (by month, if available) for the last five (5) years to the present, steam sales volumes delivered and billed to customers of Vicinity.
 - a) If there is a difference between volumes delivered and volumes billed to the customers, please explain the reason(s) for the difference.
- 6) Please provide, (by month, if available) for the last five (5) years to the present, the system losses for the steam distribution system.
 - a) Please provide any system loss studies performed on the Vicinity distribution system over the past five (5) years.
 - b) Please provide any efficiency studies performed on the Vicinity distribution system over the past five (5) years.

2. Vicinity objects to these requests because they seek information irrelevant to this proceeding and not reasonably tailored to lead to the discovery of admissible evidence. Pursuant to 52 Pa. Code § 5.321(c), a party may obtain discovery of any matter not privileged that is relevant to a pending proceeding and that is reasonably calculated to lead to the discovery of admissible evidence. *Id.*

3. The information sought in PGW-II Nos. 4-6 is not relevant to any issues to be addressed in this proceeding or any relief sought in the Complaint. The Complaint requests relief on four distinct points:

- Find that the rate demanded by PGW for service to Grays Ferry post 2022 is unjust and unreasonable;
- Require PGW to continue to provide Grays Ferry with firm transportation service;
- Require PGW to execute a new contract under Rate GTS-Firm for that service at a rate that is just and reasonable; and
- Require PGW to cease and desist from targeting VEPI's customers within VEPI's franchised service territory for rate discounts and financial incentives in order to entice them to switch from VEPI's steam service to PGW's natural gas service.

See Complaint at 13-14. Thus, the basis of this Complaint is that of PGW is demanding unjust and unreasonable rates for Vicinity after 2022, forcing Vicinity to take service under inappropriate terms (i.e., service that is interruptible), and requesting that PGW cease and desist targeting VEPI's steam customers to convert to natural gas. PGW-II Nos. 4-6 do not seek information reasonably calculated to lead to the discovery of admissible evidence on any of this relief and is ultimately irrelevant to the disposition of any portion of this matter.

4. Like the objections Vicinity raised to PGW Set I Nos. 20-22, 25, 30, 31, and 34, PGW-II Nos. 4-6 drives to the same point - PGW's desire to paint Vicinity's financial characteristics in a way that diminishes the impact of the unjust and unreasonable rate demanded by PGW by generalizing revenues, costs, and, ultimately, the viability of Vicinity's operations. This can serve only one purpose – to argue that, on paper, Vicinity's *ability to pay* the unjust and unreasonable rates demanded by PGW makes the underlying demand for those rates more reasonable. It does not. Under no principle of Pennsylvania utility ratemaking is there a

consideration of what a utility's customer is *able to pay* when setting, designing, or allocating rates. *See* J. Cawley and N. Kennard, Rate Case Handbook, A Guide to Utility Ratemaking before the Pennsylvania Public Utility Commission (Pennsylvania Public Utility Commission 2018) at 138-141. Such consideration of a customer's ability to pay is of no doubt against public policy and ignores the tenants enshrined in Pennsylvania utility ratemaking – namely that rates must be set and designed based on the actual cost of service of each customer and customer class. Indeed, appellate courts have consistently held that cost of service is the “polestar” of ratemaking principles in Pennsylvania. *Lloyd v. Pa. P.U.C.*, 904 A.2d 1010 at 1020-21 (Pa. Cmwlth. 2006).

5. The information sought in PGW-II Nos. 4-6 can only be for one purpose – to argue whether or not Vicinity *can afford* the new rates demanded by PGW. This is not and cannot be the basis of any finding of fact as to whether or not PGW's demanded rates for Vicinity's unique, single customer pipeline service – service unlike any other portion of PGW's distribution system – are just and reasonable. Therefore, the discovery is irrelevant and unlikely to lead to the discovery of admissible evidence in this matter.

6. Additionally, to the extent potential relevance could be imagined for PGW-II Nos. 4-6, which there is none, the requests are so wide cast over Vicinity's operations and finances that they are nothing more than a mere fishing expedition, not reasonably tailored to discover admissible evidence. *See, e.g., City of York v. Pa. P.U.C.*, 281 A.2d 261, 265 (Pa. Commw. Ct. 1971)(“Anything in the nature of a mere fishing expedition is not to be encouraged. Where the plaintiff will swear that some specific book contains material or important evidence, and sufficiently describes and identifies what he wants, it is proper that he should have it produced. But this does not entitle him to have brought in a mass of books and papers in order that he may search them through to gather evidence.”) (quoting *American Car & Foundry Company v.*

Alexandria Water Company, 70 A. 867, 869 (Pa. Super. Ct. 1908)). Instead, under 52 Pa. Code § 5.341(c), a party may propound interrogatories that relate to matters that can be inquired into under Section 5.321. Section 5.321(c) provides that a party is entitled to obtain discovery of any matter not privileged that is **relevant to a pending proceeding** and **reasonably calculated to lead to the discovery of admissible evidence**. 52 Pa. Code § 5.321(c) (emphasis added).

7. Therefore, Vicinity objects to PGW-II Nos. 4-6 as irrelevant and unlikely to lead to the discovery of admissible evidence under 52 Pa. Code § 5.321(c).

II. OBJECTION TO PGW-II NOS. 7-14

8. PGW-II Nos. 7-14 provide:

- 7) Please provide, (by month, if available) for the last five (5) years to the present, the amount of steam produced by Gray's Ferry and delivered to Vicinity's steam distribution system.
- 8) Please provide, (by month, if available) for the last five (5) years to the present, the amount of gas purchased to operate the Schuylkill Station.
- 9) Please provide, (by month, if available) for the last five (5) years to the present, the amount of steam produced by Schuylkill Station.
 - a) What percentage of this production was delivered to Vicinity's steam distribution system?
- 10) Please provide, (by month, if available) for the last five (5) years to the present, the amount of gas purchased to operate the Edison Station.
- 11) Please provide, (by month, if available) for the last five (5) years to the present, the amount of steam produced by Edison Station.
 - a) What percentage of this production was delivered to Vicinity's steam distribution system?
- 12) Please provide, (by month, if available) for the last five (5) years to the present, the amount of gas purchased to operate the Edison Station.
- 13) Please provide, (by month, if available) for the last five (5) years to the present, the amount of steam delivered to Vicinity's steam distribution system that was produced by the steam production facilities owned by Vicinity Energy Efficiency LLC.

- 14) In the last five (5) years, has Grays Ferry sold steam to entities other than Vicinity and its predecessor companies?
 - a) If yes, please provide the revenues, by month for all sales of steam made to entities other than Vicinity.
 - b) Is the unit price per 1000 lbs. of steam that is charged to other customers the same price that is charged to Vicinity? If the answer is anything other than an unqualified “yes” please provide information regarding the price at which it provides or provided steam to other customers.

9. Vicinity objects to these requests because they seek information irrelevant to this proceeding and not reasonably tailored to lead to the discovery of admissible evidence. Pursuant to 52 Pa. Code § 5.321(c), a party may obtain discovery of any matter not privileged that is relevant to a pending proceeding and that is reasonably calculated to lead to the discovery of admissible evidence. *Id.* PGW-II Nos. 7-14 seeks volumes of steam produced by Vicinity, as well as gas purchased by Vicinity to operate various stations that do not have any relevance to the relief sought in the complaint. *Supra* Paragraph 3 as if set forth in full.

10. What amount of steam Vicinity produced and delivered, and what amount of gas purchased to produce said steam is not relevant to any aspect of this matter with regards to the unreasonable and unjust rates PGW is demanding of Vicinity. This matter is not an investigation or ratemaking proceeding for Vicinity, and such questions are wholly irrelevant. Additionally, these requests are not relevant to the relief sought, and are outside the scope of discovery in this matter. *Supra* Paragraph 3 as if set forth in full.

11. Further, to the extent relevance could be imagined, which it cannot, Vicinity objects to these interrogatories as a fishing expedition which is not allowed. *Supra* Paragraph 6.

12. Therefore, Vicinity objects to PGW-II Nos. 7-14 as irrelevant and unlikely to lead to the discovery of admissible evidence under 52 Pa. Code § 5.321(c).

III. OBJECTION TO PGW-II NOS. 26 and 27

13. PGW-II Nos. 26 and 27 provide:

- 26) Please describe in detail Vicinity's sales, business development and lobbying activities directed at gaining/maintaining market share.
- 27) Please identify the employees/consultants who are engaged in sales/marketing activities. Please identify whether these employees are paid commission, or have contingent sales agreements.

14. Vicinity objects to these requests because they seek information irrelevant to this proceeding and not reasonably tailored to lead to the discovery of admissible evidence. Pursuant to 52 Pa. Code § 5.321(c), a party may obtain discovery of any matter not privileged that is relevant to a pending proceeding and that is reasonably calculated to lead to the discovery of admissible evidence. *Id.*

15. PGW-II Nos. 26 and 27 seek information regarding Vicinity's sales, business development, and lobbying activities which has no relevance to the relief sought in the complaint. *Supra* Paragraph 3 as if set forth in full.

16. This matter is not an investigation into the justness and reasonableness of Vicinity's sales and marketing practices. Rather, this matter seeks to resolve the unjust and unreasonable rates demanded by PGW, and these requests do not fall under the relief requested. *Supra* Paragraph 3 as if set forth in full. Such discovery into Vicinity's sales and marketing practices is wholly inappropriate and well beyond the scope of permissible discovery.

17. Further, to the extent relevance could be imagined, which it cannot, Vicinity objects to these interrogatories as a fishing expedition which is not allowed. *Supra* Paragraph 6.

18. Therefore, Vicinity objects to PGW-II Nos. 26 and 27 as irrelevant and unlikely to lead to the discovery of admissible evidence under 52 Pa. Code § 5.321(c).

IV. OBJECTION TO PGW-II NOS. 15-17, 24, 25, 28, and 29

19. PGW-II Nos. 15-17, 24, 25, 28, and 29 provide:
- 15) Vicinity's tariff includes a formula for the calculation of its steam rate. One of the components of that formula, T_p , is defined in Vicinity's tariff as "Projected megawatt-hours of Trigen electricity sales during the computation year."
 - a) For how many years have "Trigen electricity sales" been a component of the steam rate charged to Vicinity's customers?
 - b) Please identify the generator(s) that is (are) source(s) of Trigen's electricity sales.
 - c) Please identify the amount of electricity sales (by month if available), for the last five (5) years, or for whatever period is readily available to the present that were made by generator(s) identified in part (a).
 - d) Are any other sales of electricity included in the calculation of Vicinity's steam rates? If not, please explain why not.
 - 16) Vicinity's tariff includes a formula for the calculation of its steam rate. One of the components of that formula, L_p , is defined in Vicinity's tariff as "Projected total electricity purchases at Schuylkill Station during the computation year."
 - a) What is Schuylkill Station?
 - b) What is the use for electricity purchased at Schuylkill Station?
 - c) Please provide the dollar amount of electricity purchased at Schuylkill Station, (by month if available) for the last five (5) years through the present.
 - 17) Vicinity's tariff includes a formula for the calculation of its steam rate. One of the components of that formula, " CRL_p ", is defined in Vicinity's tariff as "Projected total electricity revenues during the computation year."
 - a) What is (are) the source(s) of electricity revenue for Vicinity?
 - b) Who are the customers that purchase electricity from Vicinity? If the customer(s) is (are) confidential, please provide a general nature and description of the customer(s).
 - c) Please provide a summary, (by month if available), for the last five (5) years to the present of Vicinity's electricity revenue?
 - 24) Does Vicinity offer flex or customized rates? Please provide the relevant Tariff provisions that allow Vicinity to offer these rates.
 - 25) Does Vicinity have any customers that are being charged rates other than those authorized in Vicinity's Tariff? Please explain. If so, under what authority is Vicinity offering these rates?

- 28) Does Vicinity offer incentive payments to customers in exchange for the customer agreeing to long term rate schedules?
- 29) Does Vicinity have any customers whose rates are fixed by contract and are not reflected specifically in the Tariff? What is the duration of these contracts? Under what authority is Vicinity offering these rates?

20. Vicinity objects to these requests because they seek information irrelevant to this proceeding and not reasonably tailored to lead to the discovery of admissible evidence. Pursuant to 52 Pa. Code § 5.321(c), a party may obtain discovery of any matter not privileged that is relevant to a pending proceeding and that is reasonably calculated to lead to the discovery of admissible evidence. *Id.*

21. PGW-II Nos. 15-17, 24, 25, 28, and 29 seek information regarding various provisions contained in Vicinity's Commission approved tariff and rates charged by Vicinity to its customers. Such information is wholly irrelevant to the instant matter and is in no way related to any of the relief sought by Vicinity in this proceeding. *Supra* paragraph 3 as if set forth in full.

22. This matter is not an investigation into the justness and reasonableness of Vicinity's tariff or the rates it charges its utility customers. Such discovery into Vicinity's sales and marketing practices is wholly inappropriate and well beyond the scope of permissible discovery, and indeed even if it were relevant, which it is not, Vicinity's Commission approved tariff and rates are *prima facie* reasonable. It is improper for PGW to contest or question Vicinity's rates and tariff in this complaint proceeding.

23. Subject to and without waiver of the above objection, Vicinity is willing to produce information responsive to PGW-II Nos. 15-17, 24, 25, 28, and 29 that was contained in Vicinity's recent rate case at Docket No. R-2021-3024060 or is otherwise publicly available.

V. CONCLUSION

WHEREFORE, Vicinity objects to PGW-II Nos. 4-17, and 24-29 as irrelevant to the Complaint and relief sought, and unlikely to lead to the discovery of admissible evidence under 52 Pa. Code § 5.321(c).

Respectfully submitted,



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DATED: March 7, 2022

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the forgoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

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