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June 28, 2022

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street – Second Floor North
Harrisburg, PA 17120

Re: Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. v. Philadelphia Gas Works; Docket No. C-2021-3029259; **MOTION OF GRAYS FERRY COGENERATION PARTNERSHIP AND VICINITY ENERGY PHILADELPHIA, INC. TO DISMISS THE OBJECTIONS OF THE PHILADELPHIA GAS WORKS TO INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS, SET IX, AND TO COMPEL ANSWERS THERETO**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Motion of Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. to Dismiss the Objections of the Philadelphia Gas Works to Interrogatories and Requests for Production of Documents, Set IX, and to Compel Answers Thereto in the above-captioned proceeding.

Copies of the Motion 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,

Dennis A. Whitaker, Esq.
Kevin J. McKeon, Esq.
Todd S. Stewart, Esq.
*Counsel for Grays Ferry Cogeneration
Partnership and Vicinity Energy Philadelphia,
Inc.*

TSS/jld

Enclosures

cc: Administrative Law Judge Marta Guhl (via electronic mail – mguhl@pa.gov)
Athena Delvillar, Legal Assistant (via electronic mail – sdelvillar@pa.gov)
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. | : | |

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

Pursuant to 52 Pa. Code § 5.342(g), Grays Ferry Cogeneration Partnership (“Grays Ferry”) and Vicinity Energy Philadelphia, Inc. (“VEPI”) (collectively, “Vicinity”) hereby file this Motion to Dismiss the Objections of Philadelphia Gas Works (“PGW”) and Compel Responses to Vicinity’s Interrogatories and Requests for Production of Documents, Set IX (“Set IX Requests”).

Vicinity’s Set IX Requests are as follows:

17. *Provide data of annual consumption and peak day consumption, load factor, and annual revenue for each of the industrial class customers by year for the period 2018-2021.*
18. *Provide customer class data of annual consumption, peak day consumption if available, peak month consumption, and monthly revenue, by year for the period 2018-2021.*
19. *List all lines operated at 125 psig or greater and provide their usual operating pressure, and list customers served from each line, along with annual volumes for each customer.*

On June 24, 2022, PGW objected to the Set IX Requests (“Objections”). A complete copy of the Objections is attached hereto as **Exhibit A**. A summary of the Objections as written by PGW is as follows:

1. *Complainants’ Set IX, Nos. 17, 18, and 19 are Vague, Unreasonably Burdensome, Overbroad and Requires Unreasonable Investigation. 52 Pa. Code § 5.361(a).*
2. *Complainants’ Set IX, Nos. 17, 18, and 19 are Not Relevant to the Issues Presently Subject to Discovery at this stage of the Proceeding.*

Though presented as two arguments, PGW’s Objections appear to constitute four or five separate arguments, all of which are incorrect. As detailed below, Vicinity’s Set IX Requests were drafted as narrowly as possible so as to minimize the production burden on PGW, are neither vague nor overbroad, and are relevant to Vicinity’s claims. Additionally, an objection to a discovery request may not be sustained where the objection’s basis relates to the submission of evidence because the discovery standard is far broader than the standard used to judge admissible evidence.

1. The Set IX Requests are not unreasonably burdensome and do not require an unreasonable investigation.

PGW objected to the Set IX Requests by arguing that they “impose an unreasonable burden and expense on PGW by requiring PGW to try to compile the voluminous data and information, data that PGW does not keep in the normal course” and that production of the Set IX Requests “would require PGW to make an unreasonable investigation to calculate data for numerous customers and rate classes.”

Here, we must examine the harm PGW will suffer if the Objections are denied balanced against the harm Vicinity will suffer if the Objections are sustained. The information requested will enable Vicinity and the Public Utility Commission (“Commission”) to determine whether the rates and conditions demanded by PGW are reasonable, discriminatory, and fair—among the key

accusations Vicinity made in its complaint. These claims require, in part, an ability to compare PGW's treatment of its other customers to its demands of Vicinity. Vicinity drafted the Set IX Requests as narrowly as possible without hindering its ability to make such a comparison.

PGW does not assert that it has preliminarily reviewed the extent of its records or has made even a cursory inquiry into how it knows that producing the requested documents would be unreasonably burdensome or require an unreasonable investigation. Perhaps it should not be surprising, then, that PGW does not explain the type or extent of the investigation that may be required or the estimated cost thereof. This information would have been useful in comparing the harm PGW will suffer in producing the requested documents against Vicinity's obvious need for the information.

In the absence of any such assertions by PGW, we are left to guess at what PGW meant by "unreasonable burden" and "unreasonable investigation." PGW, the self-described "largest municipally owned gas utility in the country,"¹ is a sophisticated company with vast resources. During its 2021 fiscal year, PGW served over half a million customers² and realized a profit of \$154.6 million, an increase of \$66.6 million from the prior year.³ The cost of producing the requested information would likely constitute an infinitesimally small fraction of PGW's annual profit, not an "unreasonable expense." Furthermore, PGW's argument that it does not keep the requested information in the normal course of business strains credulity. For example, no modern energy utility can function for long without knowing the annual consumption tendencies of its various types of customers; the specific components of its distribution network that a given

¹ PGW's website, <https://www.pgworks.com/about-us>, retrieved June 27, 2022.

² [PGW's FY 2021 Annual Report](#), Page 107, attached hereto as **Exhibit B**.

³ [PGW's FY 2021 Annual Report](#), Page 8, attached hereto as **Exhibit C**.

customer depends on; and when, where, and how demands on its supply and distribution network may peak.

2. The Set IX Requests are not vague, nor are they overbroad.

Though PGW asserts in the first summary heading of its Objections that the Set IX Requests are “overbroad,” PGW makes no argument supporting the assertion. Similarly, though PGW asserts in the first summary heading of its Objections that the Set IX Requests are “vague,” PGW makes no argument supporting the assertion. In fact, the Objections do not mention the words “overbroad” or “vague” anywhere but in the first summary heading.

As noted above, Vicinity drafted the Set IX Requests as narrowly as possible so as to balance its need for information that supports its claims against the burden such needs may place on PGW. PGW’s assertion that the Set IX Requests are vague and overbroad are totally unsupported by any assertions whatsoever, let alone any evidence.

3. The Set IX Requests are relevant.

PGW also objected to the Set IX Requests by arguing that they are irrelevant.

The scope of discovery before the Commission is broad: a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. 52 Pa. Code § 5.321(c).

As noted above, Vicinity drafted the Set IX Requests in order to obtain the information its needs to support its claims. These claims require, in part, an ability to compare PGW’s treatment of its other customers to its demands of Vicinity. Vicinity drafted the Set IX Requests as narrowly

as possible without hindering its ability to make such a comparison. Given the breadth of material that is discoverable under the Commission's regulations, and the nature of the Set IX Requests, it is certain that none could be said to be outside the scope of discovery.

4. An objection to a discovery request may not be sustained where the objection's basis relates to the submission of evidence.

Finally, PGW objected to the Set IX Requests by arguing that the admission of the requested information as evidence in a later phase of this proceeding would be barred by 52 Pa. Code § 5.243(e)(2). The cited rule regulates admissible evidence, not discovery material, so its application here is incorrect. The discovery standard is broad—far broader than the standard used to judge admissible evidence.

Furthermore, the inadmissibility of anything requested during discovery “is not ground for objection...if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.” 52 Pa. Code § 5.321(c). PGW's assertion that the information requested will be submitted into evidence by Vicinity in order to support a witness's testimony is a purely speculative assumption for which PGW has absolutely no evidence. PGW cannot dictate how Vicinity may or may not use discovery material, nor presume to know Vicinity's intent.

Accordingly, PGW's Objections to Vicinity's Set IX Requests should be dismissed and PGW should be compelled to answer the questions in their entirety.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'Dennis A. Whitaker', written over a horizontal line.

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DATED: June 28, 2022

*Counsel for Grays Ferry Cogeneration
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Philadelphia, Inc.*

EXHIBIT 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. | : | |

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

Pursuant to Section 5.342(c) of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.342(c), Philadelphia Gas Works (“PGW”) files these Objections to the Interrogatories and Requests for Production of Documents, Set IX, served by Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. (collectively, “GFCP/VEPI” or “Complainants”) on June 21, 2022. The interrogatories that PGW is objecting to are set forth in Attachment A hereto. PGW objects to the Complainant’s Set IX Interrogatories and Requests for Production of Documents on the following grounds:

1. Complainants’ Set IX, Nos. 17, 18, and 19 are Vague, Unreasonably Burdensome, Overbroad and Requires Unreasonable Investigation. 52 Pa. Code § 5.361(a).

PGW objects to Complainants’ Interrogatories and Requests for Production of Documents Set IX, Nos. 17–19. (“Set IX Requests”), which state as follows:

17. Provide data of annual consumption and peak day consumption, load factor, and annual revenue for each of the industrial class customers by year for the period 2018-2021.

18. Provide customer class data of annual consumption, peak day consumption if available, peak month consumption, and monthly revenue, by year for the period 2018-2021.
19. List all lines operated at 125 psig or greater and provide their usual operating pressure, and list customers served from each line, along with annual volumes for each customer.

The above-referenced requests ask PGW to provide data for *every* industrial customer, all customer classes, and all customers served at a particular pressure or above, in two cases over a four-year period. The Commission's regulations prohibit discovery which "[w]ould cause unreasonable . . . burden or expense . . . [or] [w]ould require the making of an unreasonable investigation." 52 Pa. Code §§ 5.361(a) & (b). Complainants' Set IX Requests impose an unreasonable burden and expense on PGW by requiring PGW to try to compile voluminous data and information, data that PGW does not keep in the normal course. Moreover, Complainants' Requests would require PGW to make an unreasonable investigation to calculate data for numerous customers and rate classes. As such, these requests are unreasonable, burdensome and require an unreasonable investigation. *See id.*

2. Complainants' Set IX, Nos. 17, 18, and 19 are Not Relevant to the Issues Presently Subject to Discovery at this stage of the Proceeding.

In addition, Complainants' Set IX Requests are untimely and irrelevant. Complainants' demands are not directed at any portion of PGW's Rebuttal Testimony. Rather they appear to endeavor to obtain data in an attempt to support Mr. Crist's original, unsubstantiated assertions about load factor, line pressure, and customer size. This information should have been requested and/or presented in Mr. Crist's Direct Testimony. Under Commission Rules, a Party may not submit evidence in a later phase of a proceeding that could have been presented earlier. *See* 52 Pa. Code § 5.243(e)(2). Therefore, Complainants' Set IX Requests are untimely and not legally

relevant at this stage of the proceeding. To now demand information that could have been requested many months earlier is unfair, burdensome, and not consistent with Commission Rules.

For the reasons explained above, PGW objects to Complainants' Interrogatories and Requests for Production of Documents, Set IX, Nos. 17, 18, and 19, as the questions are unreasonable, burdensome, require an unreasonable investigation, untimely, and seek information that is not legally relevant.

Respectfully submitted,



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Dated: June 24, 2022

Attachment A

Set IX Interrogatories and Requests for Production of Documents of Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia Inc.

17. Provide data of annual consumption and peak day consumption, load factor, and annual revenue for each of the industrial class customers by year for the period 2018-2021.
18. Provide customer class data of annual consumption, peak day consumption if available, peak month consumption, and monthly revenue, by year for the period 2018-2021.
19. List all lines operated at 125 psig or greater and provide their usual operating pressure, and list customers served from each line, along with annual volumes for each customer.

EXHIBIT B

PHILADELPHIA GAS WORKS
 (A Component Unit of the City of Philadelphia)
 Average Number of Customers Billed by System
 Fiscal Years 2012 through 2021

| | <u>2021⁽²⁾</u> | <u>2020⁽¹⁾</u> | <u>2019</u> | <u>2018</u> |
|-------------|---------------------------|---------------------------|----------------|----------------|
| Residential | 498,300 | 498,300 | 484,300 | 482,300 |
| Commercial | 25,000 | 25,000 | 25,000 | 25,000 |
| Industrial | 700 | 700 | 700 | 700 |
| Total | <u>524,000</u> | <u>524,000</u> | <u>510,000</u> | <u>508,000</u> |

Source - PGW Records



(1) PGW's customer count increased in FY 2020 as compared to FY 2019. However, PGW was operating under the PAPUC's requirement to extend the moratorium regarding customer shut-offs during the period April 1, 2020 through August 31, 2020. This inflated PGW's customer count at the end of FY 2020.

(2) PGW's customer count remained consistent in FY 2021 as compared to FY 2020. PGW was operating under the PAPUC's modification of the March 13 Emergency Order by initiating phase 2 regarding customer protections until December 31, 2021. This continued to inflate PGW's normal customer count at the end of FY 2021.

EXHIBIT C

PHILADELPHIA GAS WORKS
(A Component Unit of the City of Philadelphia)
Management's Discussion and Analysis
August 31, 2021 and 2020 (Unaudited)

FY 2020 was \$5.2 million lower than FY 2019, as a result of decreased earnings on restricted and unrestricted fund balances.

Interest Expense – Total interest expense was \$41.5 million in FY 2021, an increase of \$5.8 million, or 16.2%, when compared with FY 2020. Interest on long-term debt was \$4.9 million, or 11.2%, higher in FY 2021 when compared to FY 2020 reflecting the issuance of the Sixteenth Series Bonds in October 2020. Additionally, other interest expense increased by \$1.3 million, reflecting an increase in the amortization of the bond premiums and increased bond issuance expenses related to the Sixteenth Series bonds. Total interest expense was \$35.7 million in FY 2020, a decrease of \$3.9 million, or 9.8%, when compared with FY 2019. Interest on long-term debt was \$2.5 million, or 5.4%, lower in FY 2020 when compared to FY 2019. Interest expense was lower in FY 2020 due to the normal amortization of long-term debt.

Excess of Revenues over Expenses – In FY 2021, the Company's excess of revenues over expenses was \$154.6 million, an increase of \$66.6 million from FY 2020. This increase is primarily due to greater contribution margins resulting from a new base rate approved by the PUC in the Settlement Agreement, which became effective January 1, 2021 and July 1, 2021, and lower pension and OPEB expenses. In FY 2020, the Company's excess of revenues over expenses was \$88.0 million, a decrease of \$7.9 million from FY 2019. This decrease is primarily due to lower contribution margins of gas offset by lower pension and OPEB expenses.

Condensed Balance Sheets

(Thousands of U.S. dollars)

| Assets and Deferred Outflows of Resources | As of August 31 | | |
|---|------------------------|-------------|-------------|
| | 2021 | 2020 | 2019 |
| Current assets: | | | |
| Accounts receivable (net of accumulated provision for uncollectible accounts of \$113,164, \$80,422, and \$66,751 for 2021, 2020, and 2019, respectively) | \$ 81,991 | 83,681 | 85,989 |
| Restricted investment funds | 96,340 | 2,736 | 71,345 |
| Cash and cash equivalents, cash designated for capital expenditures, gas inventories, materials, and supplies and other current assets | 224,563 | 237,458 | 193,979 |
| Total current assets | 402,894 | 323,875 | 351,313 |
| Noncurrent assets: | | | |
| Utility plant, net | 1,565,863 | 1,491,420 | 1,451,470 |
| Unamortized bond insurance costs | 784 | 233 | 258 |
| Capital improvement fund | 91,322 | — | — |

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).

VIA ELECTRONIC MAIL ONLY

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Dated: June 28, 2022