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September 20, 2022

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' ("PGW") Main Brief (**public version**) with regard to the above-referenced matter.

A **confidential version** of the Brief is being sent by overnight mail to the Commission. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Daniel Clearfield, Esquire

DC/lww
Enclosure

cc: Hon. Marta Guhl, w/enc.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PGW's Main Brief, 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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Dated: September 20, 2022



Daniel Clearfield, Esquire

**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.	:	

PHILADELPHIA GAS WORKS MAIN BRIEF

PUBLIC VERSION

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I. INTRODUCTION AND PROCEDURAL HISTORY

A. Introduction

As a municipal utility, Philadelphia Gas Works (“PGW”) has no shareholders and does not earn a profit. PGW is a collection of real and personal assets owned by the City of Philadelphia (“City”) and responsible for the acquisition, storage, processing, distribution, and sale of natural gas within the City.¹ PGW manages a distribution system of approximately 6,000 miles of gas mains and service lines that supplies approximately 500,000 customers in the City.² PGW is a “city owned natural gas operation” as the term is defined by the Public Utility Code and has been subject to rate regulation by the Pennsylvania Public Utility Commission (“Commission” or “PUC”) since 2000.

Complainants Grays Ferry Cogeneration Partnership (“GFCP”) and Vicinity Energy Philadelphia, Inc. (“VEPI”) are both for-profit entities. GFCP generates electricity to sell on the wholesale market and earned \$41.6 million in revenues from the sale of electricity in 2021.³ VEPI is a privately-owned public utility that supplies steam to approximately 230 nonresidential customers.⁴ Only VEPI is subject to rate regulation by the PUC.

As a result of the settlement of a 1995-1996 bypass dispute, and prior to PGW coming under the jurisdiction of the PUC, the City and others negotiated contractual arrangements to provide natural gas transportation and other services to both GFCP and VEPI (through their predecessor in interest) at negotiated rates.⁵ The arrangements provided that PGW would both

¹ PGW St. No. 1R at 4.

² *Id.*

³ PGW St. No. 5R at 8; *see also* GFCP/VEPI Statement JC-1 at 4.

⁴ *Pa. PUC v. Vicinity Energy Phila., Inc.*, Docket No. R-2021-3024060, <https://www.puc.pa.gov/pcdocs/1702004.pdf>.

⁵ *See generally* PGW St. No. 1R at 6–10.

construct a new, 16 inch pipeline (“Distribution Extension,” as defined herein) at GFCP/VEPI’s expense, and refurbish and repurpose a PGW gas liquids line (“Naphtha Line,” as defined herein, together, “Four Mile Line”) that, together, permit PGW to transport natural gas to both GFCP and VEPI so that they could, respectively, use natural gas as fuel for GFCP’s cogeneration facilities (to produce electricity and steam as “waste”) and VEPI’s steam production facilities.⁶ While the electricity is sold into the market, the “waste” steam is sold by GFCP to VEPI which, in turn, sells it to VEPI’s steam customers.⁷

1. The 1996 Contracts

In January 1996, the Philadelphia Authority for Industrial Development (“PAID”) entered into a total of four agreements: (a) two service contracts: one with GFCP (the “Partnership Service Contract”) and one with VEPI (then known as Trigen) (the “Trigen Service Contract”) (collectively, the “Service Contracts”); and (b) two service agreements with the City of Philadelphia on behalf of PGW: one regarding the Partnership Service Contract (“Partnership Service Agreement”) and one regarding the Trigen Service Contract (the “Trigen Service Agreement”) (collectively, the “Service Agreements”).⁸ The Service Contracts and the Service Agreements are collectively referred to herein as the “1996 Contracts.” PAID and the City acted as conduits for the real party in interest, PGW.⁹

The 1996 Contracts were the product of negotiations as part of the settlement of a proceeding before the Federal Energy Regulatory Commission (“FERC”).¹⁰ Prior to the

⁶ Tr. 83–84; PGW St. 1R at 7–8.

⁷ PGW St. 1R at 5–6; GFCP/VEPI Statement JC-1 at 4, 9.

⁸ PGW notes that none of the 1996 Contracts have been made part of the record in this case.

⁹ See PGW St. 1R at 12 (“[T]he original contract was actually not with PGW directly but with the Philadelphia Authority for Industrial Development (‘PAID’).”)

¹⁰ *Texas Eastern Transmission Corporation*, Docket No. CP95-2-000, 71 FERC ¶ 61,020 (Apr. 5, 1995), *vacated by*, 75 FERC ¶ 61,236 (May 31, 1996).

settlement, PGW had never provided GFCP/VEPI with gas service. Rather than using gas service from PGW, GFCP/VEPI in or around 1995–1996, pursued construction of a lateral to, and connection point, with the “Philadelphia Lateral” – which is part of the interstate pipeline system owned and operated by Texas Eastern Transmission Company (“TETCO”) and subject to FERC’s jurisdiction.¹¹ GFCP/VEPI dropped these plans with the execution of the 1996 Contracts.

2. PGW’s Grandfathering of the 1996 Contracts in its PUC-Approved Tariffs

Beginning July 1, 2000, the regulation of PGW, including rates and service, was transferred from the local Philadelphia Gas Commission to the state PUC.¹² PGW’s prior (non-Commission) rates and tariff were continued until the effective date of a final order by the Commission approving PGW’s restructuring plan and new tariff.¹³ In 2003, the Commission approved a restructuring plan and initial PUC Tariff for PGW.¹⁴ As part of PGW’s restructuring plan, PGW proposed to continue to honor the 1996 Contracts by incorporating them, along with contracts with other customers, into a specific rate schedule – Gas Transportation Service – Rate GTS-Firm Service (“Rate GTS-F”).¹⁵ To reflect the fact that this rate schedule was only available to provide service to customers with legacy contracts, Rate GTS-F was closed so that it was only available to customers who were being served under a contract existing at the time – September 1, 2003 – and only for the life of those contracts.¹⁶ Those Tariff provisions, along with the rest of PGW’s proposed initial tariff,

¹¹ PGW St. 1R at 6–7.

¹² 66 Pa. C.S. § 2212(b).

¹³ *See Id.* §§ 2212(d), (g).

¹⁴ *See* Docket No. M-00021612.

¹⁵ PGW Gas Service Tariff – Pa. P.U.C. No. 2 at Original Pages 118 to 123 (“Rate GTS-F”).

¹⁶ PGW Gas Service Tariff – Pa. P.U.C. No. 2 at Original Page 118 (Rate GTS-F “is only available to those customers who utilized this service on or before September 1, 2003 pursuant to a currently valid agreement with the Company.”).

were approved by the Commission as legacy, contractual rates with an effective date of September 1, 2003. None of the rates, terms and conditions were determined to reflect just, reasonable and non-discriminatory rates, terms and conditions pursuant to the Public Utility Code. Accordingly, it was anticipated, at that time, that the then-existing contracts regarding Rate GTS-F would not be renewed or extended and that GFCP/VEPI (or their successors) would, at end of the twenty-five-year term, transition to service under other provisions in PGW's Tariff on or before January 1, 2023.

3. PGW's Non-Binding Proposal for Rates After December 31, 2022

Given the expiration of Rate GTS-F and the 1996 Contracts, PGW provided a written non-binding proposal for going forward rates to GFCP/VEPI in February 2021. Because GFCP/VEPI have insisted that they could only receive firm service PGW could have determined that their only option was firm transmission service – the current rate for which is over \$5.00/Mcf. Instead, PGW suggested that they transition to interruptible service pursuant to Rate IT. PGW initially offered Rate IT because it is the “lowest priced Interruptible Transportation rate class. PGW made clear that it was willing to negotiate additional provisions – such as Standby Service – so that GFCP/VEPI would be able to receive the level of firmness they desired.”¹⁷ GFCP/VEPI's response was to file this Complaint.

4. Going Forward Rates, Terms and Conditions for GFCP/VEPI

Nearing the end of the agreed-upon 25-year term of the 1996 Contracts, and despite the crystal-clear language in PGW's Rate Schedule GTS-F, GFCP/VEPI have filed this complaint and are insisting that they should continue to receive service under this now closed tariff provision and terminating contract (as opposed to engaging in meaningful negotiations about transitioning to

¹⁷ PGW St. 1R at 11.

other tariff provisions).¹⁸ In addition, GFCP/VEPI have complained that the lowest available tariffed rate (Rate IT, with provisions to eliminate the potential to be interrupted) is unreasonable for them, and even claimed that payments in their original contract might also be unreasonable.¹⁹ They insist that they continue to receive special treatment and subsidized rates. The shortfall from any such subsidized rates will, of course, have to be shouldered by remaining PGW customers.

As noted, and as the Commission is aware, PGW is a municipal utility that has no shareholders and does not earn a profit on its business. However, as a Commission-regulated utility, PGW has an obligation to establish rates for its customers that are just, reasonable, and non-discriminatory.²⁰ If GFCP/VEPI are permitted to continue a non-PUC approved, legacy contract and to continue to pay rates that do not cover their costs – which would be the case if the rates in the 1996 Contracts were permitted to continue – those subsidies would continue to be covered by PGW’s remaining gas customers under PGW’s, Commission approved, cash flow rate methodology. It is important to reiterate that, regardless of the outcome of this dispute, as a cash flow regulated utility, PGW itself will not make any more money or gain or lose some advantage; only PGW customers will be ultimately affected.

Because GFCP is a natural gas user in its service territory, PGW acknowledges it has the right and obligation to provide natural gas transportation service to GFCP/VEPI.²¹ And PGW is committed to providing service to these customers – like all its other customers – at just, reasonable, and non-discriminatory rates. But GFCP/VEPI can no longer receive service under Rate GTS-F or the related 1996 Contracts, as the 1996 Contract will expire on their agreed-upon

¹⁸ Formal Complaint at 14; GFCP/VEPI Statement JC-1 at 34.

¹⁹ Formal Complaint ¶¶ 17–23; *see generally* GFCP/VEPI Statement JC-1 at 11–26.

²⁰ 66 Pa. C.S. §§ 1501–02.

²¹ *Id.* § 1501.

terms on December 31, 2022. Further, as the record makes clear, GFCP/VEPI have simply not met their burden of showing that they are entitled to a new, special rate since there is nothing so unique about the way in which they receive natural gas so as to justify such special treatment.

Even if the Commission determines that GFCP/VEPI should be served going forward on a new special rate, the level of rates need to reflect well established cost of service principles. PGW's evidence shows that the cost to serve GFCP/VEPI is at least \$0.698/Dth, in stark contrast to the \$0.08/Dth they are now paying. Even GFCP/VEPI's own witness has testified that the cost of service to GFCP/VEPI is at least \$0.21/Dth.²²

GFCP/VEPI's demand for "Alternative Receipt Service" ("ARS") also needs to be priced appropriately. GFCP/VEPI have a peak of 56,000 Dth/day but only control 35,000 Dth/day on the Philadelphia Lateral. Thus, they are completely reliant on PGW to obtain access to additional capacity to serve them. The way that GFCP/VEPI do that today is through ARS. Under the current contract, PGW uses its distribution system to permit GFCP/VEPI to deliver gas to a gate station in Northeast Philadelphia, which, in turn, allows PGW to use some of its capacity on TETCO's very constrained Philadelphia Lateral pipeline to deliver the same amount of gas to GFCP/VEPI. PGW must hold onto ownership of this capacity to be assured of meeting its firm customer needs on its peak design day, but it can use it to provide ARS service when PGW determines that this "safety net" capacity is not needed to serve PGW's essential needs customers – hospitals, schools etc. As noted, the Philadelphia Lateral is very constrained, and thus capacity on the line is very valuable; PGW has received offers in the past of \$0.60/Dth.²³ Yet today GFCP/VEPI pay only \$0.0138 per

²² GFCP/VEPI Statement JC-1SR at 17.

²³ PGW St. 2R at 9.

Dth for such capacity.²⁴ Similar subsidies and lost revenue opportunities exist with other services provided by PGW under the 1996 Contract.

It should be clear from the above that, for over two decades, GFCP/VEPI have essentially gotten away with paying just a tiny fraction of the cost that PGW has incurred to provide service to them. Every cent of those subsidies is paid by other PGW base rate and Gas Cost Rate (“GCR”) customers. A substantial portion of the gas that PGW delivers for GFCP/VEPI is used by their cogeneration facility to generate electricity that GFCP then sells into the market generating tens of millions of dollars in profit, none of which is credited to VEPI steam customers. The time has come to end these subsidies and require that GFCP/VEPI pay the just and reasonable rates reflected in PGW’s current Tariff or to create a special rate that appropriately reflects the cost and value of the natural gas service they are demanding. GFCP/VEPI has presented absolutely no evidence to show that it would be inequitable or otherwise unfair to charge these customers cost based, non-discriminatory rates, just like every other customer class on PGW’s system. The customers of PGW deserve nothing less.

B. Procedural History

On October 22, 2021, GFCP/VEPI filed a Formal Complaint against PGW pursuant to 66 Pa. C.S. § 701 and 52 Pa. Code § 5.21, *et seq.* (“Formal Complaint”). On November 22, 2021, PGW filed an Answer with New Matter to Formal Complaint and Preliminary Objections to the Complaint.

On November 18, 2021, the Office of Consumer Advocate (“OCA”) filed a Notice of Intervention and Public Statement. On December 6, 2021, the Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention, Public Statement, and Verification. On December 7,

²⁴ PGW St. 2R, Ex. RER-2, as amended by Tr. 58–59 (reflecting the per unit cost based on \$54,000/yr).

2021, the Bureau for Investigation and Enforcement (“I&E”) entered its appearance in this proceeding. On June 10, 2022, the Philadelphia Industrial and Commercial Gas Users Group (“PICGUG”) submitted a Late-Filed Petition to Intervene. GFCP/VEPI and PGW filed letters not objecting to PICGUG’s intervention on June 14, 2022 and June 15, 2022, respectively.

Pursuant to a Prehearing Conference Order dated December 22, 2021, Administrative Law Judge Marta Guhl was assigned to develop an evidentiary record and Recommended Decision in this proceeding. In accordance with the Prehearing Conference Order, PGW, GFCP/VEPI, I&E, OCA, and OSBA submitted prehearing memoranda to the presiding officer on January 10, 2022. A Prehearing Conference was held on January 13, 2022. After the Prehearing Conference, the Parties engaged in a substantial amount of discovery.

In accordance with the procedural schedule agreed to by the parties in their prehearing memoranda, the parties exchanged direct, rebuttal, and surrebuttal testimony. On April 22, 2022, GFCP/VEPI submitted the Direct Testimony of James L. Crist.²⁵ On June 17, 2022, PGW submitted the rebuttal testimony and exhibits of John C. Zuk,²⁶ Ryan E. Reeves,²⁷ Florian Teme,²⁸ Constance E. Heppenstall,²⁹ Frank Lacey,³⁰ and Ronald Carrier.³¹ Also on June 17, 2022, OCA submitted the Rebuttal Testimony and Exhibits of Jerome D. Mierzwa³² and OSBA submitted the Rebuttal Testimony and Exhibits of Robert D. Knecht.³³

²⁵ GFCP/VEPI Statement JC-1.

²⁶ PGW St. 1R.

²⁷ PGW St. 2R.

²⁸ PGW St. 3R.

²⁹ PGW St. 4R.

³⁰ PGW St. 5R.

³¹ PGW St. 6R.

³² OCA Statement 1R.

³³ OSBA Statement No. 1-R.

On July 22, 2022, PGW submitted the Surrebuttal Testimony of Ryan E. Reeves,³⁴ Florian Teme,³⁵ Constance E. Heppenstall,³⁶ and Frank Lacey.³⁷ That same day, GFCP/VEPI submitted the Surrebuttal Testimony of James L. Crist,³⁸ OCA submitted the Surrebuttal Testimony of Jerome D. Mierzwa,³⁹ and OSBA submitted the Surrebuttal Testimony of Robert D. Knecht.⁴⁰

On July 29, 2022, PGW submitted the Further Surrebuttal Testimony of Ryan E. Reeves solely responding to a new issue raised for the first time in the Surrebuttal Testimony of OSBA witness Robert D. Knecht after obtaining consent from counsel for OSBA.⁴¹ GFCP/VEPI filed a Motion to Strike “Further Surrebuttal Testimony” of PGW on August 1, 2022 (“Motion to Strike”). PGW filed its Answer to GFCP/VEPI’s Motion to Strike on August 4, 2022. The ALJ denied the Motion to Strike at the evidentiary hearing but authorized GFCP/VEPI to submit rejoinder, which they did at the hearing through Mr. Crist.⁴²

On August 9, 2022, a full evidentiary hearing was held telephonically. During the hearing, GFCP/VEPI presented its testimony, including oral rejoinder to PGW’s Further Surrebuttal Testimony, and made its witnesses available for cross-examination by the other parties. PGW presented its witnesses’ various testimonies, and also made its witnesses available for cross-examination by the other parties. The testimony and accompanying exhibits (if any) of the

³⁴ PGW St. 2SR.

³⁵ PGW St. 3SR.

³⁶ PGW St. 4SR.

³⁷ PGW St. 5SR.

³⁸ GFCP/VEPI Statement JC-1SR.

³⁹ OCA Statement 1S.

⁴⁰ OSBA Statement No. 1-S.

⁴¹ PGW St. 2FSR.

⁴² *See* Tr. 43.

witnesses for PGW, GFCEP/VEPI, OCA, and OSBA were each entered into the record. Hearing Exhibits submitted by PGW were also admitted into the record.⁴³

This Main Brief is being submitted in accordance with the Briefing Order dated August 15, 2022.

II. STATEMENT OF THE CASE

The Statement of the Case is set forth in the above Introduction. The procedural history is set forth in Section I.B of this Brief. In addition, Appendices A (Proposed Findings of Fact), B (Proposed Conclusions of Law), and C (Proposed Ordering Paragraphs), as requested by the ALJ's Briefing Order, are incorporated herein by reference.

III. SUMMARY OF ARGUMENT

Service pursuant to PGW's existing Tariff, Rate GTS-F, is no longer available to GFCEP/VEPI after the expiration of the legacy 1996 Contract on December 31, 2022. Service under that rate schedule was closed to new customers and new contracts in 2003. The tariff language allows for continued service under Rate GTS-F only for the remaining duration (term) of contracts that were in existence on September 1, 2003 to continue. Upon expiration (or termination) of those contracts, service will not be renewed or extended under Rate GTS-F and customers will need to transition to service under other provisions in PGW's Tariff.

There is no legal basis for the Commission to simply order PGW to extend the contract or duration (term) of the Existing Contracts. Contractual provisions regarding duration allow contracting parties to adjust to changing conditions without the necessity of litigation to end the relationship. It is not disputed that the 1996 Contracts will end on December 31, 2022. The Commission has no power to order a public utility to enter into a particular contract

⁴³ PGW Hearing Exs. 1-9.

as to do so would be to be putting the Commission in the role of a “super board of directors.” Moreover, extending the duration (term) of the 1996 Contracts, as argued for by GFCP/VEPI, would not be in the public interest. PGW has submitted substantial evidence proving that the current terms of the 1996 Contracts would decidedly *not* be in the public interest to continue. In fact, even GFCP/VEPI acknowledge that PGW is not recovering the cost of service for transportation service to GFCP/VEPI’s facilities under the Existing Contract.⁴⁴ PGW’s remaining customers must make up that shortfall.

GFCP/VEPI’s demand that the Commission use its Section 508 power to modify the rates, terms and conditions (essentially the material terms) of the Existing Contracts to GFCP/VEPI’s liking is both contrary to law and grossly unreasonable. Importantly, the Commission does not have the power to create a new contract or to vary, reform or revise the Existing Contracts because: the contract will be terminating and thus any argument about modifying it is moot. Moreover, on its face, Section 508 requires that obligations, terms, or conditions in a utility contract be found to be inequitable or “otherwise contrary or adverse to the public interest and the general well-being of this Commonwealth.”⁴⁵ Only after such a finding can the Commission determine and prescribe just, reasonable, and equitable obligations, terms, and conditions of said contract. It certainly would not be consistent with the “general well-being of this Commonwealth” to resurrect these contracts in which the rates are grossly below cost of service and where the only reason for doing so would be to award the rates, terms and conditions of service that GFCP/VEPI desires.

A New Special Rate for GFCP/VEPI is not Justified. A special rate should not be approved absent a compelling reason and where the service to the entity is “unique.” Here,

⁴⁴ See GFCP/VEPI Statement JC-1SR at 17.

⁴⁵ 66 Pa. C.S. § 508.

GFCP/VEPI have failed to satisfy their burden because the record clearly demonstrates that GFCP/VEPI have not justified a special rate. Under Commission precedent, the size of their load is not a unique and compelling circumstance so as to justify a special rate. The other factors cited by GFCP/VEPI witness Crist are either irrelevant or fail to justify a special rate under Commission precedent. Moreover, as discussed herein, GFCP/VEPI's threat of bypass is unsubstantiated and should not be used to justify a special rate for GFCP/VEPI.

Assuming *arguendo* that a special rate is justified, there are numerous considerations to be applied to determine the Special Rates for GFCP/VEPI. The “polestar” of ratemaking has been found to be the “cost of providing service.” So, if the Commission determines that GFCP/VEPI should be served going forward on a special rate, that rate should reflect well established cost of service principles. The existing rates are substantially below the cost of service, as the record demonstrates. An appropriate cost-based rate would be \$0.689/Dth to \$0.756/Dth. The transportation rate should be based on a cost of service study that allocates a portion of the costs of the distribution system because GFCP/VEPI do not receive service from a system that is separate from PGW's distribution system, and two of the services they currently receive – ARS and bundled sales service – directly rely on the distribution system for their provision. If ARS service is to continue to be provided, it should be priced at a level that recognizes that the service is only available because of the use of PGW's distribution system. Other services, including bundled sales service, should be provided on the same rates, terms and conditions of service that would apply to any other customer. GFCP/VEPI have not demonstrated that they deserve special consideration because of the alleged threat of “bypass” or any other reason.

If a Special Rate is NOT justified (as is the case), it would be reasonable for the Commission to require GFCP/VEPI to receive transportation service under Rate IT with

Standby Service. Generally speaking, regarding transportation service, there are two options under PGW’s Tariff: firm service under rate schedule General Service⁴⁶ (“Rate GS”) or interruptible service under rate schedule Interruptible Transportation⁴⁷ (“Rate IT”). When the service is available under two or more rate schedules, the customer must select the rate schedule on which the customer desires to receive service and be billed. However, GFCEP/VEPI have not clearly selected a rate schedule. In the absence of a selection, service under Rate IT with Standby Service is reasonable. Mr. Crist conceded, during cross-examination, that GFCEP/VEPI can withstand limited curtailments and interruptions. Unplanned interruptions of Rate IT customers are rare, and reliability of service under Rate IT can be increased by adding “Standby Service,” which calls upon PGW to provide gas supply to the customer in the unlikely event that the customer experiences an interruption or curtailment in transportation service by a supplier.

PGW Marketing Activities. After presenting various allegations regarding PGW marketing, PGW completely refuted each and every allegation. GFCEP/VEPI’s witnesses chose to not respond to those allegations. Therefore, the unrefuted evidence in the record requires that they be dismissed.

IV. LEGAL STANDARDS

A. Overall Burden of Proof

As the proponent of a rule or order, GFCEP/VEPI have the burden of proof in this matter pursuant to 66 Pa. C.S. § 332(a).

To establish a sufficient case and satisfy the burden of proof, GFCEP/VEPI must show that the respondent public utility is responsible or accountable for the problem described in the

⁴⁶ PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 83–85; PGW St. 3R at 6.

⁴⁷ PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 111–17; PGW St. 3R at 5–6.

Complaint.⁴⁸ Such a showing must be by a preponderance of the evidence.⁴⁹ That is, by presenting evidence more convincing than that presented by the other party.⁵⁰ Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.⁵¹ More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.⁵²

Upon the presentation by GFCP/VEPI of evidence sufficient to initially satisfy the burden of proof, the burden of going forward to rebut the evidence of GFCP/VEPI shifts to PGW. If the evidence presented by PGW is of co-equal weight, the burden of proof on GFCP/VEPI has not been satisfied and GFCP/VEPI would be required to provide additional evidence to rebut PGW's evidence.⁵³

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on GFCP/VEPI, as the party seeking affirmative relief from the Commission.⁵⁴

B. Rates Must be Just and Reasonable and Non-Discriminatory

Section 1301(a) of the Code mandates that “[e]very rate made, demanded, or received by any public utility . . . shall be just and reasonable, and in conformity with [the] regulations or orders

⁴⁸ *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976).

⁴⁹ *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Commw. Ct. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992).

⁵⁰ *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

⁵¹ *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Commw. Ct. 1982); *Edan Transp. Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Commw. Ct. 1993); 2 Pa. C.S. § 704.

⁵² *Norfolk & W.Ry. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Cntr.*, 480 A.2d 382 (Pa. Commw. Ct. 1984).

⁵³ *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Commw. Ct. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

⁵⁴ *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Commw. Ct. 2001).

of the [C]ommission.”⁵⁵ Pursuant to the just and reasonable standard, a utility may obtain “a rate that allows it to recover those expenses that are reasonably necessary to provide service to its customers[,] as well as a reasonable rate of return on its investment.”⁵⁶ There is no single way to arrive at just and reasonable rates, and “[t]he [Commission] has broad discretion in determining whether rates are reasonable” and “is vested with discretion to decide what factors it will consider in setting or evaluating a utility's rates.”⁵⁷

A utility cannot unreasonably discriminate for or against one of its customers by establishing a special rate for them.⁵⁸ Section 1304 of the Public Utility Code prohibits unreasonably prejudicial and disadvantageous rates; it clearly permits class ratemaking.⁵⁹ Section 1304 contains no requirement that rates must be designed based on individual customer's costs and circumstances.

C. Legal Standard for Special Rate

The Commission has the authority to approve special pricing for a particular customer, but those rates must still be just and reasonable and reasonably non-discriminatory (i.e., there must be a reasonable justification for the discrimination). An applicant for flexible (or special) rates has a “heavy burden of demonstrating that it would be in the public interest for it to pay less than the utility’s tariffed rates.”⁶⁰

⁵⁵ 66 Pa. C.S. § 1301(a).

⁵⁶ *City of Lancaster Sewer Fund v. Pa. PUC*, 793 A.2d 978, 982 (Pa. Commw. Ct. 2002).

⁵⁷ *Popowsky v. Pa. PUC*, 683 A.2d 958, 961 (Pa. Commw. Ct. 1996).

⁵⁸ 66 Pa. C.S. § 1304. Section 1304 was formerly 66 P.S. § 1144.

⁵⁹ *Id.*; *U. S. Steel Corp. v. Pa. PUC*, 390 A.2d 849, 854 (Pa. Commw. Ct. 1978) (quoting *Phila. Suburban Trans. Co. v. Pa. PUC*, 281 A.2d 179, 185 (Pa. Commw. Ct. 1971)) (To sustain a complaint of rate discrimination under Section 1304, it must be shown that the rate differential creates an advantage for one customer or group of customers and a resulting injury to another customer or group of customers.).

⁶⁰ *Pa. PUC v. PPL Elec. Utils. Corp.*, Docket No. R-2010-2161694, 2012 Pa. PUC LEXIS 989 (Opinion and Order entered June 21, 2012).

A special rate should not be approved absent a compelling reason. This is generally limited to cases where there is a serious and credible threat of loss of load, and where revenues from the customer exceed the cost of serving the customer.⁶¹ Simply having a large volume of usage does not entitle a customer to a preferred rate.⁶² Contributing a greater rate of return than the system average also is not a basis for receiving a special rate.⁶³ The Commission has consistently rejected a customer's demand for the creation of a special rate.⁶⁴

D. Legal Standard for Cost of Service Ratemaking

The “polestar” for determining just and reasonable rates is the “cost of providing service.”⁶⁵ Given that cost of service is the “polestar,” it follows that one of the central issues in this proceeding is the cost of service to serve GFCP/VEPI. Cost of service is determined by the way in which the service is used by GFCP/VEPI.⁶⁶ “Each individual customer imposes a different combination of costs on the system, and the cost to serve is unique to each. But putting each customer on its own separate tariff reflecting its own individual costs is administratively infeasible. Thus, customers with homogeneous characteristics are grouped together as a customer class, and tariffs are designed to recover the cost of serving the class.”⁶⁷

⁶¹ *Id.* at *28.

⁶² *U.S. Steel Corp. v. Pa. PUC*, 390 A.2d 849 (Pa. Commw. Ct. 1978).

⁶³ *Building Owners and Managers Assoc. v. Pa. PUC; SEPTA v. Pa. PUC*, 470 A.2d 1092 (Pa. Commw. Ct. 1984) (“SEPTA”).

⁶⁴ *See, e.g., PPL Elec. Utils. Corp.*, 2012 Pa. PUC LEXIS 989; *U.S. Steel Corp.*, 390 A.2d 849; *SEPTA*, 470 A.2d 1092.

⁶⁵ *Lloyd v. Pa. PUC*, 904 A.2d 1010, 1019–21 (Pa. Commw. Ct. 2006).

⁶⁶ *See James H. Cawley & Norman James Kennard, Rate Case Handbook: A Guide to Utility Ratemaking Before the Pennsylvania Public Utility Commission* at 141 (2018).

⁶⁷ *See id.* at 142.

E. Adherence to Tariff

A tariff is a set of operating rules imposed by the Commission that each public utility must follow to provide service to its customers.⁶⁸ Each public utility must file a copy of its tariff with the Commission setting forth its rates, services, rules, regulations and practices so that the public may inspect their contents.⁶⁹ Public utility tariffs must be applied consistent with their language. Public utility tariffs have the force and effect of law and are binding on the public utility and its customers.⁷⁰

All rates, terms and conditions of service applied to customers must be reflected in or authorized by a utility's tariff. The Commission has no authority to allow a public utility to deviate from its tariff even where the Commission concludes it is in the public interest.⁷¹ A public utility may not charge a rate other than the rates set forth in its tariff.⁷² It follows that a utility may not enter into a private contract with a customer that sets forth rates or terms and conditions of service that is not set forth or authorized by its tariff.

F. Challenges to Existing Rates

The burden of showing that a tariff is either unreasonable or discriminatory is on GFCP/VEPI. They have a very heavy burden to prove that facts and circumstances have changed so drastically as to render application of a tariff provision unreasonable.⁷³ If the customer

⁶⁸ *PPL Elec. Utils. Corp. v. Pa. PUC*, 912 A.2d 386 (Pa. Commw. Ct. 2006).

⁶⁹ 66 Pa. C.S. § 1302; 52 Pa. Code § 53.25; *Phila. Suburban Water Co. v. Pa. PUC*, 808 A.2d 1044 (Pa. Commw. Ct. 2002).

⁷⁰ *Penn. Elec. Co. v. Pa. PUC*, 663 A.2d 281 (Pa. Commw. Ct. 1995).

⁷¹ *Phila. Suburban Water Co.*, 808 A.2d 1044.

⁷² 66 Pa. C.S. § 1303.

⁷³ *Shenango Twp. Bd. of Supervisors v. Pa. PUC*, 686 A.2d 910, 914 (Pa. Commw. Ct. 1996); *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Commw. Ct. 1981); *Zucker v. Pa. PUC*, 401 A.2d 1377 (Pa. Commw. Ct. 1979).

demonstrates that the rate is unlawful, the Commission must set just and reasonable rates that would be applicable to the complaining customer and other customers similarly situated.⁷⁴

V. GFCP/VEPI CURRENT USE OF THE PGW SYSTEM

Consistent with PGW's obligations in the 1996 Contracts, PGW constructed a two-mile local lateral pipeline connecting PGW's Passyunk Liquefied Natural Gas Plant (the "Passyunk Plant") with GFCP/VEPI's facilities (the "Distribution Extension").⁷⁵ While financed by GFCP/VEPI and/or their predecessors,⁷⁶ the Distribution Extension was "constructed, owned and operated" by PGW.⁷⁷ Also consistent with PGW's obligations in the 1996 Contracts, PGW refurbished and repurposed an existing 24-inch gas liquids pipeline that had previously been used to transport naphtha (the "Naphtha Line").⁷⁸ The Naphtha Line, which, at all times was owned and operated by PGW, connects the TETCO 060 Gate Station (which is maintained by PGW) with PGW's Passyunk Plant and the Distribution Extension. PGW's Passyunk Plant is connected to the Naphtha Line/Distribution Extension so that PGW can take gas delivered at the 060 Gate Station through the Distribution Extension for use at the Passyunk Plant or for use throughout PGW's distribution system.⁷⁹ The Distribution Extension is not dedicated to GFCP/VEPI because there is no restriction or limitation on PGW's ability to connect other customers to the Distribution

⁷⁴ *Penn. Elec. Co.*, 663 A.2d 281.

⁷⁵ For a depiction of how PGW's system connects with GFCP/VEPI, see PGW St. 2R, Confidential Ex. RER-1 and PGW Hearing Ex. 5.

⁷⁶ PGW St. 1R at 7–8, 16–17.

⁷⁷ *Id.*

⁷⁸ This pipeline is called the "PGW Liquids Pipeline" in the 1996 Contracts. It has also been called the "MTBE" line. Tr. 83–84.

⁷⁹ PGW St. 2R at 7; PGW St. 2SR at 2; PGW St. 2FSR at 1–4; Tr. 83–84.

Extension.⁸⁰ PGW is in the process of evaluating several new load opportunities that would utilize the Naphtha Line to deliver gas to PGW’s existing 150lb pipeline and then to new customers.⁸¹

Under Rate GTS-F and the 1996 Contracts, PGW currently provides the following to GFCP/VEPI: (1) transportation service; (2) Alternative Receipt Service (“ARS”); (3) sales service; and (4) a capacity release service.⁸²

The primary method for providing transportation service to GFCP/VEPI is as follows: Gas is delivered to 060 Gate Station on the “Philadelphia Lateral” owned by TETCO.⁸³ Gas received by PGW at 060 Gate Station is transported by PGW through the Naphtha Pipeline to the P60 interconnect, where the gas flows to PGW’s Passyunk Plant.⁸⁴ If gas is not taken by PGW at P60 for use at the Passyunk Plant or for use throughout PGW’s distribution system, the gas continues to be transported by PGW through the Distribution Extension to GFCP/VEPI’s meters.⁸⁵ A map entered into evidence at the evidentiary hearings which graphically depicts these arrangements is included as Attachment “A” to this Brief.

A. GFCP/VEPI’s Payment for Distribution Service

This and the following sections describe the rates terms and conditions of GFCP/VEPI’s current service. However, by the terms of the Tariff under which they currently receive service – Rate GTS-F – and the underlying 1996 contracts these rates, terms and conditions of service end as of December 31, 2022. With that understanding, GFCP/VEPI currently receives distribution

⁸⁰ See Tr. 149–50 (Mr. Zuk affirms that PGW is currently aware of two customers that may potentially be served off of the Naphtha Line.).

⁸¹ PGW St. 1R at 22; Tr. 149–50.

⁸² PGW Answer to Formal Complaint at 12; PGW St. 2R at 6.

⁸³ PGW St. 2R at 7.

⁸⁴ *Id.*

⁸⁵ *Id.*

service in two different ways. First, GFCP/VEPI receives transportation service; this service constitutes about 70% of its load.⁸⁶ The current rate, as established by the 1996 Contracts, consists of a customer charge of \$250 per month and a volumetric rate of \$0.08 per Dth.⁸⁷ These rates are substantially below the cost of service, as the record demonstrates. PGW witness Heppenstall showed that these rates produce \$1,069,863 in revenue, yet the cost to provide service to Grays Ferry is at least \$8,035,000.⁸⁸ For PGW to recover its cost to serve GFCP/VEPI, the volumetric rate needs to be increased from \$0.08 to \$0.698 per Dth.⁸⁹ Even GFCP/VEPI acknowledge that PGW is not recovering the cost of serve GFCP/VEPI's facilities under the 1996 Contracts rate.⁹⁰

Under Rate GTS-F, GFCP/VEPI also use PGW's distribution system to receive natural gas via a bundled sales service. PGW provides this service to GFCP/VEPI on a partially interruptible or "best efforts" basis and utilizes PGW's distribution system to enable the delivery of natural gas to GFCP/VEPI's facilities via a portion of the Distribution Extension.⁹¹ As PGW witness Reeves explained in his Surrebuttal Testimony, GFCP/VEPI use the bundled sales service when the Philadelphia Lateral is out of service.⁹² In that event, PGW delivers gas to GFCP/VEPI using PGW's distribution system as follows: "the Whitman Gate Station to serve to the 150lb distribution system, the 150lb distribution system from the Whitman Gate Station to Passyunk, then transport gas through Passyunk LNG Facility and P-60 interconnect to the Distribution Extension and on to

⁸⁶ GFCP/VEPI Statement JC-1 at 21.

⁸⁷ PGW St. 4R at 7.

⁸⁸ *Id.*; see also PGW St. 4R, Sch. C. In her Surrebuttal, Ms. Heppenstall updated the cost of service results to reflect GFCP/VEPI's actual peak demand of 56,000 Dth/Day. That update increased the cost of service to \$0.698/Dth. See PGW St. 4SR at 3. Ms. Heppenstall did not update the total cost of service number for the record.

⁸⁹ PGW St. 4R at 7; PGW St. 4SR at 3.

⁹⁰ See GFCP/VEPI Statement JC-1SR at 17. Based on this position, it appears that GFCP/VEPI are not challenging the existing grandfathered rate as unjust or unreasonable before December 31, 2022.

⁹¹ PGW St. 2SR at 2.

⁹² *Id.*; OSBA Statement No. 1-R at 5.

GFCP/VEPI.”⁹³ Pursuant to the soon to expire 1996 Contracts, GFCP/VEPI pay the weighted average cost of gas (“WACOG”) plus \$0.61.⁹⁴ This is well below the cost for any other bundled sales service available to any other customer.

Importantly, in addition to paying current rates that are far below their cost of service or the comparable Tariffed rate, GFCP/VEPI pay no surcharges or riders. Riders and surcharges that are otherwise applicable to any other sales service customer (i.e., a customer that pays both for the commodity and a delivery charge to deliver the gas to their meter) include the Distribution System Improvement Charge,⁹⁵ the Universal Service and Energy Conservation Surcharge⁹⁶ and the Other Post Retirement Benefits Surcharge,⁹⁷ among others. Note that Interruptible Transportation Service customers are not assigned these surcharges, but firm transportation customers do pay them.⁹⁸

B. GFCP/VEPI’s Operation and Maintenance Expense

The soon to be ending 1996 Contracts contained a provision that obligated GFCP/VEPI to pay a small amount each year to cover some of the costs of operations and maintenance on the Distribution Extension. Most recently the annual payment was \$160,000.⁹⁹ All other customers pay for the operations and maintenance expense on the facilities that are used to serve them through a cost based distribution charge. PGW witness Heppenstall calculated that the cost of service to operate and maintain a portion of pipe such as the Distribution Extension or the Naphtha Line was

⁹³ PGW St. 2SR at 2.

⁹⁴ *Id.* at 11.

⁹⁵ PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 151–53.

⁹⁶ PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 81.

⁹⁷ PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 82.

⁹⁸ PGW St. 1R at 22–23; *compare* PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 83 *with* PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 111–17.

⁹⁹ GFCP/VEPI Statement JC-1 at 26.

approximately \$955,000 per year, a cost that is recovered in the regular tariffed rates.¹⁰⁰ Many customers also pay a Distribution System Improvement Charge that PGW uses to raise funds to replace PGW's antiquated cast iron main distribution main. Under the current 1996 Contract, GFCP/VEPI make zero contribution to the cost of replacing these at-risk facilities.

GFCP/VEPI have failed to satisfy their heavy burden of proof to prove that the facts and circumstances have changed so drastically as to render the grandfathered operations and maintenance fee unreasonable on and before December 31, 2022. Under the 1996 Contracts, it was agreed that GFCP, under Rate GTS-F would contribute to PGW's operations and maintenance costs. The amount was initially set at \$100,000 per year.¹⁰¹ It was agreed that the initial amount would be increased with the consumer price index ("CPI"), and is now \$160,000.¹⁰² Here, Mr. Crist opined that said amount should be \$663 per year. However, in doing so, Mr. Crist did not explain any changed facts or circumstances so as to render this grandfathered rate unreasonable on and before December 31, 2022.

C. GFCP/VEPI's Payment for Capacity Release

It is important to understand that the subsidies and foregone revenue associated with these next several items flow through PGW's Gas Cost Rate ("GCR") and not base rates. Nonetheless, they impose real costs or result in foregone revenue opportunities for PGW's GCR customers (i.e., customers that purchase natural gas from PGW as well as have it transported to their meter). First, pursuant to the Rate GTS-F and the 1996 Contracts, PGW may release to GFCP/VEPI a certain

¹⁰⁰ PGW St. 4R, Ex. CEH-1, Sch. C at 2. Mr. Crist, in his Direct Testimony on behalf of GFCP/VEPI, quoted PGW's response to a discovery request wherein PGW stated it "does not maintain annual maintenance records by main. However, the cost of service allocates \$995,000 of mains and maintenance of mains expenses in Accounts 874 and 887." GFCP/VEPI Statement JC-1 at 13, Ex. JC3.1. The Revised COSS submitted by PGW witness Heppenstall in her rebuttal testimony allocates \$955,000 of mains and maintenances of mains expenses in Accounts 874 and 887. PGW St. 4R, Ex. CEH-1, Sch. C at 2.

¹⁰¹ GFCP/VEPI Statement JC-1 at 8.

¹⁰² *Id.* at 13.

amount of firm capacity.¹⁰³ PGW only makes released capacity available to GFCP/VEPI between May 1 and September 30.¹⁰⁴ If requested, and PGW has available capacity, PGW delivers its released capacity on the Philadelphia Lateral to the 060 Gate Station maintained by PGW where the gas then flows to GFCP/VEPI's facility in the same way as transportation service.¹⁰⁵

PGW does not charge the maximum rate for that capacity as set forth in the Tariff of the upstream pipeline on which the capacity is released.¹⁰⁶ "Instead, the charge for capacity release is set forth in exhibits to the 1996 Contracts."¹⁰⁷ The difference between the cost incurred by PGW for that capacity and the rate charged to GFCP/VEPI is charged to PGW's GCR customers.¹⁰⁸ The record shows that GFCP/VEPI received a subsidy between \$1,000,000 and \$1,700,000 annually for the past three years as a result of this capacity release.¹⁰⁹ GFCP/VEPI witness Crist disputed this calculation and, instead asserted that that GFCP/VEPI's obligation to purchase capacity from PGW in the Summer actually caused them to pay more than the market price.¹¹⁰ But the relevant point of analysis is what PGW customers were required to bear. PGW customers paid the tariffed rates for the capacity and GFCP/VEPI had the capacity released to them at a substantially lower price (as established in the 1996 Contracts). Mr. Crist did not mention this; he also failed to mention or account for the fact that, after purchasing this capacity, GFCP/VEPI were free to resell it at what could have been higher prices than the price at which they paid. Mr. Crist states that

¹⁰³ PGW St. 2R at 12.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ PGW St. 2R at 13.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ PGW St. 2R at 13, Ex. RER-2.

¹¹⁰ GFCP/VEPI Statement JC-1 at 16, 26.

GFCP/VEPI have no interest in extending this service. In any event, PGW witness Zuk made clear that PGW had no interest in requiring GFCP/VEPI to continue to purchase capacity from PGW in the Summer if they no longer needed or desired that capacity.¹¹¹

GFCP/VEPI have failed to satisfy their heavy burden of proof to show that the facts and circumstances have changed so drastically as to render the grandfathered capacity fee unreasonable on and before December 31, 2022. Mr. Crist stated that GFCP/VEPI is being forced to buy capacity that it no longer needs.¹¹² He is wrong, as discussed above. Mr. Crist did not explain any changed facts or circumstances so as to render this grandfathered rate unreasonable on and before December 31, 2022.

D. GFCP/VEPI's Payment for Alternative Receipt Service

Another current “service” that results in lost revenues for GCR customers, and one of the most valuable services provided to GFCP/VEPI under the current contract is Alternative Receipt Service (“ARS”). Historically, GFCP/VEPI use 3,781,000 Dth per year (for October to April) of ARS service, with no reservation charge or take or pay.¹¹³ Because GFCP/VEPI only own rights to around 35,000 Dth per day of capacity in the Winter and has a peak of 56,000 Dth per day, they have used ARS service to fill that gap.¹¹⁴ Under ARS, GFCP/VEPI cause gas to be delivered using Gate Station 034 on TETCO’s Skippack Lateral near Lawndale (a neighborhood in Northeast Philadelphia) while the same amount of gas is then delivered to the Gate Station 060 in South Philadelphia, on the highly constrained Philadelphia Lateral using PGW’s firm capacity rights that are otherwise used by PGW to serve PGW’s customers and provide for system peaks (but which

¹¹¹ PGW St. 1R at 23.

¹¹² GFCP/VEPI Statement JC-1 at 16–17.

¹¹³ *Id.* at 23; PGW St. 2R, Ex. RER-2. Under the 1996 Contracts, however, PGW did have the right to not provide ARS for up to 15 days if, on that day, the temperature was lower than 25°. PGW St. 2SR at 2.

¹¹⁴ GFCP/VEPI Statement JC-1 at 23.

PGW has determined will not be so needed at that time).¹¹⁵ The gas delivered by PGW to Gate Station 060 then flows to GFCP/VEPI in the same way as GFCP/VEPI transportation service. Under Rate GTS-F and the 1996 Contracts, ARS is provided at a flat dollar amount per month, for 12 months a year. The charge for ARS under the current Tariff and Contract is \$4,500 per month.¹¹⁶ Historically, GFCP/VEPI have had PGW transport about ¹¹⁷ 3,700,000 Dth per year (for October to April) per year using ARS service, for a cost of \$54,000, which, on a unit basis per Dth is \$0.0138.¹¹⁸

GFCP/VEPI do not otherwise compensate PGW for the use of the capacity associated with ARS. But it is important to note that the capacity that PGW uses to effectuate the ARS exchange is purchased by PGW and charged to customers through the GCR.

Absent ARS, PGW witness Reeves testified that ARS is an alternative to capacity release; he calculated that PGW could release or sell the capacity that it uses for the ARS service to other shippers for between \$0.25 to \$0.60 per Dth or more.¹¹⁹ Seventy-five percent of the revenues from capacity releases would then flow to GCR customers. Based on this analysis, the ARS creates a lost revenue opportunity for GCR customers of between \$690,000 and \$1.7 million annually.¹²⁰

GFCP/VEPI have failed to satisfy their heavy burden of proof to prove that the facts and circumstances have changed so drastically as to render the grandfathered ARS charge unreasonable on and before December 31, 2022. Mr. Crist opined that a cost-based ARS charge

¹¹⁵ PGW St. 2R at 8–9.

¹¹⁶ See GFCP/VEPI Statement JC-1 at 16; Tr. 156.

¹¹⁷ PGW St. 2R, Ex. RER-2.

¹¹⁸ *Id.*; PGW St. 4R at 7; Tr. 58–59 (reflecting the per unit cost based on \$54,000/yr).

¹¹⁹ PGW St. 2R, Ex. RER-2. Based on increases in the cost of released capacity on the Philadelphia Lateral is probably even higher than it was in 2019 when this offer was made. Tr 65–66, 79–80.

¹²⁰ PGW St. 2R, Ex. RER-2.

fee would be near zero.¹²¹ He is incorrect, as discussed herein. That being said, Mr. Crist did not explain any changed facts or circumstances so as to render this grandfathered rate unreasonable on and before December 31, 2022.

E. GFCP/VEPI's Management of Balancing and Compliance with TETCO Tariff Requirements.

Under the current, soon to be ending 1996 Contracts, PGW has the option to balance the gas that GFCP/VEPI for their supplier delivers to PGW's city gate,¹²² but currently PGW does not do so. Essentially, PGW has deferred to GFCP/VEPI to permit them to balance their own load. This deference was made, under the 1996 Contracts, prior to PUC regulation (and therefore was never determined to be reasonable and non-discriminatory pursuant to the Public Utility Code) but also prior to the unbundling of PGW's system to permit customer choice on a uniform basis.¹²³ This deference approach reduced costs to GFCP/VEPI (because they were not subject to any PGW balancing charges that would otherwise apply). Also, it forced PGW to limit the use of the Naphtha and Distribution Extension to just GFCP/VEPI. This means that PGW has not presently utilized those facilities by which to serve new customers. However, with the end of this legacy contract and business accommodations, PGW fully intends to balance all load that is delivered to the 060 Gate Station so that additional customers may be connected.¹²⁴ This will potentially have a significant positive effect because it will permit PGW to serve customers in the least cost manner and avoid building additional costly facilities.

¹²¹ GFCP/VEPI Statement JC-1 at 16–17, 19.

¹²² PGW St. 1R at 16–17, 22.

¹²³ *See id.* at 19–20.

¹²⁴ *Id.* at 22; Tr. 149–50.

F. GFCP/VEPI’s Payment for Natural Gas Purchased from PGW

Mr. Crist testified that: “There are rare occasions when there are interruptions on the Philadelphia Lateral and gas cannot be delivered through the high pressure four-mile line to” GFCP/VEPI.¹²⁵ During those times, GFCP/VEPI purchase natural gas directly from PGW.¹²⁶ Pursuant to Rate GTS-F and the 1996 Contracts, PGW currently charges GFCP the Weighted Average Cost of Gas (“WACOG”) plus a fee of \$0.61/Dth.¹²⁷ PGW has honored that grandfathered rate.

VI. RATE SETTING FOR GFCP/VEPI

A. Is Service Under Rate GTS-F Available to GFCP/VEPI After December 31, 2022?

The following section discuss the various options available for service to GFCP/VEPI starting in 2023. The first question is whether service pursuant to PGW’s existing Tariff, Rate GTS-F may be available. The answer is no, Rate GTS-F is no longer available to GFCP/VEPI or any other customer after December 31, 2022.

GFCP/VEPI currently receive service pursuant to Rate GTS-F in PGW’s Tariff -Gas No. 2, page 118. As explained in the Statement of the Case, in 1996, PGW and GFCP/VEPI entered a twenty-five-year contract to provide natural gas transportation and other services to GFCP and VEPI. In 2003, PGW came under the jurisdiction of the Commission and was made subject to the Public Utility Code.¹²⁸ Once subject to the Public Utility Code, PGW could no longer render service pursuant to unilateral contracts; service could only be provided pursuant to its PUC-

¹²⁵ GFCP/VEPI Statement JC-1 at 17.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ PGW St. 1R at 8–9.

approved Tariff.¹²⁹ Accordingly, as part of its restructuring plan, PGW proposed – and the Commission accepted – PGW’s plan to incorporate the rates terms and conditions that had been previously agreed to in the 1996 contract into Rate GTS-F in its PUC-authorized Tariff.¹³⁰

Rate GTS-F authorizes and incorporates related service contracts. But, while PGW determined to continue to honor its existing service contracts by incorporating them into its approved Tariff, it proposed to limit the tariff provision’s applicability only to existing customers pursuant to an existing – i.e., existing in 2003 – contract.¹³¹ The Commission accepted this proposal and the rates, terms, and conditions set forth in those contracts were, according to the Tariff, grandfathered until the expiration of those then-existing service contracts.

Specifically, Rate GTS-F states: “This rate is only available to those customers who utilized this service on or before September 1, 2003 pursuant to **a currently valid agreement** with the Company.”¹³²

By its clear language, the entities that currently receive service pursuant to Rate GTS-F may no longer receive service under that Tariff provision because they do not meet one or both of the requirements in the Tariff. Two of the three entities – or their predecessor – (GFCP and VEPI) utilized the service prior to September 1, 2003, but a third entity – Vicinity Energy Efficiency PA (“VEEPA”) started to receive service pursuant to GFCP/VEPI’s direction under the existing

¹²⁹ 66 Pa. C.S. § 1302 (“Under such regulations as the commission may prescribe, every public utility shall file with the commission, within such time and in such form as the commission may designate, tariffs showing all rates established by it and collected or enforced, or to be collected or enforced, within the jurisdiction of the commission.”); 66 Pa. C.S. § 1303 (“No public utility shall, directly or indirectly, by any device whatsoever, or in anywise, demand or receive from any person, corporation, or municipal corporation a greater or less rate for any service rendered or to be rendered by such public utility than that specified in the tariffs of such public utility applicable thereto. The rates specified in such tariffs shall be the lawful rates of such public utility until changed, as provided in this part.”).

¹³⁰ PGW St. 1R at 8–9; *see also Pa. PUC v. PGW*, Docket No. M-00021612, *et al.*, 2003 Pa. PUC LEXIS 13 (Opinion and Order entered March 31, 2003).

¹³¹ PGW St. 1R at 9.

¹³² PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 118 (emphasis added).

contract in 2010 but was not even in existence in 2003 and therefore was never entitled to receive service under the contract.¹³³ Second, none of the entities currently receiving service will be doing so after 2022 pursuant to an agreement that was “currently valid” in 2003, because it is undisputed that the contract term ends at the end of this year and there are no provisions for renewal.¹³⁴ Note that the reference to “currently valid” in the Tariff is clearly referencing the September 1, 2003 date because that is the effective date of the Tariff page. Thus, as of 2023, Rate GTS-F is no longer available for any customer to receive service because all contracts that were valid on September 1, 2003 will have concluded. It is axiomatic that a public utility may not provide a regulated service pursuant to rates, terms, and conditions that are not set forth in its Tariff.¹³⁵ The Commission has no authority to allow a public utility to deviate from its tariff even where the Commission concludes it is in the public interest.¹³⁶

Thus, the only way in which GFCP/VEPI could avoid the plain language of the grandfathering provision is by arguing to the Commission that this provision should somehow be set aside or eliminated. But GFCP/VEPI clearly have not met the extremely heavy burden that they must overcome in order to deem an *existing* Tariff provision unreasonable. The courts have held that a complainant seeking to avoid the effect of existing tariff provisions carries a very heavy burden to prove that the facts and circumstances have changed so drastically as to render the application of the tariff provisions unreasonable.¹³⁷ However, GFCP/VEPI have not even tried to

¹³³ See PGW St. 6R at 4.

¹³⁴ See Formal Complaint ¶ 7 (GFCP/VEPI agrees that “[b]y its terms, the [1996] Contract expires on December 31, 2022.”).

¹³⁵ See 66 Pa. C.S. § 1303.

¹³⁶ *Phila. Suburban Water Co.*, 808 A.2d at 1056.

¹³⁷ See, e.g., *Shenango Twp. Bd. of Supervisors*, 686 A.2d 910; *Brockway Glass Co.*, 437 A.2d 1067; *Zucker*, 401 A.2d 1377.

show that the grandfathering provisions of Rate GTS-F are somehow unreasonable. If they did, GFCP/VEPI would have to explain why the grandfathering language has been in PGW's Tariff for almost 20 years, a fact that GFCP/VEPI were presumably aware of,¹³⁸ and yet they had failed to raise any concerns in all that time.

Moreover, while it was reasonable for PGW to grandfather the 1996 Contract into its Tariff in 2003, it would clearly be grossly unreasonable to continue that rate provision after the 1996 Contract ends. As Mr. Zuk explained, the 1996 Contracts were entered into before PGW came under Commission jurisdiction and, therefore, was never subject to review by the Commission or held to the Public Utility Code's "just, reasonable and non-discriminatory" standard.¹³⁹ In many respects GFCP/VEPI's own evidence has shown that the rates in the 1996 Contract do not reflect current costs.¹⁴⁰ GFCP/VEPI would have to explain why the clear intent of this provision – to permit customers served under contracts pre-dating Commission jurisdiction to continue to receive service at those rates, terms and conditions *until the contract existing in 2003 terminated* – was somehow unjust and unreasonable and contrary to the public interest. They have not.

B. May GFCP/VEPI receive service by an Extension of the Existing Contract?

GFCP/VEPI have asked that this issue be addressed in the Brief under the apparent belief that the Commission could somehow order PGW to "extend" the existing 1996 Contracts, which all parties agree will terminate at the end of 2022. This option is not legally permissible. Further,

¹³⁸ See PGW St. 1R at 9 (noting that GFCP/VEPI was presumably aware of PGW's grandfathering proposal in 2003).

¹³⁹ See *id.* at 8–9.

¹⁴⁰ For example, GFCP/VEPI's own witness submitted a cost of service study which – while seriously understates the actual cost of service, sets a floor of around 21 cents/Dth. GFCP/VEPI Statement JC-1SR at 17. The current contract rate is 8 cents/Dth. See PGW St. 4R at 7.

requiring PGW to continue to serve GFCP/VEPI under some aspects of the soon to be terminated contract would be grossly unfair to PGW and its ratepayers and contrary to the public interest.

At the outset, there is simply no legal basis on which the Commission could order PGW to enter into a contract with GFCP/VEPI. It is well-settled that as a creation of the General Assembly, the Commission has only the powers and authority granted under the Code.¹⁴¹ Nothing in the Public Utility Code authorizes the Commission to require a public utility to enter into a contract. Section 508 of the Public Utility Code states that the Commission may “vary, reform, or revise, upon a fair, reasonable, and equitable basis,” a contract between a public utility and any person, corporation, or municipal corporation, when doing so is consistent with the public interest and the general well-being of this Commonwealth.¹⁴²

Most importantly, the Commission has, in the past, declined to use its Section 508 powers to revise a contract that had terminated and thus was “moot.”¹⁴³ Although Section 508 of the Public Utility Code empowers the Commission to vary, reform, and revise existing contracts between public utilities and any other person, this provision does not empower the Commission to direct a public utility to enter into a new contract or to renew a contract that has terminated by its

¹⁴¹ See *City of Phila. v. Phila. Elec. Co.*, 473 A.2d 997, 999–1000 (Pa. 1984) (“We begin our inquiry by recognizing that the authority of the Commission must arise from the express words of the pertinent statutes or by strong and necessary implication therefrom. . . . It is axiomatic that the Commission’s power is statutory; and the legislative grant of power in any particular case must be clear.”); see also *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 795 (Pa. 1977); *Tod and Lisa Shedlosky v. Pa. Elec. Co.*, Docket No. C-20066937 (Order entered May 28, 2008).

¹⁴² 66 Pa. C.S. § 508; *Friends of the Atglen- Susquehanna Trail Inc. v. Pa. PUC*, 717 A.2d 581, 588 (Pa. Commw. Ct. 1998).

¹⁴³ *Petition of West Penn Power Co.*, Docket No. P-870216, 1989 Pa. PUC LEXIS 200, at *70–71 (Sept. 29, 1989), *affirmed in part and modified in part*, *Armco Advanced Materials Corp. v. Pa. PUC*, 579 A.2d 1337 (Pa. Commw. Ct. 1990) (“Armco/Allegheny’s Reply Exceptions state that Section 508 does not empower the Commission to modify a contract that has lapsed and that an increase to rates would violate the September 1, 1988 Consent Order. . . . We agree with the ALJ that Milesburg’s EEPA has lapsed and that modification to the EEPA under Section 508 is a moot point.”); accord, *Little Washington Wastewater Co. -- Northeast PA Consolidated Division*, Docket Nos. R-2008-2081738, *et al.*, 2009 Pa. PUC LEXIS 1666, at *35 (July 24, 2009) (finding that the Commission cannot use its Section 508 power to modify asset agreement because, “[s]imply put, Eagle Rock failed procedurally to maintain the Asset Agreement as a controlling and viable document before this Commission in this proceeding”).

own terms.¹⁴⁴ Simply put, the Commission may not modify a contract that does not exist. The 1996 Contracts will not exist as of January 1, 2023. Therefore, Section 508 is not available as an avenue for reviving the 1996 Contracts.¹⁴⁵

On a related note, the Commission's Section 508 power extends to modifying or abrogating an existing agreement,¹⁴⁶ not to order a public utility to enter into what clearly amounts to a materially different agreement. While Section 508 has been cited by the Commission and the courts numerous times, PGW was unable to find a single case in which the Commission ordered a utility to enter into a new contract for utility service using its Section 508 power. To do so would be an end-run around the clear standards governing whether a customer is deserving of its own special rate. Whether GFCP/VEPI is entitled to a special rate on a going forward basis should be judged on the specific standards that the PUC has applied in such cases, all of which are discussed in a separate section of this Brief.

Notably, even if Section 508 did apply here, both the Commission and the courts have held that the Commission may only use its Section 508 power to revise or abrogate an existing contract when those terms are contrary to the public interest and would be contrary to the "general well-being."¹⁴⁷ Here, GFCP/VEPI are simply making a self-serving demand to benefit those specific entities. There is no way in which they can honestly argue that what they are demanding benefits anyone else other than themselves. PGW has submitted substantial evidence proving that the

¹⁴⁴ 66 Pa. C.S. § 508.

¹⁴⁵ In addition, it is questionable whether Section 508 can even be applied to the contracts at issue since: (a) at the time the 1996 Contracts were executed, PGW was not a public utility and (b) one of the contracts is actually with a non-utility entity, PAID.

¹⁴⁶ See *ARIPPA v. Pa. PUC*, 792 A.2d 636, 662 (Pa. Commw. Ct. 2002).

¹⁴⁷ *Friends of the Atglen- Susquehanna Trail Inc.*, 717 A.2d at 588 (finding that, under 66 Pa. C.S. § 508, the Commission has the power "to reform and revise contracts of public utilities upon a fair, reasonable and equitable basis when the Commission determines after notice and hearing that terms of such obligations are adverse to the public interest and general well-being").

existing terms of the 1996 Contracts would decidedly *not* be in the public interest to continue. In every instance, the rates that are set forth in the 1996 Contracts have no relation to just and reasonable rates today; the contracts contain several special provisions that heavily favor GFCP/VEPI and would be unreasonably discriminatory to continue to provide – unless the Commission determined that a special rate would be reasonable, in which case the Commission should craft a new rate with new, going forward terms and conditions. The below cost rates and special conditions that GFCP/VEPI demands would be at the cost of all other ratepayers who would both have to continue to subsidize their service and tolerate their receiving special treatment that is unavailable to them.

Moreover, it is also important to remember that GFCP/VEPI uses the natural gas that PGW transports or sells to them in part to run a cogeneration facility that sells electricity and which generates enormous profits for their parent company – Vicinity. Not a cent of those profits flow to VEPI steam customers. Moreover, it was revealed that, to the extent that GFCP/VEPI use gas solely to fuel steam boilers that do not also generate electricity, all of those boilers have alternative fuel capability. Therefore, contrary to their attempts to portray their natural gas usage otherwise, there is no “public interest” necessity for awarding GFCP/VEPI enormously subsidized rates and unique terms and conditions of service unlike any other customers. It is hard to imagine how kowtowing to their unreasonable demands could possibly be viewed as in the public interest. Accordingly, GFCP/VEPI’s demand that the PUC use its Section 508 power to extend the existing contract is both contrary to law and grossly unreasonable.

Beyond Section 508, the PUC has no other power to order PGW to enter into a contract against its will. A long line of appellate cases hold that the Commission may not interfere with internal management or business decisions of a public utility and that the Commission is “not a

super board of directors” for public utilities and “has no right of management of them.” Rather, the Commission’s “sole power is to see that in the matter of rates, service and facilities,” their treatment of the public is fair.¹⁴⁸

That GFCP/VEPI are seeking the Commission’s interference in PGW’s management for its own gain, as opposed to what is fair to the public, underscores the importance of the Commission foregoing any efforts to require PGW to enter into a contract. But, even if the Commission did issue such a directive, it would be for naught, without more. Neither PGW nor any utility can provide service other than as set forth in its approved Tariff. As explained above the only Tariff provision that could possibly accommodate an “extension” of the existing contract is the soon to be terminated Rate GTS-F.

C. Is a New Special Rate for GFCP/VEPI Justifiable?

GFCP/VEPI witness Mr. Crist claimed that “even in the absence of rate GTS-F, there is no reason PGW and [GFCP/VEPI] cannot develop and agree to a new contract under terms that reasonably reflect the actual cost to serve [GFCP/VEPI].”¹⁴⁹ However, as noted above, since all rates terms and conditions must be provided pursuant to its Tariff, GFCP/VEPI’s demand for a new contract is really a demand for a special tariff provision that would apply only to them. In that “special rate,” the rates, terms and conditions of service would be spelled out and/or set out in a contract authorized by the Tariff provision. GFCP/VEPI, however, have the burden of proof to establish, by a preponderance of the evidence, that a new Tariff provision and/or a new contract comprising a special rate is justified in lieu of an existing applicable rate schedule, such as PGW’s

¹⁴⁸ *N. Pa. Power Co. v. Pa. PUC*, 5 A.2d 133, 134 (Pa. 1939); *see, e.g., Bell Tel. Co. of Pa. v. Driscoll*, 21 A.2d 912 (Pa. 1941); *Metro. Edison Co. v. Pa. PUC*, 437 A.2d 76, 80 (Pa. Commw. Ct. 1981); *Pa. PUC v. Phila. Elec. Co.*, 460 A.2d 734, (Pa. 1983).

¹⁴⁹ GFCP/VEPI Statement JC-1SR at 6.

Commission-approved Rate IT with accommodations to make the rate sufficiently firm (as offered by PGW).¹⁵⁰ GFCEP/VEPI have failed to satisfy their burden because the record clearly demonstrates that GFCEP/VEPI are not so unique as to justify a special rate.

1. Legal standard

The PUC has the authority to approve special pricing for a particular customer pursuant to 66 Pa. C.S. §§ 1301, 1303, and 1502. The Commission may only approve a special rate if it is just, reasonable, and not unreasonably discriminatory.¹⁵¹ Moreover, “[a]n approved tariff provision is presumed to be just and reasonable, and the challenging party has the burden of proving otherwise.”¹⁵² As a result, by seeking a special rate, GFCEP/VEPI implicitly assert that PGW’s Commission-approved Rate IT, as applied to GFCEP/VEPI, is unjust, unreasonable and discriminatory.¹⁵³ Thus, GFCEP/VEPI have a “heavy burden of demonstrating that it would be in the public interest for [them] to pay less than the utility’s tariffed rates.”¹⁵⁴ Thus, GFCEP/VEPI’s burden is to prove not only that they are so unique that they deserve consideration for a special rate and that application of PGW’s existing rates would not be just and reasonable.

2. Examples of Special Rates or rejection of Special Rates in Pennsylvania

Existing Commission pronouncements on the awarding of special rates are quite clear. Because “individualized ratemaking generally is poor public policy . . . , a special rate should not be approved absent a compelling reason to do so.”¹⁵⁵ The Commission, therefore, has largely

¹⁵⁰ See 66 Pa. C.S. § 332(a).

¹⁵¹ See *PPL Elec. Utils. Corp.*, 2012 Pa. PUC LEXIS 989, at *18.

¹⁵² See *id.* at *13.

¹⁵³ See *MCI Airsignal of Pa., Inc. v. Pa. PUC*, 512 A.2d 600, 603 (Pa. Commw. Ct. 1986) (considering the radio common carriers’ (“RCCs”) argument for a special rate from The Bell Telephone Company of Pennsylvania “to mean that the tariff rates, as applied to the RCCs, are discriminatory, and therefore, unlawful, pursuant to Section 1304.”).

¹⁵⁴ *PPL Elec. Utils. Corp.*, 2012 Pa. PUC LEXIS 989 at *28.

¹⁵⁵ *Id.*

rejected customer demands for the creation of a special rate.¹⁵⁶ For example, in the seminal case on this point, the Commonwealth Court upheld a Commission decision to deny a special rate in *U.S. Steel*.¹⁵⁷ In that proceeding, U.S. Steel, PECO’s largest gas customer, appealed a Commission decision approving “PECO’s proposed new rate structure that eliminated class TC, which only [U.S. Steel] previously occupied, and which placed [U.S. Steel] in class L where rates were higher.”¹⁵⁸ The result was a 74% increase in U.S. Steel’s natural gas rates.¹⁵⁹

U.S. Steel argued on appeal that the Commission “arbitrarily combined customers of widely diversified gas usage characteristics” by approving PECO’s consolidation of all of its existing industrial customer classes into a single rate schedule.¹⁶⁰ The Court, however, disagreed and held that “[c]ustomers may be classified on the basis of the quantity of gas used” under Section 1304 of the Public Utility Code.¹⁶¹

U.S. Steel, alternatively, requested that it be served under a separate rate.¹⁶² U.S. Steel argued that it was a unique customer entitled to a special rate because: (1) its average gas usage was exponentially higher than the average usage of the other industrial customers; and (2) it received gas service directly from the gas transmission pipeline.¹⁶³ The Court disagreed. In rejecting U.S. Steel’s argument, the Court noted that “[U.S. Steel] asks us to restore it to its sole

¹⁵⁶ See e.g., *PPL Elec. Utils. Corp.*, 2012 Pa. PUC LEXIS 989; *U.S. Steel Corp.*, 390 A.2d 849; *SEPTA*, 470 A.2d 1092.

¹⁵⁷ *U.S. Steel Corp.*, 390 A.2d 849.

¹⁵⁸ *Id.* at 852.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 855.

¹⁶¹ *Id.* (citing *Pittsburgh v. Pa. PUC*, 112 A.2d 826, 836 (Pa. Super. Ct. 1955)).

¹⁶² *Id.* at 857 (“[U.S. Steel] finally appears to say that assuming the Rate L classification to be valid and not discriminatory, it should nevertheless be given a separate rate classification . . .”).

¹⁶³ *Id.* at 857 n.3.

membership in former classification Rate TC paying .99 for each MCF of gas.”¹⁶⁴ The Court determined that U.S. Steel did “not produce[] any such clear reason why it should be treated differently from the other customers grouped in Rate L.”¹⁶⁵ The Court, therefore, held that large volume of use “does not entitle a customer to a preferred rate.”¹⁶⁶

The Court later relied on its decision in *U.S. Steel* to reject a request that PECO provide a special rate to the Southeastern Pennsylvania Transportation Authority (“SEPTA”).¹⁶⁷ In *Building Owners and Managers Association v. PA PUC*,¹⁶⁸ SEPTA argued that it was “entitled to a separate mass transportation rate which [would be] designed to return to PECO a rate of return equal to its system rate of return.”¹⁶⁹ In support of its argument for a separate mass transportation rate, SEPTA argued that it was unique because: (1) its peak fell on a separate period and at a separate time (winter mornings) as compared to the remainder of the customers in the same rate class; (2) it received electricity at thirty points; and (3) SEPTA serves the public interest.¹⁷⁰

Relying on its decision in *U.S. Steel*, the Court again rejected SEPTA’s argument and found that SEPTA was not so unique from other customers that received PECO service under the same tariffed rate.¹⁷¹ The Court also determined that the fact that SEPTA contributed a greater rate of return than the system average did not mean they deserved a special rate.¹⁷²

¹⁶⁴ *Id.* at 857.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *SEPTA*, 470 A.2d 1092.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 1094.

¹⁷⁰ *Id.* at 1094 n.2.

¹⁷¹ *Id.*

¹⁷² *Id.* at 1094–95.

In another case involving MCI,¹⁷³ the radio common carriers (“RCCs”) sought to extend the terms of the contract under which they received a special rate from MCI. The RCCs had obtained services necessary for paging customers to receive calls from a landline from Bell under rates established pursuant to contract. Bell notified the RCCs that the contract would be terminated upon the reorganization of American Telephone and Telegraph (“AT&T”), at which time Bell charged the RCCs existing tariff rates. Bell filed a petition for approval of a rate increase, which included the rate that would be charged to the RCCs. “The RCCs contended, in essence, that the tariff rates proposed by Bell were unjustified and that the appropriate rates were those defined by the previous contract between the parties, now terminated.”¹⁷⁴ Specifically, the RCCs argued that they were entitled to a reduced rate because they served a greater number of paging customers than any other provider taking service under the tariff.¹⁷⁵

The Court disagreed and affirmed¹⁷⁶ the Commission’s decision denying the RCCs a special rate. In so doing, the Court held that “[a] large volume of use of a utility’s produce alone does not entitle the customer to a singular rate.”¹⁷⁶ Importantly, the Court “f[ound] no authority in either the Code or contract law entitling the RCCs to the continuation of preferential, but terminated, contract rates.”¹⁷⁷ The Court also rejected the RCCs’ argument that the existing tariff rates “subjects [the RCCs] to a substantial rate increase, ranging from 100-400% for respective services. *However, we cannot avoid the conclusion that the observed rate increase results in large measure*

¹⁷³ *MCI Airsignal of Pa., Inc.*, 512 A.2d 600.

¹⁷⁴ *Id.* at 603.

¹⁷⁵ *Id.* at 604 (“The RCCs contend that they are entitled to a reduced rate for DID numbers, those telephone numbers which activate specific beepers assigned by the RCCs to their subscribers, by virtue of the fact that they are ‘number intensive,’ that is, they use telephone numbers in greater quantities than do PBX and TAS consumers.”).

¹⁷⁶ *Id.* (citing *U. S. Steel Corp.*, 390 A.2d at 857; *Carpenter v. Pa. PUC*, 15 A.2d 473 (Pa. Super. 1940)).

¹⁷⁷ *Id.* at 605.

because the RCCs have benefited from an advantageous contract rate, now properly terminated.”¹⁷⁸

The Commission also denied a request for a discounted rate in PPL Electric Utilities Corporation’s (“PPL”) request for approval of an increase in base rates.¹⁷⁹ PPL Industrial Customer Alliance (“PPLICA”) requested that Donsco, Inc. (“Donsco”), which operated foundries in PPL’s service territory, be served under the general service rate for customers receiving 69kV service, despite Donsco being served by a 12kV line.¹⁸⁰ Donsco constructed a new foundry to which PPL extended two 12 kV lines across the Susquehanna River from PPL’s substation that transformed the voltage from PPL’s 69kV transmission line to a distribution voltage of 12kV.¹⁸¹

The Commission reasoned that PPLICA had the burden of proving that PPL’s rate was unjust and unreasonable: “An approved tariff provision is presumed to be just and reasonable, and the challenging party has the burden of proving otherwise.”¹⁸² Moreover, the Commission held that “any special rate approved by the Commission in this proceeding is subject to the requirement that the rate be just, reasonable and non-discriminatory.”¹⁸³ PPLICA claimed that special circumstances existed because of a multitude of reasons including: (1) Donsco paid 1.5% of the revenue requirement of its rate class, despite being only one of over 1,100 accounts in the class; (2) Donsco’s direct competitors in PPL’s service territory paid a substantially lower distribution service rate under the rate scheduled desired by PPLICA; and (3) Donsco’s facility operated with

¹⁷⁸ *Id.* (emphasis added).

¹⁷⁹ *See PPL Elec. Utils. Corp.*, 2012 Pa. PUC LEXIS 989.

¹⁸⁰ *See id.* at *9.

¹⁸¹ *Id.* at *6.

¹⁸² *Id.* at *13.

¹⁸³ *Id.* at *18.

a monthly billing demand of 16 MW, whereas the average demand of its current rate class was 1 MW and the next highest user peaked at 12 MW.¹⁸⁴

The Commission determined that PPLICA failed to establish special circumstances justifying a special rate for Donsco. The Commission agreed with PPL’s argument that “[i]f the largest customer on a rate schedule is deemed to be unique due to its size and thereby qualifies for a special rate, then the second-largest customer will become the largest customer, and the process could be repeated indefinitely.”¹⁸⁵ Therefore, the Commission rejected the claim that “the size of Donsco’s load qualifies it for a more favorable rate than other” customers in its rate class.¹⁸⁶

GFCP/VEPI witness Crist cited to the Columbia Gas of Pennsylvania’s Main Line Distribution Service rate (“Rate MLDS”) as an example of a utility that offers a “special rate” to those customers that could bypass Columbia’s system.¹⁸⁷ However, PGW witness Teme submitted undisputed testimony establishing that Columbia’s “rate has no application here.”¹⁸⁸

Columbia’s Rate MLDS “offers a lower rate to customers located within two miles of an interstate transmission line.”¹⁸⁹ PGW witness Teme explained that Columbia’s “rate is obviously based upon an internal calculation that compares lost revenue of Columbia to the customer’s cost of construction, operation and attachment to an interstate pipeline.”¹⁹⁰ Because the cost to construct a new pipeline is higher in PGW’s service territory than in Columbia’s rural service

¹⁸⁴ *Id.* at *31–32.

¹⁸⁵ *Id.* at *51.

¹⁸⁶ *Id.* at *52.

¹⁸⁷ *See* GFCP/VEPI Statement JC-1 at 24–25.

¹⁸⁸ PGW St. 3R at 9–10.

¹⁸⁹ *Id.* at 9; GFCP/VEPI Statement JC-1 at 24–25; *see also* Columbia Gas of Pennsylvania Gas Service Tariff No. 9 (effective July 1, 2022), available at <https://www.columbiagaspa.com/our-company/about-us/regulatory-information>.

¹⁹⁰ PGW St. 3R at 9.

territory, the costs associated with constructing a new pipeline system is much different in Columbia's rural territory, and "the revenue-to-cost comparison is less advantageous to the customer than it would be on Columbia."¹⁹¹ Moreover, because "interstate pipelines in the Philadelphia area are very constrained and capacity hard to obtain," there is no basis for assuming the availability or likelihood that the pipeline would be able add another connection.¹⁹² Importantly, Mr. Teme testified that "Rate MLDS appears to be available where the customer is directly connected to the [interstate] pipeline and does not utilize Columbia's distribution system."¹⁹³ As explained above, GFCP/VEPI connect to and utilize PGW's distribution system, and are not connected directly to the interstate pipeline.

As the above cases demonstrate, the Commission rarely finds a compelling reason to approve a special rate because such a rate is contrary to public policy.

3. Application of Standard

GFCP/VEPI have failed to satisfy their burden of proof to demonstrate that it is so unique as to justify a special rate because: (i) the size of GFCP/VEPI's load is not a unique circumstance justifying a special rate; (ii) other factors cited by GFCP/VEPI witness Crist are either irrelevant or fail to justify a special rate; and (iii) GFCP/VEPI's threat of bypass is unsubstantiated.

Size of GFCP/VEPI's Load. GFCP/VEPI contends that it "is a unique customer in terms of its significantly large size."¹⁹⁴ But, as shown above, simply having a large volume of usage does not entitle a customer to a preferred rate.¹⁹⁵

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ GFCP/VEPI Statement JC-1 at 25.

¹⁹⁵ *U.S. Steel Corp.*, 390 A.2d at 857; *see also PPL Elec. Utils. Corp.*, 2012 Pa. PUC LEXIS 989 at *51 (denying a request for a special rate upon finding that "the fact that [the customer] has a monthly billing demand higher than any other customer on Rate Schedule LP-4 also does not sufficiently distinguish it from other LP-4 customers").

The size of load should not be used to justify a special rate because it would create an infinite cycle of customers seeking special rates. Specifically, as the Commission found in the *PPL* case, above, if the largest customer on a rate schedule is deemed to be unique due to its size, thereby justifying a special rate, then the next-largest customer becomes the largest customer, and the process could be repeated indefinitely.¹⁹⁶ Moreover, the record shows that GFCP/VEPI's natural gas usage is expected to decrease in the near future.¹⁹⁷

In addition to the incorrect claim that their status as the largest customer in PGW's system justified a special rate, GFCP/VEPI also pointed to several other service characteristics that they claimed – incorrectly – justified such treatment:

1. Served on “dedicated facilities” financed by GFCP/VEPI. PGW has scores of customers that contributed all or a portion of the cost of their services, mains extensions, or other improvements.¹⁹⁸ In fact, this is the general rule for new customers.¹⁹⁹ In those circumstances, PGW owns and operates these facilities notwithstanding these “contributions in aid of construction,” and those customers are not served on their own, special rate.

2. High Load Factor. Mr. Zuk explained that: (a) GFCP/VEPI's overall load factor was 67% not the 70% it touted,²⁰⁰ and (b) that several large industrial customers had similar load factors.²⁰¹ Moreover, Mr. Zuk explained that high load factor has no particular effect on cost incurrence for a transportation customer.²⁰²

¹⁹⁶ See, e.g., *PPL Electric Utilities Corp.*, 2012 Pa. PUC LEXIS 989, at *40 (“PPL argues that claims of uniqueness based on a customer's size should be rejected, since otherwise there would be many such claims.”).

¹⁹⁷ PGW Hearing Ex. 9; Tr. 118–30.

¹⁹⁸ PGW St. 1R at 15–16.

¹⁹⁹ *Id.* at 15–16.

²⁰⁰ *Id.* at 17.

²⁰¹ *Id.*

²⁰² *Id.*

3. Served under high pressure. While it is true that GFCP/VEPI is served at a high PSI level that does not justify a special rate. Mr. Reeves explained that a portion of PGW's distribution system is served at 150lbs, a similarly high pressure to the GFCP/VEPI line.²⁰³

The bottom line is that GFCP/VEPI have simply not met their heavy burden to show that they should be served on a special or new rate. Consider that Section 1304 of the Public Utility Code, in essence, prohibits the very thing – undue or unreasonable discrimination – that GFCP/VEPI are demanding. Their demand should be rejected.

D. What Considerations Should be Applied to Determine the Special Rate for GFCP/VEPI?

If the Commission determines that GFCP/VEPI have justified a special rate or tariff provision, the next question is: what rates terms and conditions of service should apply? PGW does not believe that the resolution of a complaint proceeding is the appropriate forum for making these determinations. Far better would be a collegial process such as a workshop in which all the Parties could meet and discuss the nature and structure of the rates to apply to GFCP/VEPI. But, GFCP/VEPI have filed this complaint and have made this an adversarial process. Accordingly, PGW sets out a series of considerations that should be taken into account if the Commission determines to permit GFCP/VEPI to be served on their own rate.

First and foremost, the starting point for any such discussion clearly must be cost of service. The “polestar” of ratemaking concerns is the “cost of providing service,” as noted above.²⁰⁴ However, by all accounts, the existing rates are grossly below the cost of service.

Here, GFCP/VEPI appear to be seeking special rates not only for transportation service to one (TETCO 060 Gate Station) or more city gates (as part of transportation service or ARS) but

²⁰³ PGW St. 2SR at 2.

²⁰⁴ *See supra* Section IV.D.

also for bundled sales service. In addition, they are seeking special rates and terms regarding PGW’s capacity on interstate pipelines as well as other rate elements. In doing so, GFCP/VEPI seems to justify such special treatment on their threat of bypassing of PGW’s system. Each of these considerations is discussed below:

1. Gas Transportation Rate, Cost of Service

Gas transportation service to GFCP/VEPI constitutes about 70% of their load.²⁰⁵ The current rate, as established by the 1996 Contracts, consists of a customer charge of \$250 per month and a volumetric rate of \$0.08 per Dth.²⁰⁶ These rates are substantially below the cost of service, as the record demonstrates.

Pricing of gas transportation service has two components: A customer service charge and a delivery charge. The range of rates recommended by the Parties can be summarized as follows:

Table 1: Gas Transportation; Rate Proposals GFCP/VEPI					
	PGW		OCA	GFCP/VEPI	OSBA
Rate Schedule	Rate IT	Special Rate	Unclear	Unclear	Unclear
Type of Rate (Tariff or Special Rate)	Tariff	Special Rate	Special Rate	Special Rate	Unclear
Customer Charge (\$) (per meter; per month)	\$426.06 ²⁰⁷	\$ 75.90 ²⁰⁸	Unclear	Unclear	Unclear
\$ per DTH	\$0.8550 ²⁰⁹	\$0.698 ²¹⁰	\$0.756 ²¹¹	\$0.212 ²¹²	Unclear

²⁰⁵ GFCP/VEPI Statement JC-1 at 21.

²⁰⁶ PGW St. 2R at 7.

²⁰⁷ Industrial Customer, Rate Class IT-E: PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 115.

²⁰⁸ Industrial Customer: PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 83.

²⁰⁹ Industrial Customer, Rate Class IT-E: PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 115.

²¹⁰ PGW St. 4SR at 3. Ms. Heppenstall, PGW’s cost of service witness, updated her cost of service study results to reflect GFCP/VEPI witness Crist’s representation of his clients’ peak demand. Ms. Heppenstall’s earlier calculations were based on a lower GFCP/VEPI peak. PGW St. 4R at 7; *see also* PGW St. 4R, Sch. C.

²¹¹ PGW St, 4SR at 1. OCA examined the February 2021 rate proposal by PGW and found that it was reasonable. OCA St, 1R at 3-4, 7.

²¹² GFCP/VEPI Statement JC-1SR at 17.

The justification for these rate recommendations were based in the cost of service studies that were submitted by the Parties which can be summarized as follows:

Table 2: Gas Transportation; Cost of Service GFCP/VEPI				
	PGW	OCA	GFCP/VEPI	OSBA
\$ per DTH	\$0.698 ²¹³	\$0.756 ²¹⁴	\$0.212 ²¹⁵	Unclear

The principal difference between the cost of service studies presented by PGW and OCA, and that presented by GFCP/VEPI’s witness, Mr. Crist, is that both PGW and OCA properly accounted for the fact that all of services currently provided to GFCP/VEPI use PGW’s distribution system, and thus they should be allocated a share of the costs of that system.²¹⁶

Some 70% of GFCP/VEPI’s transportation throughput is transportation service, where PGW moves gas that is delivered on the Philadelphia Lateral through the Naphtha Line and then through the Distribution Extension to GFCP/VEPI’s meter. Mr. Crist insisted that this transportation service was somehow completely separate from the rest of PGW’s distribution system. But this is simply incorrect. As PGW witness Reeves made clear, gas delivered to the 060 Gate Station of TETCO first moves through 2 miles of line that terminates at PGW’s Passyunk Plant.²¹⁷ The Passyunk Plant is interconnected to the rest of PGW’s system and any gas deliveries could be moved through the Naphtha line to any customer on its system. When this gas is targeted for GFCP/VEPI it moves through the Passyunk Plant to the “Distribution Extension.” It is this

²¹³ PGW St. 4R at 7; *see also* PGW St. 4R, Sch. C.

²¹⁴ OCA St. 1S at 2. Mr. Mierzwa utilized the Peak & Average (“P&A”) method to allocate distribution mains costs. He presented, in his Rebuttal Testimony, a CCOS study which modified PGW’s study to reflect the P&A method. OCA St. 1S at 1; OCA St. 1R at 6; OCA Exhibit JDM-2.

²¹⁵ GFCP/VEPI Statement JC-1SR at 17.

²¹⁶ *See, e.g.*, PGW St. 4SR at 2.

²¹⁷ PGW St. 2R at 7; PGW St. 2SR at 2; PGW St. 2FSR at 1–4; Tr. 83–84.

line that GFCP/VEPI financed and had built (by PGW) – but which is owned and operated by PGW as part of its distribution system.²¹⁸

More importantly, Mr. Crist’s cost of service study refused to allocate any distribution system costs associated with GFCP/VEPI’s ARS service. This was under the mistaken believe that ARS service is “just a swap”²¹⁹ and does not implicate or impose costs on the distribution system. But the evidence clearly demonstrates that this characterization is incorrect.

As Mr. Reeves explained, ARS service is an arrangement whereby, during the winter, when GFCP/VEPI do not have enough capacity reserved on the Philadelphia Lateral to meet demand, they arrange for PGW to use some of their Philadelphia Lateral capacity to permit them to have delivered the gas they need. GFCP/VEPI causes gas to be delivered using Gate Station 034 on TETCO’s Skippack Lateral near Lawndale (a neighborhood in Northeast Philadelphia). That same amount of gas is then delivered to the Gate Station 060 by PGW using PGW’s firm capacity rights on the Philadelphia Lateral that are otherwise needed by PGW to meet PGW’s system peaks (and which PGW has determined will not be so needed at that time). The gas delivered by PGW to Gate Station 0-60 then flows to the Complainants in the same way as GFCP/VEPI transportation service. The record shows that, contrary to Mr. Crist’s assumption, which was apparently shared by OSBA witness Knecht,²²⁰ ARS service could not be provided without the use of PGW’s distribution system. In order to provide ARS, PGW must use its distribution system to move the gas delivered by GFCP/VEPI to Gate Station 034 across its distribution system to the customers in South Philadelphia who ordinarily would be served via gas delivered from the 060 Lateral.

Mr. Reeves explained it thusly:

²¹⁸ PGW St. 1R at 7-8.

²¹⁹ *Id.* at 7–8, 16–17.

²²⁰ *See, e.g.*, OSBA Statement No. 1-S at 2–3.

Q. ON PAGE 2 OF HIS SURREBUTTAL MR. KNECHT ASSERTS THAT, ARS “DOES NOT PHYSICALLY REFLECT HOW GAS FLOWS ON PGW’S SYSTEM AND THEREFORE DOES NOT REFLECT DISTRIBUTION COST CAUSATION.” (OSBA ST. 1-S AT 2). CAN YOU COMMENT?

A. Yes. Mr. Knecht’s analysis is narrowly focuses on how ARS impacts the flow of gas to the Grays Ferry facility. This approach does not give appropriate consideration to how ARS impacts the gas flows on PGW’s distribution system to PGW customers in South Philadelphia, including small business customers, who are normally served through gate station O-30.

...

When ARS is not being provided, PGW’s customers in South Philadelphia are served via gate station O-30. Gas flows from the Philadelphia Lateral, through gate station O-30, to PGW’s distribution system, and from there on to PGW’s customers in South Philadelphia.

When PGW provides ARS, a portion of PGW’s capacity on the Philadelphia Lateral is used to provides gas to the Grays Ferry facility. In turn, an equal amount of gas is provided by GFCP/VEPI on the Skippack Lateral. When PGW provides ARS, the Company serves the customers in South Philadelphia that would normally be served via the Philadelphia Lateral from gas that is delivered from the next closest gate station. It then replaces that gas with gas from another gate station, and so on until the additional gas delivered at O-34 by GFCP/VEPI is utilized. Therefore, for PGW to accept GFCP/VEPI’s gas flows through the O-34 Gate Station to PGW’s distribution system, PGW needs two things: first, it needs a customer load on the distribution system to use this gas at the O-34 Gate Station, and secondly, it needs other distribution system and pipeline assets to provide gas to the customers who normally receive service through O-30 on the Philadelphia Lateral if not for the ARS.

The reason PGW can enter into the ARS arrangement is because it has customers and load distributed on both sides of Philadelphia and can flow gas to them from alternative locations. The simple fact is if PGW’s distribution was not connected to O-34 Gate Station then the ARS would not work.²²¹

²²¹ PGW St. 2FSR at 1–2.

And in answer to questions on cross-examination, Ms. Heppenstall explained why these facts compelled an allocation of a portion of PGW's distribution system costs to GFCP/VEPI on the basis of ARS volumes:

My background is finance so I do rely on PGW experts to show me how this gas flows. But it is very evident to me that Grays Ferry is using this distribution system not for their own gas but so that they can get the gas they need, which they couldn't get without this system. . . . ARS gas is not available, would not be available to Grays Ferry, without the rest of the distribution system that PGW has. ARS -- Grays Ferry delivers this gas to a different lateral to the Skippack lateral from what I understand and then is able to take more gas as a result from the Philadelphia lateral. This delivery to the Skippack lateral, the swap as you may call it, is only available because PGW can then use that gas for customers that normally would have gotten off the Philadelphia lateral and without the rest of that system there would be no -- it wouldn't be available to Grays Ferry.²²²

Significantly, PGW's cost allocation approach regarding ARS service was fully endorsed by OCA witness Mierzwa, whose cost of service results actually produced a higher cost per Dth for GFCP/VEPI.²²³ The consequences of this testimony are that if GFCP/VEPI are to receive a special rate, the transportation charge portion should be *at least* \$0.698/Dth if the Commission agrees that the rate should be set to cover PGW's costs.

2. PGW Capacity Assets and Nondiscriminatory Availability of Such.

There should be no special service or treatment of GFCP/VEPI regarding releases of capacity by PGW. Generally speaking, capacity release can occur during two periods of the year: May 1 and September 30 ("Summer") or October 1 through April 30 ("Winter").

²²² Tr. 184–85.

²²³ See OCA St. 1S at 1; OCA St. 1R at 6; OCA Exhibit JDM-2.

The 1996 Contracts provided for capacity releases in the Summer, which GFCP/VEPI have indicated they are no longer interested in.²²⁴ That is fine with PGW.²²⁵ There is, however, a continuing disagreement over capacity releases in the Winter, since GFCP/VEPI have a 21,000 Dth per day winter capacity shortfall (compared to the capacity they have available on the Philadelphia Lateral) based on normal operations.²²⁶ GFCP/VEPI, therefore, appear to be demanding that PGW release capacity to them during the Winter.

PGW objects to being forced to release capacity as a service during the Winter to GFCP/VEPI. PGW does not have a “capacity release” provision in its Tariff and no other customer has the right to demand that PGW release its capacity to them. Moreover, PGW does not have capacity on TETCO’s Philadelphia Lateral that is in excess of PGW’s present or expected future needs for such capacity.²²⁷ PGW has a maximum daily firm capacity on the interstate pipelines.²²⁸ That combined total of daily capacity is less than PGW’s design day requirement, so PGW relies on off-site storage assets and stored LNG to meet its design day demands.²²⁹ This means that PGW’s design day, as well as many days during the winter, PGW’s firm demand is greater than PGW’s firm capacity rights.²³⁰ This requires PGW to rely on its off-system storage and LNG assets to meet the remaining demand.²³¹

²²⁴ GFCP/VEPI Statement JC-1 at 19.

²²⁵ PGW St 1R at 23.

²²⁶ See OSBA Statement No. 1R at 15; *see also* PGW St. 2R at 8.

²²⁷ PGW St. 2R at 14.

²²⁸ *Id.* at 4.

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

PGW does not directly release capacity to GFCP/VEPI in the Winter. The existing Contracts do not require release in the Winter. In addition, mandatory and direct releases during the Winter are not reasonable, since that capacity is required to meet PGW's design day peak load and PGW may need to call upon that capacity to be able to deliver natural gas to PGW's customers on the design days.²³² Significantly, PGW witness Reeves testified that PGW cannot permanently release capacity to GFCP/VEPI on the Philadelphia Lateral because, based on PGW's design day and design season analysis, permanent release of capacity at that level could result in system failures that would require PGW to curtail firm customer load (as well as interrupting all IT customers that receive pipeline deliveries on the Philadelphia Lateral.)²³³ His Exhibit RER-1SR is a summary of this analysis.²³⁴

Mr. Reeves' analysis shows that, if PGW were to permanently release the level of capacity that GFCP/VEPI have indicated they require in the Winter (21,000 Dth/day), PGW would experience system failures in 11 of the 18 scenarios that were examined.²³⁵ System failures would cause curtailment or interruption of service. Thus, PGW believes that even one system failure would be unacceptable. The fact that PGW has not had to interrupt the service is explained by weather conditions and the fact that operating conditions have not created a scenario where interruption was necessary. PGW always tries its best to provide the best service to all of its customers, including firm, interruptible, choice, and non-choice customers.²³⁶ Therefore, the fact that PGW has successfully managed its system to avoid interruptions does not mean that it can, or

²³² *Id.* at 13–14.

²³³ PGW St. 2SR at 2–3.

²³⁴ PGW St. 2SR, Ex. RER-1SR.

²³⁵ PGW St. 2SR at 3.

²³⁶ *Id.*

should, give away the assets that permit PGW to maintain the high quality of service it has been able to provide for the last several decades.²³⁷

That being said, PGW can (and has) made the determination to release limited amounts of capacity in the Winter. Historically, PGW has periodically released capacity in the winter season but only when it had determined that the capacity would not be needed to meet system peak demand and only on a recallable with “reput” basis. GFCP/VEPI could participate in the open market and bid for this recallable capacity, since the capacity is available on a non-discriminatory basis. GFCP/VEPI would have to make the determination that it could rely on such recallable capacity (it is possible that the recall would occur at the same time that GFCP/VEPI needs the capacity).²³⁸ But GFCP/VEPI has not justified special (and potentially discriminatory) treatment for the direct and permanent release of capacity in the Winter.

3. Bypass Considerations

GFCP/VEPI have raised the specter of bypassing the PGW system with their own separate bypass line as a means of trying to justify a below cost rate and special operating conditions but have not demonstrated that a bypass line is physically possible, let alone economically feasible. In fact, they totally failed to identify the cost of such a project. PGW urges the Commission to disregard this vague and unsubstantiated threat of bypass as a justification for awarding rates that are not cost based or fair to other customers.

²³⁷ *Id.*

²³⁸ At the evidentiary hearing, GFCP/VEPI’s witness, Mr. Crist, suggested that GFCP/VEPI could accept recallable capacity from PGW to meet its peak needs. Tr. 73–74. It is difficult to understand how that could be the case, as GFCP/VEPI have insisted from the inception of this proceeding that they could only be served on firm transportation rates. If GFCP/VEPI have reconsidered, and they have now determined that that recallable capacity could be acceptable, then PGW would be happy to consider GFCP/VEPI as a counterparty for capacity release. However, in order to meet its obligation to provide service on a non-discriminatory basis, any capacity release would be on an auction basis, to the entity that offered the best price. Recall that 75% of all capacity release revenues are credited back to GCR customers who otherwise bear the costs of the capacity. *See* PGW St. 2R at 9.

As Mr. Florian Teme, Vice President, Marketing, Sales and Energy Planning at PGW stated in his rebuttal testimony:

PGW does not offer [lower] rates . . . merely because the customer claims to have another cost-effective alternative – the entity needs to provide some level of proof to show that the claim is bona fide. Mr. Crist appears to rely entirely on the fact that bypass was proposed in or around 1994.²³⁹

In response to cross examination by GFCP/VEPI, Mr. Teme again pointed to the missing aspects of GFCP/VEPI 's case:

Q. My question is what would they have to do in order to meet that standard in your mind? What's missing here?

A. . . . [W]e don't know . . . how much it would cost, capitol [sic] cost for Vicinity. So in order for PGW to be bypassed, we would need to understand what the capitol costs would be for Vicinity to install a new line[. S]econd what that process would look like as far as O&M costs as well as the public process regulatory process. So there's quite a few things that we would need to understand in order to make Vicinity [a] special rate.

Q. Okay, that's fair.²⁴⁰

Instead of providing information upon which a special bypass rate could be designed, the threat of bypass was raised almost as a generalized threat. PGW, GFCP/VEPI claimed, “apparently prefers to push Grays Ferry down the bypass path [under which] PGW will lose its largest customer.”²⁴¹ “Mr. Zuk is recklessly pushing Grays Ferry in the bypass direction.”²⁴²

While Mr. Crist offered that “[t]here *may be* other factors such as competitive opportunities that also would be justification for establishing a special rate that is less than the cost of service,”

²³⁹ PGW St. 3R at 8.

²⁴⁰ Tr. 173–74.

²⁴¹ GFCP/VEPI Statement JC-1SR at 7–8.

²⁴² *Id.* at 8–9.

he offers no specific impact.²⁴³ The witness, later conceded that cost information is needed for the Commission to design a rate below the cost of service,²⁴⁴ but, again, failed to present any such information. He acknowledged OSBA witness Mr. Knecht's position²⁴⁵ that "customers with a credible ability to physically bypass the distribution utility generally have negotiated flex rates, which should reflect the cost the customer would incur to bypass."²⁴⁶ But, as noted, GFCP/VEPI presented no such costs.²⁴⁷

Without knowing the cost of bypass, it would be pure guesswork to design a below cost "bypass rate." PGW and the Commission are left to speculate about what a matching, "special" rate might be. Mr. Crist only speculated about the effect directionally (down) but could not recommend a specific per Mcf rate. Thus, there is no basis for an adjustment to the cost-of-service rate presented by Ms. Heppenstall.

Ultimately, Mr. Crist conceded that "[a]ny contract or Bypass Rate must be based on the actual cost causation of Grays Ferry"²⁴⁸ And elsewhere, that "[d]evelopment of a special rate should be grounded in the cost of service."²⁴⁹ In other words, the mere threat of bypass is not something that the Commission should act upon in designing rates on this record.

Nor does the record presented by GFCP/VEPI describe the prospects of a bypass line being successfully constructed. As Mr. Teme testified: "So far as PGW can determine, Grays Ferry has

²⁴³ GFCP/VEPI Statement JC-1SR at 9 (emphasis added).

²⁴⁴ "Additionally, because of the continual presence of a bypass threat, any special rate will need to be sufficiently attractive to deter Grays Ferry from constructing its own four-mile line" GFCP/VEPI Statement JC-1SR at 11.

²⁴⁵ See OSBA Statement No. 1-R at 7.

²⁴⁶ GFCP/VEPI Statement JC-1SR at 31.

²⁴⁷ *Id.* Instead, Mr. Crist presented a design map, the completeness of which is discussed later in this Section VI.D.3.

²⁴⁸ GFCP/VEPI Statement JC-1 at 25–26.

²⁴⁹ GFCP/VEPI Statement JC-1SR at 9.

no bona fide competitive natural gas alternative to PGW.”²⁵⁰ Mr. Knecht concurred for the OSBA: “I agree [with PGW] that GFCP has not presented any evidence that it does have such an opportunity, even over the longer term.”²⁵¹

GFCP/VEPI pointed to the proximity of Texas Eastern’s nearest location and claimed that bypass “is a very practical, feasible project.”²⁵² But Mr. Crist can only speculate that “the economics of bypass would be attractive,”²⁵³ because this is nothing more than pure conjecture, and not facts upon which the Commission can judge the likelihood of bypass.

The fact that a “pipeline from TETCO to Grays Ferry was planned and permitted by the FERC” in 1996 is a matter of only historic interest over twenty-five years later.²⁵⁴ If a new application were pursued, GFCP/VEPI, would have to start all over.²⁵⁵ The unsupported claim that “[n]othing has changed in 25 years to make Grays Ferry’s bypass option any less realistic” lacks any analysis of the intervening circumstances²⁵⁶ and seems obviously false. The Commission may take administrative notice of the fact that, of course, things have changed. It can also take administrative notice of the fact that any attempt to construct a new natural gas pipeline, especially in an urban environment would face substantial challenges and opposition.²⁵⁷

²⁵⁰ PGW St. 3R at 4–5.

²⁵¹ OSBA Statement No. 1-S at 4.

²⁵² GFCP/VEPI Statement JC-1SR at 8–9 (“It sits in a location that is very accessible for pipeline . . .”).

²⁵³ GFCP/VEPI Statement JC-1SR at 23

²⁵⁴ GFCP/VEPI Statement JC-1 at 24; GFCP/VEPI Statement JC-1SR at 7–8.

²⁵⁵ The 1995 FERC determination actually did not involve bypass because Grays Ferry had never previously received natural gas service. *See Texas Eastern Transmission Corporation*, Docket No. CP95-2-000, 71 FERC ¶ 61,020, 61,085 (Apr. 5, 1995), *vacated by*, 75 FERC ¶ 61,236 (May 31, 1996) (“[W]hile Trigen is located in the service area of [PGW], a customer of Texas Eastern, [PGW] has never provided Trigen with gas service in the past.”); *Texas Eastern Transmission Corporation*, Docket No. CP95-2-000, 71 FERC ¶ 61,203 (May 23, 1995).

²⁵⁶ GFCP/VEPI Statement JC-1SR at 7.

²⁵⁷ *See, e.g., Meghan Flynn, et al. v. Sunoco Pipeline, L.P.*, Docket No. C-2018-3006116, 2021 PA PUC LEXIS 529 (Opinion and Order dated Nov. 18, 2021).

[REDACTED]

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 - [REDACTED]
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[END HIGHLY CONFIDENTIAL]

Moreover, GFCP/VEPI are currently studying other options, including the production of steam by electric energy in partial replacement of its natural gas burning boilers.²⁷⁹ A capability study has been completed.²⁸⁰ The conversion is projected to occur within the 2022–2030 timeframe as part of a pledge to be “net zero carbon” by 2050.²⁸¹ “It is anticipated that, as Vicinity electrifies its steam production, its overall usage of natural gas will decrease.”²⁸²

[REDACTED]

²⁷⁹ PGW Hearing Ex. 9; Tr. 119.

²⁸⁰ Tr. 120–21.

²⁸¹ PGW Hearing Ex. 9.

²⁸² *Id.*; Tr. 119.

This reduction in natural gas demand would reduce throughput on any bypass line and adversely affect its economics.²⁸³ The question is: is it realistic to believe that GFCP/VEPI would expend what can only be a substantial amount of money on construction and maintenance of a natural gas pipeline through an urban and heavily trafficked area when they have pledged to be “carbon free” and are planning to expend more dollars to reduce their gas use by electrifying their steam boilers? This is a recipe for the creation of stranded asset.

In summary, GFCP/VEPI have not presented any information about the potential cost of building a bypass line. Nor have they demonstrated that construction in today’s busy urban environment is even possible or that TETCO has sufficient capacity to serve it.

In the absence of any cost data upon which to devise a “special rate,” even GFCP/VEPI’s witness has conceded that PGW’s rate should be based upon cost-of-service principals and analysis. The bypass argument is simply a distraction from that task.

4. ARS Type service rates, costs, terms and conditions

There should be no special service or treatment of GFCP/VEPI regarding ARS. ARS allows the coordination of gas deliveries so as to increase the flow of gas to GFCP/VEPI at TETCO 060 Gate Station (which is maintained by PGW), as discussed above.²⁸⁴ Presently, ARS only exists as a negotiated term of service for Rate GTS-F customers and is not an ordinary service for gas transportation customers.²⁸⁵ So, there is not a regular tariff rate (or service) for ARS under either Rate GS or Rate IT.²⁸⁶ Moreover, if GFCP/VEPI’s gas transportation rate is established based on a COSS that gives full consideration to ARS volumes in establishing costs (i.e., the PGW

²⁸³ See Tr. 121–23.

²⁸⁴ See supra Section V.D.

²⁸⁵ PGW St. 2R at 8–9; PGW St. 3R at 6.

²⁸⁶ PGW St. 3R at 6.

or OCA COSS), PGW does not believe that there should be an additional charge for ARS. PGW would have the obligation to deliver the volumes of gas that GFCP/VEPI required, absent system wide interruptions or curtailments.

However, if GFCP/VEPI's transportation rate is set using Mr. Crist's cost of service study, or some alternative that does not include consideration of the costs that ARS service imposes on the distribution system, then any special rate tariff should continue to include an ARS type service and rate or PGW should be relieved of any obligation to provide such a service. The rate for the ARS service should reflect the comparable cost that GFCP/VEPI would incur if it were to obtain essentially equivalent capacity via capacity release. As Mr. Reeves testified, capacity releases on the Philadelphia Lateral have ranged from \$0.25/Dth/Day to \$0.60/Dth/Day, which is \$0.425 on average. Yet, GFCP/VEPI paid an average price of \$0.0138 per Dth for ARS service.²⁸⁷ So an ARS rate should be higher and within that above range.

Moving forward, the coordination of gas deliveries would occur under rate schedule Daily Balancing ("Rate DB"). This means that, to the extent that GFCP/VEPI acquires their own gas, GFCP/VEPI will be subject to all of the Gas Supplier provisions of Rate DB, except for those provisions related to licensing and bonding requirements.²⁸⁸ It also means that there is no continuing need for a "separate" special service for GFCP/VEPI after December 31, 2022.

5. Bundled Supply Service rates terms and conditions

Pricing of bundled supply service has two components: The commodity price and the delivery price. GFCP/VEPI agreed to use PGW's GCR for gas purchased by GFCP/VEPI from PGW.²⁸⁹ The applicable GCR is under Rate GS, regardless of the rate schedule applicable to

²⁸⁷ Tr. 58–59 (reflecting the per unit cost based on \$54,000/yr).

²⁸⁸ PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 116; *see also* PGW St. 1R at 22.

²⁸⁹ GFCP/VEPI Statement JC-1 at 17, 19.

transportation service. Rate GS provides for commodity pricing,²⁹⁰ while Rate IT does not (unless Standby Service is elected).²⁹¹ The delivery charge for gas purchased by GFCP/VEPI would be the same as the applicable delivery charge for gas transportation service, which is discussed above.

Absent some special showing, there should be no special pricing for bundled supply service. GFCP/VEPI should obtain bundled sales service from PGW in the same way and at the same rates that any other entity would.

6. Other Rate Elements, rates, terms and conditions

All applicable tariffed surcharges, balancing charges, and unaccounted-for-gas charges would be applied to GFCP/VEPI, unless GFCP/VEPI demonstrate a compelling reason not to do so. They have not done so, so all applicable rates, terms, and conditions regarding surcharges, balancing and unaccounted-for-gas should be applicable to GFCP/VEPI. There would be no need for a separate operations and maintenance fee. Those costs would be recovered through the transportation charge, as they are for all other customers.²⁹²

PGW also notes that there is disagreement over the duration (term) of the special rate. Contractual provisions regarding duration allow contracting parties to adjust to changing conditions without the necessity of litigation to end the relationship. GFCP/VEPI are seeking duration of 25 years.²⁹³ PGW says that the duration should be no more than 5 years.²⁹⁴ Alternatively, the special rates could be subject to review, and modification, in each subsequent

²⁹⁰ PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 86.

²⁹¹ PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 111–17.

²⁹² PGW St. 1R at 21.

²⁹³ GFCP/VEPI Statement JC-1 at 25, 34.

²⁹⁴ PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 115.

base rate proceeding to ensure that they continue to comport with cost of service principles established here.

E. If GFCP/VEPI Has Not Justified a Special Rate, What Rates, Terms, and Conditions of Service Should Apply to GFCP/VEPI?

1. Existing Tariffed Rates

PGW can no longer enter into contracts that are not reflected or authorized by its Tariff, since PGW is under Commission jurisdiction and subject to the Public Utility Code.²⁹⁵ Consistent with the Public Utility Code, PGW has a Commission-approved Tariff,²⁹⁶ and may not charge a rate other than the rates set forth in its Tariff.²⁹⁷ Since GFCP/VEPI can no longer take service under Rate GTS-F, and since it has not met its burden of justifying a special rate, its only alternative is to receive service under an existing PGW tariffed rate.

Regarding transportation service, there are two options under PGW's Tariff:

First, transportation service could be provided under rate schedule General Service ("Rate GS").²⁹⁸ Rate GS is available for firm transportation service. Firm service anticipates no planned interruptions.²⁹⁹ Rate GS requires a service agreement.³⁰⁰

Second, transportation service could be provided under rate schedule Interruptible Transportation ("Rate IT").³⁰¹ Rate IT is available for interruptible transportation service to those who can manage their businesses without the use of gas during periods of curtailment or

²⁹⁵ PGW St. 1R at 13.

²⁹⁶ The current version of PGW's Gas Service Tariff – Pa. P.U.C. No. 2 ("Tariff"), which was effective on September 1, 2002, is available at: <https://www.pgworks.com/customer-care/your-business/tariffs>.

²⁹⁷ 66 Pa. C.S. §§ 1302, 1303.

²⁹⁸ PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 83–85; PGW St. 3R at 6.

²⁹⁹ PGW St. 3R at 4.

³⁰⁰ PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 85.

³⁰¹ PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 111–17; PGW St. 3R at 5–6.

interruption.³⁰² Interruptible service is subject to interruption at PGW’s option under the terms of the tariff.³⁰³ Rate IT can be supplemented by Standby Service or back-up service to assure sufficient firmness.³⁰⁴ In fact, PGW has consistently suggested that service under Rate IT with a subscription to a Standby Service provides the firm service that GFCP/VEPI request.³⁰⁵ Rate IT (either with or without Standby Service) requires a service agreement.

There is one option for sales service, as between Rate GS and Rate IT. Sales service would be provided under Rate GS, regardless of the rate schedule applicable to transportation service. Rate GS provides for the sale of the commodity.³⁰⁶ Rate IT does not, since PGW does not normally sell gas to customers using Rate IT. Under Rate IT, the customer is expected to manage its arrangements for daily deliveries of gas so that they are approximately equal to its combined daily gas usage with volumes retained for unaccounted-for gas adjustment.³⁰⁷

Regarding transportation service, GFCP/VEPI have not made a choice between Rate GS and Rate IT. When the service is available under two more rate schedules, the customer must select the rate schedule on which the customer desires to receive service and be billed.³⁰⁸ However, GFCP/VEPI have not clearly selected a rate schedule.³⁰⁹ GFCP/VEPI have insisted that they could only be served pursuant to a “firm” rate schedule, until the hearing. Previously, Mr. Crist testified that “an interruptible quality of service is not practical for” GFCP/VEPI.³¹⁰ He also testified that

³⁰² PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 111; *see also* Statement JC-1 at 12.

³⁰³ PGW St. 3R at 4.

³⁰⁴ PGW St. 1R at 17.

³⁰⁵ PGW St. 3R at 4–5.

³⁰⁶ PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 86.

³⁰⁷ PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 116 (Delivery Quantities).

³⁰⁸ PGW St. 3R at 3–4.

³⁰⁹ *Id.* at 4.

³¹⁰ GFCP/VEPI Statement JC-1 at 12.

interruptible service was “unacceptable.”³¹¹ During cross examination, however, Mr. Crist noted that “Grays Ferry is a dual-fuel facility, which makes it capable withstanding some interruptions” by burning oil.³¹² Nevertheless, that contradiction means — to the extent that they can manage their businesses during periods of curtailment or interruption — it is practical and acceptable for GFCP/VEPI to use Rate IT, as PGW has suggested to them, at least for some portion of GFCP/VEPI’s load.³¹³

With the foregoing in mind, it would be reasonable for the Commission to require GFCP/VEPI to receive transportation service under Rate IT with Standby Service.³¹⁴ Given the historically low occurrence of interruptions under Rate IT, Rate GS and Rate IT are actually comparable, due to system design and operation.³¹⁵ PGW has not had an unplanned interruption of any Rate IT customer since 2004.³¹⁶ The low level of unplanned interruptions within PGW’s distribution system is based, in part, on the availability of stored gas from PGW’s LNG facilities— which help to ensure that PGW has available capacity throughout PGW’s system to meet the requirements of firm customers.³¹⁷ In addition, the reliability of service under Rate IT can be increased by adding “Standby Service.”³¹⁸ Standby service is optional at the customer’s choice.³¹⁹ Standby service calls upon PGW to provide gas supply to the customer in the event that the

³¹¹ Statement JC-1 at 19.

³¹² Tr. 76; *see also* Tr. 77–79; PGW St. 2R at 5.

³¹³ PGW St. 3R at 4.

³¹⁴ *Id.*

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ PGW St. 3R at 4–5.

³¹⁸ *Id.* at 5; *see also* PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 117.

³¹⁹ PGW St. 3R at 5; *see also* PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 117.

customer experiences an interruption or curtailment in transportation service by a supplier.³²⁰ This would mitigate against another key circumstance that could trigger an interruption or curtailment in service.³²¹ So, interruptible transportation service under Rate IT when combined with Standby Service should be viewed as being sufficiently firm to meet the needs of GFCP/VEPI.³²² If GFCP/VEPI are unsatisfied with Rate IT with Standby Service, they may elect to use Rate GS, which is a general rate schedule for transportation service.³²³

2. Potential Modifications

Both Rate GS and Rate IT require service agreements,³²⁴ which could be modified under Rule 2.3 of PGW’s Tariff.³²⁵ If GFCP/VEPI are receiving gas transportation under an existing rate schedule, PGW could add provisions or make adjustments by way of service agreements to accommodate specific special service needs — if the Commission authorized such provisions.³²⁶

a. Daily Balancing

Daily balancing provisions will be required in any service agreement. If GFCP//VEPI use a different amount of gas than what they had delivered to PGW’s system, that creates an imbalance, and the imbalance can be positive, meaning more gas was delivered than consumed, or negative, meaning less gas was delivered than consumed.³²⁷ Since GFCP/VEPI will be served under an

³²⁰ PGW St. 3R at 5.

³²¹ *Id.*

³²² *Id.*

³²³ PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 83–85; PGW St. 3R at 6.

³²⁴ PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 85; PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 117.

³²⁵ Rule 2.3 provides that: “Contracts stipulating the negotiated non-scheduled rates and/or terms of Gas Service may also be entered into between the Company and Customer when the Company, in its sole discretion, deems such offerings to be economically advantageous to the Company.” PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 18 (Rule 2.3).

³²⁶ PGW St. 1R at 15; *see also* PGW St. 3R at 3–4, 5.

³²⁷ GFCP/VEPI Statement JC-1 at 17.

existing tariff provision all the banking/balancing provisions that otherwise apply to a customer on that existing rate schedule would apply to GFCP/VEPI

Simply put, to the extent that GFCP/VEPI acquires their own gas, GFCP/VEPI will be subject to all of the Gas Supplier provisions of rate schedule Daily Balancing (“Rate DB”), except for those provisions related to licensing and bonding requirements.³²⁸ PGW is not currently balancing all load that is delivered to the 060 Gate Station by GFCP/VEPI,³²⁹ as discussed in Section V.E of this Brief. Moving forward, however, GFCP/VEPI should not be balanced on the interstate pipeline. By requiring balancing on PGW’s system, PGW can utilize the Naphtha Line and even potentially the Distribution Extension to transport natural gas to other customers.³³⁰ In addition, PGW believes that GFCP/VEPI should be treated as any other customer who supplies their own gas.³³¹ It would not only be unfair and discriminatory for GFCP/VEPI to be able to have PGW deliver its gas without being responsible for costs if deliveries were short or long of their actual demand, but the lack of balancing would also prevent PGW from considering using the Four Mile Line – which is PGW’s facility – to serve new customers or existing customers.³³²

³²⁸ PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 116; *see also* PGW St. 1R at 22.

³²⁹ PGW St. 1R at 22.

³³⁰ *Id.*; Tr. 149–50.

³³¹ PGW St. 1R at 22.

³³² *Id.*

b. Metering

Each individual use (boiler) should be separately metered for gas usage.³³³ This is needed to not only separate gas usage between GFCP, VEPI, and VEEPA,³³⁴ but also to prevent further usage (resales) behind the meter.³³⁵

c. Rates for Transportation Service

There is no need to modify or adjust the service agreement to provide for lower rates for GFCP/VEPI, since there is no mutual agreement as to rates and no basis for modification of the rates under either Rate GS or Rate IT. The rates under Rate GS would be applied to GFCP/VEPI, unless GFCP/VEPI demonstrates a compelling reason not to do so and PGW deems the negotiated price to be economically advantageous. In comparison, Rate IT authorizes the use of negotiated rates (that may include long-term contracts of up to five years) as mutually agreed to by PGW and the customer.³³⁶ As discussed herein, there is no mutual agreement as to rates, or any evidence justifying a negotiated rate.

PGW notes that Firm service is more expensive than interruptible service. Firm service rate schedules are higher than interruptible service because of the additional assets and supply agreements needed to assure service continuity.³³⁷ Customers who elect interruptible service accept the potential of reduced reliability of service in exchange for lower rates.³³⁸

³³³ PGW St. 1R at 23.

³³⁴ VEPI's affiliate, Vicinity Energy Efficiency PA ("VEEPA"), is an end-user of gas supplied or delivered by PGW to VEPI. PGW St. 2R at 6; *see also Request for the approval of affiliated interest agreement filed by Trigen-Philadelphia Energy Corporation and Veolia Energy Efficiency (PA) LLC for Steam Supply Agreement pertaining to the sale of steam from VEEPA to Trigen*, Docket No. G-2010-2193989, Secretarial Letter entered March 22, 2011, <https://www.puc.pa.gov/docket/G-2010-2193989>.

³³⁵ PGW St. 2R at 6.

³³⁶ PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 117. Rule 2.3 may also be applicable to a service contract under Rate IT. *See* PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 18 (Rule 2.3).

³³⁷ PGW St. 3R at 5.

³³⁸ *Id.*

PGW also notes that service under a rate schedule can be more expensive than an individualized rate. The rates under both Rate GS and Rate IT are higher than the calculated cost of service directly applicable to GFCP/VEPI as calculated by PGW witness Ms. Heppenstall.³³⁹ That is not an unusual result.³⁴⁰ Most customers' individual rates will be higher or lower than their individual cost of service, if an individual cost of service analysis for their service alone were conducted.³⁴¹

d. Surcharges

All applicable tariffed surcharges to sales and transportation service would be applied to GFCP/VEPI, unless GFCP/VEPI demonstrate a compelling reason not to do so.³⁴² All of PGW's other firm transportation customers are charged the existing tariffed surcharges in recognition of the fact that the surcharges, in one way or another, reflect costs and programs necessary to maintaining the gas distribution system.³⁴³

e. Alternative Receipt Service

ARS only exists as a negotiated term of service for Rate GTS-F customers and is not an ordinary service for gas transportation customers.³⁴⁴ So, there is not a regular tariff rate (or service) for ARS under either Rate GS or Rate IT.³⁴⁵ Moving forward, , if GFCP/VEPI were placed on Rate GS or Rate IT, and they needed additional capacity on the Philadelphia Lateral to meet their

³³⁹ PGW St. 1R at 18.

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² *Id.* at 22.

³⁴³ *Id.* at 22–23.

³⁴⁴ PGW St. 2R at 8–9; PGW St. 3R at 6.

³⁴⁵ PGW St. 3R at 6.

demand, they would have to negotiate a capacity release from PGW (or obtain the capacity from some other capacity holder), or utilize stand-by service.

f. Summer Capacity Releases

There is no need to modify or adjust the service agreement to provide for direct “summer” capacity releases to GFCI/VEPI. Based upon Mr. Crist’s testimony, GFCP/VEPI do not appear to be interested in obtaining released capacity in the summer, as the 1996 Contract allows for.³⁴⁶ PGW’s release of capacity in the summer was done assuming that this was something GFCP/VEPI desired.³⁴⁷ If they no longer wish to obtain summer capacity then that is fine with PGW.³⁴⁸ In any event, PGW believes that, to avoid discrimination and fairness issues, GFCP/VEPI should obtain capacity from PGW in the same way that any gas supplier or other entity would – by bidding for that capacity when PGW determines that it has excess and offers to release it.

g. Separate Maintenance Fee

There is no need to modify or adjust the service agreement to provide for a separate maintenance fee. The 1996 Contracts imposed a separate maintenance fee.³⁴⁹ Here, GFCP/VEPI utilize PGW’s entire distribution system to receive service.³⁵⁰ So, PGW’s position is that it would not be appropriate (and, in fact, would discriminate against GFCP/VEPI) to impose a separate charge for operations and maintenance costs.³⁵¹ Those costs would be recovered through the transportation charge, as they are for all other customers.³⁵²

³⁴⁶ PGW St. 1R at 23.

³⁴⁷ *Id.*

³⁴⁸ *Id.*

³⁴⁹ *Id.* at 21.

³⁵⁰ *Id.*

³⁵¹ *Id.*

³⁵² *Id.*

VII. PGW AND VICINITY MARKETING ACTIVITIES

A. Competition in the Philadelphia Energy Market

The energy markets in Philadelphia are highly competitive.³⁵³ Energy resources competition exists among the three utilities serving Philadelphia, PGW, PECO Energy Company (“PECO”), and VEPI, and has been ongoing for years.³⁵⁴ Other energy sources which are not jurisdictional to the Commission, such as fuel oil, solar, propane and geothermal also actively compete for these same customers.³⁵⁵ In other words, end use customers in Philadelphia have many energy options at their choice at prices and terms acceptable to them.³⁵⁶

PGW accepts the fact that the energy markets are competitive in Philadelphia and believes that this is in the best interests of the region to allow suppliers to compete so that customers obtain the arrangement that best suits their needs and budget.³⁵⁷ Moreover, competitors should not be hobbled by artificial rules that restrict one side but not the other,³⁵⁸ as Mr. Crist suggests.³⁵⁹ On behalf of VEPI, Mr. Crist’s expressed views that are clearly anti-choice and self-serving where he pejoratively characterized load shifting by customers to natural gas service as “poaching” or “luring” and PGW’s tariff provisions as attempts to “persuade VEPI customers to abandon the thermal energy system”³⁶⁰ These suggestions should be rejected. Indeed, the unrefuted evidence in this record is that PGW’s sales and marketing efforts are fully compliant with its Tariff

³⁵³ PGW St. 3R at 10.

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ *Id.*

³⁵⁷ *Id.* at 11.

³⁵⁸ *Id.*

³⁵⁹ *See* GFCP/VEPI Statement JC-1 at 27 and 29.

³⁶⁰ PGW St. 3R at 11 (citing GFCP/VEPI Statement JC-1 at 27 and 29).

and constitute reasonable and appropriate steps to attempt to gain new load and maintain existing load, which directly benefits existing customers.

1. Sales And Marketing By PGW

The Commission has approved tariff provisions that allow PGW to retain and attract new customers.³⁶¹ This has the advantage of implicitly reducing rates for other PGW customers by increasing the margins collected and spreading cost recovery over a greater base.³⁶²

It should be emphasized that PGW does not offer discounts from its standard tariffed rates.³⁶³ In situations using Rule 2.3, PGW may negotiate rates — if there would be an economic advantage to PGW and its customers for doing so.³⁶⁴ Regarding the TED Rider, if the customer qualifies as having new technology under the TED Rider, PGW will negotiate the base rate, but only in those limited circumstances.³⁶⁵ Situations relating to contributions in aid of construction (“CIAC”) or the capital contribution policy for extensions are described under Rule 10.³⁶⁶ But, again that does not involve the discounting of tariffed rates.³⁶⁷ Also, under strict terms, PGW has also advanced capital dollars to a new customer under Rules 10 and 2.3.³⁶⁸ Those dollars contribute a portion of the construction costs of a new gas-fired facility. This applies to new

³⁶¹ PGW St. 3R at 11. The tariff provisions are: Rule 2.3, which permits PGW to enter into customized contracts when such contracts, in PGW’s sole discretion, are in the best interests of the Company (PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 18); Rule 10, which allows PGW to fund certain line extensions when the projected revenue from the line extension exceeds the cost (PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 50–51); and the TED Rider, which authorizes PGW to support the expansion of new technologies such as, but not limited to, combined heat and power (“CHP”), natural gas vehicles, and fuel cells, to develop brownfields, and support economic development. PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 155.

³⁶² PGW St. 3R at 12.

³⁶³ *Id.* at 14, 18.

³⁶⁴ *Id.* at 14.

³⁶⁵ *Id.* at 14, 18.

³⁶⁶ *Id.* at 14.

³⁶⁷ *Id.*

³⁶⁸ *Id.*

construction that also includes oil and electric conversions,³⁶⁹ and is only done when the conversion costs are viewed as a barrier to making the switch and only under conditions – including a contract term of at least twice the length of the pay-back period -- that limit the risk to PGW and its other customers.³⁷⁰ PGW notes that, contrary to Mr. Crist’s characterization, Rate IT is not a discounted rate. Rate IT exists a Commission-approved rate schedule.³⁷¹ It is one of two existing rate schedules that PGW uses to offer transportation service and is only available to customers with confirmed alternative fuel or total curtailment ability.³⁷² Contrary to the allegations in the Formal Complaint, PGW has accurately followed its tariff rules and administers them to the benefit of all its customers.³⁷³ In the vast majority of instances, PGW has not offered discounts from its current tariffed rates, let alone “significant” rate discounts as claimed by Mr. Crist.³⁷⁴ Importantly, PGW strictly offers this Rate IT service under the terms contained in the tariff.³⁷⁵ As noted above, there are two ways for a customer to qualify for Rate IT.³⁷⁶ Under either scenario, the customer would be offline for the interruptible portion of their load and lend PGW the operational room necessary to supply essential needs customers during a period of a gas shortage.³⁷⁷ In addition, as noted, PGW monitors continued qualification for Rate IT.³⁷⁸

³⁶⁹ *Id.*

³⁷⁰ *Id.* at 15.

³⁷¹ PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 111–17.

³⁷² PGW St. 3R at 3.

³⁷³ *Id.* at 13.

³⁷⁴ *Id.*; cf. GFCP/VEPI Statement JC-1 at 27.

³⁷⁵ PGW St. 3R at 16.

³⁷⁶ *Id.*

³⁷⁷ *Id.*

³⁷⁸ *Id.* at 17.

B. PGW’s Responses to Sales and Marketing Allegations and Recommendations

In a case about the appropriate rates, terms, and conditions of service that should apply to GFCP/VEPI when obtaining natural gas service from PGW, GFCP/VEPI, apparently in an attempt to obtain leverage of some kind regarding their rate complaints, also alleged that PGW’s sales and marketing practices are somehow inconsistent with PGW’s Tariff or with the provision of adequate and reasonable service. After Mr. Crist, on behalf of VEPI, raised several “concerns” regarding alleged PGW marketing improprieties, PGW responded with detailed testimony that completely refuted each and every allegation.³⁷⁹ GFCP/VEPI made no response to this testimony.

As the PGW responsive testimonies were unaddressed and un rebutted in the record, GFCP/VEPI have failed to carry their burden of proof regarding any allegations of “unfair competition” and all of these allegations – should they be continued – must be dismissed.

Should GFCP/VEPI attempt in Brief to resuscitate Mr. Crist’s flawed factual presentation, PGW will respond, but it would appear that this line of attack line has been withdrawn.

VIII. CONCLUSION

For the reasons stated herein, Philadelphia Gas Works respectfully requests the PUC to: (a) dismiss the Complaint of GFCP/VEPI; (b) determine that GFCP/VEPI is not entitled to a special rate and may be served on existing Rate IT and be eligible to also subscribe to stand-by service; (c) if it is determined that GFCP/VEPI is eligible for a special rate, direct PGW to propose a new special rate schedule for which GFCP/VEPI would be eligible that would: (i) provide firm

³⁷⁹ See *id.* at 10–19; PGW St. 5R at 15–28. PGW also demonstrated that, for its part, VEPI engages in essentially the same rate discounting and competitive rate offers that it accused PGW of engaging in (and which proved false). GFCP/VEPI have also failed to carry their burden of proof regarding any allegations of “unfair competition” by PGW. Specifically, Count III of GFCP/VEPI’s Formal Complaint alleges that that PGW, by proposing to increase the prices set by and frozen since 1995 under a twenty-five-year-old contract, is creating a “price squeeze” on VEPI in violation of federal anti-trust laws. Even if Federal antitrust laws were justiciable by the Commission (which they are not), GFCP/VEPI has not even attempted to factually support the violation of federal antitrust standard that they asserted in the Formal Complaint.

transportation service at a rate reflecting the cost of providing that service and PGW's used of its distribution system to do so, (ii) provides for an Alternative Receipt type service that recognizes PGW's need to utilize its distribution system to provide the service, and (iii) contains other terms and conditions, including balancing, as recommended by PGW; and (d) take any other action determined to be in the public interest.

Respectfully submitted,



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Dated: September 20, 2020

Counsel for Philadelphia Gas Works

PROPOSED FINDINGS OF FACT

PGW

1. Philadelphia Gas Works (“PGW” or “Company”) is a group of real and personal assets owned by the City of Philadelphia (“City”) and used by the City for the acquisition, storage, processing, distribution, and sale of natural gas within the City. PGW St. 1R at 4.
2. PGW manages a distribution system of approximately 6,000 miles of gas mains and service lines supplying approximately 500,000 customers in the City and County of Philadelphia. PGW St. 1R at 4.
3. PGW has no shareholders and does not earn a “profit;” all dollars it collects are used to contribute to the cost of providing natural gas service to the citizens and businesses of the City. PGW St. 1R at 4.
4. PGW is regulated by the Public Utility Commission as a city natural gas distribution company pursuant to 66 Pa. C. S. § 102 and 2212.

GFCEP/VEPI

5. Grays Ferry Cogeneration Partnership (“GFCEP”) and Vicinity Energy Philadelphia, Inc. (“VEPI”) are non-residential (industrial) customers of PGW. PGW St. 1R at 6–8.
6. VEPI is a public utility certificated by the Commission to provide steam service and chilled water service to non-residential customers in portions of Center City, Philadelphia and West Philadelphia, Pennsylvania. PGW St. 1R at 5.
7. VEPI operates two steam producing facilities and a significant portion of the steam distributed by VEPI to VEPI’s customers has been produced by a cogeneration facility owned by GFCEP. PGW St. 1R at 5.
8. If GFCEP’s cogeneration plant cannot produce enough steam to satisfy VEPI’s customer demand, steam boilers owned by VEPI or its sister company, Veolia Energy Efficiency (PA), LLC (“VEEPA”) are used. PGW St. 1R at 5.
9. GFCEP uses natural gas to produce electricity and steam at its cogeneration plant. PGW St. 1R at 5.
10. GFCEP sells electricity into the wholesale PJM market and sells the waste steam to VEPI. PGW St. 1R at 5.

The 1996 Contracts

11. In January 1996, the Philadelphia Authority for Industrial Development (“PAID”) entered into a total of four agreements: (a) two service contracts: one with Grays Ferry (the “Partnership Service Contract”) and one with VEPI (then known as Trigen) (the “Trigen Service Contract”) (collectively, the “Service Contracts”); and (b) two service agreements

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with the City of Philadelphia on behalf of PGW: one regarding the Partnership Service Contract (“Partnership Service Agreement”) and one regarding the Trigen Service Contract (the “Trigen Service Agreement”) (collectively, the “Service Agreements”). The Service Contracts and the Service Agreements are collectively referred to as the “1996 Contracts.” PGW St. 1R at 6.

12. The duration (term) of the 1996 Contracts is twenty-five years. PGW St. 1R at 14–15.
13. The 1996 Contracts were the product of negotiations as part of the settlement of a proceeding before the Federal Energy Regulatory Commission (“FERC”). PGW St. 1R at 6.
14. PAID and the City acted as conduits for the real party in interest, PGW, in negotiating the 1996 Contracts. PGW St. 1R at 12.
15. Prior to the settlement, PGW had never provided the GFCP/VEPI with gas service. Rather than using gas service from PGW, GFCP/VEPI in or around 1995–1996, threatened to construct a lateral to, and connection point, with the “Philadelphia Lateral” – which is part of the interstate pipeline system owned and operated by Texas Eastern Transmission Company (“TETCO”) and subject to FERC’s jurisdiction. PGW St. 1R at 5–6.
16. Under the 1996 Contracts, PGW both constructed a new, 16-inch pipeline at GFCP/VEPI’s expense (the “Distribution Extension”) and refurbished and repurposed an existing PGW gas liquids line (the “Naphtha Line”) (the Distribution Extension and Naphtha Line are collectively referred to as the Four Mile Line). PGW St. 1R at 7–8.

PGW’s Grandfathering of the 1996 Contracts under Rate GTS-F

17. In 2003, PGW came under the jurisdiction of the Public Utility Commission, was made subject to the Public Utility Code, and, therefore, could no longer render service pursuant to contracts but only pursuant to Commission-approved Tariffs. PGW St. 1R at 8–9.
18. As part of PGW’s restructuring plan, the Commission approved PGW’s plan to incorporate the rates terms and conditions that had been previously agreed to in the 1996 Contracts into Rate “GTS-F” in its PUC-authorized Tariff. PGW St. 1R at 9.
19. PGW’s Rate GTS-F is only available to those customers who utilized that service on or before September 1, 2003 pursuant to a currently valid agreement with PGW. PGW Gas Tariff – Pa. P.U.C. No. 2 at 118.
20. The rates, terms, and conditions set forth in the 1996 Contracts and Rate GTS-F will expire December 31, 2022. PGW St. 1R at 8; Formal Complaint ¶ 7.
21. At the time that the 1996 Contracts were incorporated into Rate GTS-F, it was anticipated that Rate GTS-F would not be renewed or extended and that GFCP/VEPI (or their successors) would transition to service under other PGW tariff provisions at the end of the twenty-five-year 1996 Contracts term. PGW St. 1R at 9.

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PGW's Non-Binding Proposal for Rates After December 31, 2022

22. Given the expiration of Rate GTS-F and the 1996 Contracts, PGW provided a written non-binding proposal for going forward rates to the GFCP/VEPI in February 2021. PGW St. 1R at 10.
23. Because GFCP/VEPI's usage characteristics are most like PGW's existing Interruptible customers, PGW's non-binding proposal offered to serve GFCP/VEPI under Rate IT, with additional rates and/or accommodations to provide the requisite firmness of service that GFCP/VEPI desired, after the expiration of Rate GTS-F and the 1996 Contract on December 31, 2022. PGW St. 1R at 10–11.
24. GFCP/VEPI rejected PGW's non-binding proposal in June 2021 and filed this Formal Complaint in October 2021. PGW St. 1R at 10.
25. GFCP/VEPI receive distribution service from PGW in two different ways: (1) transportation service; and (2) bundled sales service. PGW St. 2R at 7.

Distribution/Transmission Service to GFCP/VEPI

26. GFCP/VEPI's transportation service constitutes about 70% of their natural gas load. GFCP/VEPI Statement JC-1 at 21.
27. The current transportation rate under Rate GTS-F consists of a customer charge of \$250 per month and a volumetric rate of \$0.08 per Dth. PGW St. 2R at 7.
28. The existing rates GFCP/VEPI pay to PGW under the 1996 Contracts and Rate GTS-F are substantially below the cost of service. PGW St. 4R at 7. PGW witness Heppenstall showed that these rates produce \$1,069,863 in revenue, yet the cost to provide service to GFCP/VEPI is at least \$8,035,000. PGW St. 4R at 7; *see also* PGW St. 4R, Sch. C (using peak demand volume of 38,850 Dth/day); PGW St. 4SR at 2–3 (using peak demand volume of 56,000 Dth/day).
29. The transportation rate paid by GFCP/VEPI to PGW for transportation service must be based on a cost of service study that allocates a portion of the costs of the distribution system to GFCP/VEPI because all of services, and, particularly, alternative receipt service ("ARS"), PGW currently provides to GFCP/VEPI use a portion or all of PGW's distribution system. PGW St. 4SR at 2.
30. The current tariffed rate for transportation service under Rate IT is \$0.8550. Industrial Customer, Rate Class IT-E: PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 115.
31. An appropriate cost-based transportation rate for PGW to provide transportation service to GFCP/VEPI would be between \$0.698/Dth to \$0.756/Dth. PGW St. 4R at 7, PGW St. 4R, Sch. C (using peak demand volume of 38,850 Dth/day); PGW St. 4SR at 2–3 (using peak demand volume of 56,000 Dth/day); OCA Statement 1R at 7.

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Operations and Maintenance Fee

32. Under the 1996 Contracts, it was agreed that GFCEP/VEPI would contribute to PGW's costs to operate and maintain the Four-Mile Line.
33. The 1996 Contracts initially set the operations and maintenance cost \$100,000 per year subject to increase with the consumer price index, and was most recently \$160,000. GFCEP/VEPI Statement JC-1 at 8, 13.
34. Pursuant to PGW's cost of service study, the costs attributed to GFCEP/VEPI for maintenance of PGW's mains is \$995,000 per year. PGW St. 4R at 9.
35. Unlike GFCEP/VEPI, PGW's other customers pay for the operations and maintenance expense on the facilities that are used to serve them through a cost-based distribution charge. PGW St. 1R at 21.
36. Moving forward, there should not be the need for a separate operations and maintenance fee. Those costs would be recovered through the transportation charge, as they are for all other customers. PGW St. 1R at 21.

"Summer" Capacity Releases

37. Pursuant to the Rate GTS-F and the 1996 Contracts, PGW may release to GFCEP/VEPI a certain amount of firm capacity in the Summer (between May 1 and September 30). PGW St. 2R at 12–15.
38. Under Rate GTS-F and the 1996 Contracts, if requested by GFCEP/VEPI and PGW has available capacity, PGW releases capacity to GFCEP/VEPI by delivering its released capacity on the Philadelphia Lateral to the 060 Gate Station maintained by PGW where the gas then flows to GFCEP/VEPI's facility in the same way as transportation service. PGW St. 2R at 12.
39. The rate for the capacity that PGW releases to GFCEP/VEPI in the Summer (between May 1 and September 30) is set by the 1996 Contracts and is below the maximum rate PGW can charge for that capacity. PGW St. 2R at 13.
40. The difference between the cost incurred by PGW to obtain the capacity and amount it receives for releasing capacity to GFCEP/VEPI under the 1996 Contracts in the Summer (between May 1 and September 30) is charged to PGW's Gas Cost Rate ("GCR") Customers. PGW St. 2R at 13.
41. Over the past three years, GFCEP/VEPI were subsidized by PGW's GCR customers in an amount between \$1,000,000 and \$1,700,000 annually for this capacity release. PGW St. 2R at 14, Ex. RER-2.
42. GFCEP/VEPI no longer require the release capacity of PGW in the Summer (between May 1 and September 30). GFCEP/VEPI Statement JC-1 at 15–16, 19.

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Balancing and Alternative Receipt Service (“ARS”)

43. Because GFCP/VEPI have a peak of 56,000 Dth/day in the Winter (between October 1 and April 30) but only control 35,000 Dth/day on the Philadelphia Lateral, PGW provides GFCP/VEPI with additional capacity through Alternative Receipt Service (“ARS”) under the 1996 Contracts and Rate GTS-F. PGW St. 2R at 8.
44. Under ARS, PGW permits GFCP/VEPI to obtain additional natural gas as follows: GFCP/VEPI causes gas to be delivered using Gate Station 034 on TETCO’s Skippack Lateral near Lawndale while PGW delivers the same amount of gas to Gate Station 0-60 on the highly constrained Philadelphia Lateral – using PGW’s firm capacity rights – and that gas then flows to GFCP/VEPI as they receive transportation service. PGW St. 2R at 9; PGW St. 2FSR at 1–2.
45. In order to provide ARS, PGW must use its distribution system to move the gas delivered by GFCP/VEPI to Gate Station 034 across its distribution system to the customers in South Philadelphia who ordinarily would be served via gas delivered from the 060 Gate Station. PGW St. 2FSR at 2.
46. ARS could not be provided to GFCP/VEPI without the use of PGW’s distribution system. PGW St. 2FSR at 2.
47. ARS creates a lost revenue opportunity for PGW’s GCR customers in an amount between \$690,000 and \$1.7 million annually. PGW St. 2R, Ex. RER-2.
48. Moving forward, the coordination of gas deliveries should occur under rate schedule Daily Balancing (“Rate DB”). PGW Gas Service Tariff at 116; *see also* PGW St. 1R at 22. This means that, to the extent that GFCP/VEPI acquire their own gas, GFCP/VEPI will be subject to all of the Gas Supplier provisions of Rate DB, except for those provisions related to licensing and bonding requirements. *Id.* It also means that there is no continuing need for a “separate” special (ARS) service for GFCP/VEPI after December 31, 2022.
49. Under the 1996 Contracts and Rate GTS-F, PGW has the option to balance the gas that GFCP/VEPI or their supplier delivers to PGW’s city gate, but PGW does currently not do so. PGW St. 1R at 16–17, 22.
50. By deferring to GFCP/VEPI the option of whether to balance the gas delivered to PGW’s city gate, GFCP/VEPI benefitted because they were not subject to PGW’s balancing charges while PGW suffered because only GFCP/VEPI could be served by the Four Mile Line instead of PGW’s other customers. PGW St. 1R at 22.
51. Daily balancing provisions should be required in any service agreement. PGW St. 1R at 22. By requiring balancing on PGW’s system, PGW can utilize the Naphtha and Distribution Lines to transport natural gas to other customers. PGW St. 1R at 22; Tr. 149–50. In addition, PGW believes that GFCP/VEPI should be treated as any other customer who supplies their own gas. PGW St. 1R at 22.

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Permanent “Winter” Capacity Release

52. PGW does not have capacity on TETCO’s Philadelphia Lateral that is in excess of PGW’s present or expected future needs for such capacity. PGW St. 2R at 14.
53. PGW has a maximum daily firm capacity on the interstate pipelines that is less than PGW’s design day requirement, so PGW relies on off-site storage assets and stored LNG to meet its design day demands. PGW St. 2R at 4.
54. PGW cannot release non-recallable capacity in the Winter (between October 1 and April 30) because it would threaten PGW’s ability to serve its essential service customers. PGW St. 2SR at 13–14.
55. Permanently releasing PGW-owned capacity to GFCP/VEPI on the Philadelphia Lateral could result in system failures that would require PGW to curtail firm customer load as well as interrupt all interruptible customers that receive pipeline deliveries on the Philadelphia Lateral. PGW St. 2SR at 2–3, Ex. RER-1SR.

Sales Service to GFCP/VEPI

56. Under the 1996 Contracts and Rate GTS-F, GFCP/VEPI may be required to purchase natural gas directly from PGW due to interruptions on the Philadelphia Lateral. GFCP/VEPI Statement JC-1 at 17.
57. Pursuant to the Rate GTS-F and the 1996 Contracts, PGW currently charges GFCP/VEPI the Weighted Average Cost of Gas (“WACOG”) plus a fee of \$0.61/Dth. GFCP/VEPI Statement JC-1 at 17.
58. If GFCP/VEPI wish to purchase gas (via bundled sales service), the rate would be set to include the GFCP/VEPI delivery charge plus the current gas cost rate (“GCR”). PGW St. 1R at 22.
59. To continue to sell natural gas at less than the GCR simply cannot be justified. PGW St. 1R at 22.
60. GFCP/VEPI have no objection to using the GCR instead of the WACOG. GFCP/VEPI Statement JC-1 at 17, 19.

Special Rates for GFCP/VEPI

61. The size of GFCP/VEPI’s load is not a unique and compelling circumstance so as to justify a special rate. PGW St. 1R at 15–16.
62. Prior financing of an improvement is not a unique and compelling circumstance so as to justify a special rate. *See* PGW St. 1R at 22; Tr. 149–50.
63. The level of pressure GFCP/VEPI receive is not a unique and compelling circumstance so as to justify a special rate. PGW St. 2SR at 2.

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64. If the Commission determines that GFCP/VEPI are eligible for a special rate, such rates should reflect well established cost of service principles. PGW St. 4R at 7; *see also* PGW St. 4R, Sch. C.
65. GFCP/VEPI have not presented any costs related to their proposed bypass. GFCP/VEPI Statement JC-1SR at 31. Without cost information, one cannot design rates to reflect the cost the customer would incur to bypass. *Id.*; *see also* GFCP/VEPI Statement No. 1-R at 7.
66. GFCP/VEPI did not present any information regarding the prospects of a bypass line being successfully constructed. *See* PGW St. 3R at 4–5; OSBA Statement No. 1-S at 4.
67. Daily balancing should be required in any service agreement. PGW St. 1R at 22–23.
68. Each individual use (boiler) should be separately metered for gas usage. PGW St. 1R at 23. This is needed to not only separate gas usage between GFCP, VEPI, and VEEPA, but also to prevent further usage (resales) behind the meter. PGW St. 2R at 6.
69. All applicable tariffed surcharges to sales and transportation service would be applied to GFCP/VEPI, unless GFCP/VEPI demonstrate a compelling reason not to do so. PGW St. 1R at 22.
70. All of PGW’s other firm transportation customers are charged the existing tariffed surcharges in recognition of the fact that the surcharges, in one way or another, reflect costs and programs necessary to maintaining the gas distribution system. PGW St. 1R at 22–23.

PGW’s Existing Tariff Rates

71. GFCP/VEPI have two existing tariff options by which to receive natural gas transportation service from PGW: (1) Rate Schedule General Service (“Rate GS”); or (2) Rate Schedule Interruptible Transportation (“Rate IT”).
72. PGW’s Rate GS is available for firm transportation service, anticipates no planned interruptions, and requires a service agreement. PGW St. 3R at 6.
73. PGW’s Rate IT is available for interruptible transportation service to those who can manage their businesses without the use of gas during periods of curtailment or interruption at PGW’s option under the terms of the tariff and can be supplemented by standby service or back-up service to assure sufficient firmness. PGW St. 3R at 4–6.
74. GFCP/VEPI are able to receive interruptible transportation service because GFCP/VEPI can meet their needs during periods of interruption for all or a portion of its load. Tr. 76–78.
75. Because service is available to GFCP/VEPI after the expiration of Rate GTS-F under two more PGW rate schedules, GFCP/VEPI must select the rate schedule under which they desire to receive service and be billed. PGW St. 3R at 3–4.

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76. PGW has not had an unplanned interruption of any Rate IT customer since 2004. PGW St. 3R at 4.
77. The reliability of service under PGW's Rate IT can be increased by adding "Standby Service" at the customer's choice whereby PGW provides gas supply to the customer in the event that the customer experiences an interruption or curtailment in transportation service by a supplier. PGW St. 3R at 5.
78. Both PGW's Rate GS and Rate IT require service agreements, which could be modified under Rule 2.3 of PGW's Tariff. PGW St. 1R at 15; PGW St. 3R at 3–5.

Sales and Marketing by PGW

79. Natural gas end use customers in Philadelphia have many energy options at their choice at prices and terms acceptable to them. PGW St. 3R at 10.
80. Mr. Crist, on behalf of VEPI, raised several "concerns" regarding alleged marketing improprieties by PGW. GFCEP/VEPI Statement JC-1 at 26–35.
81. PGW responded with detailed testimony that completely refuted each and every allegation. Mr. Crist challenged the rate applied by PGW to the Red Cross (GFCEP/VEPI Statement JC-1 at 32) and was refuted (PGW St. 3R at 13, 16–17). Mr. Carrier's testimony showed that the entire basis for Mr. Crist's efficient argument (GFCEP/VEPI Statement JC-1 at 31, 35) was factually incorrect. PGW St. 6R at 12. In addition, GFCEP/VEPI made no response to the competition testimony presented by Mr. Lacey (PGW St. 5R at 26–27) and Mr. Teme (PGW St. 3R at 21).
82. Mr. Crist made no response to PGW's rebuttal testimony. GFCEP/VEPI Statement JC-1SR at 2, 32.

PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa. C.S. § 701.
2. PGW is a “city natural gas distribution operation” as defined in Section 102 of the Public Utility Code, 66 Pa. C.S. § 102.
3. The burden of proof is on the parties seeking affirmative relief from the Commission. 66 Pa. C.S. § 332(a); *NRG Energy, Inc. v. Pa. Pub. Util. Comm’n*, No. 58 C.D. 2019, 2020 Pa. Commw. LEXIS 420, at *29–30 (Pa. Commw. Ct. June 2, 2020).
4. Section 1301(a) of the Code mandates that “[e]very rate made, demanded, or received by any public utility . . . shall be just and reasonable, and in conformity with [the] regulations or orders of the [C]ommission.” 66 Pa. C.S. § 1301(a).

The claims for service under Rate GTS-F beyond December 31, 2022, by GFCP/VEPI, must be denied and dismissed.

5. Service pursuant to PGW’s existing Tariff, rate GTS-F, is no longer available to GFCP/VEPI or any other customer after December 31, 2022.
6. GFCP/VEPI have not sustained their burden in proving that Rate GTS-F is available to them, or any other customer, after December 31, 2022.
7. All rates, terms and conditions of service applied to customers must be reflected in or authorized by a utility’s tariff.
8. The Commission has no authority to allow a public utility to deviate from its tariff even where the Commission concludes it is in the public interest. *Phila. Suburban Water Co. v. Pa. PUC*, 808 A.2d 1044, 1056 (Pa. Commw. Ct. 2002).

The claims for service by way of an extension of duration (term) of the 1996 Contracts, by GFCP/VEPI, must be denied and dismissed.

9. GFCP/VEPI has the heavy burden of proving by a preponderance of the evidence that PGW’s Commission-approved tariff is either unreasonable or discriminatory. *MCI Airsignal of Pa., Inc. v. Pa. PUC*, 512 A.2d 600, 603 (Pa. Commw. Ct. 1986); *Pa. PUC v. PPL Elec. Utils. Corp.*, Docket No. R-2010-2161694, 2012 Pa. PUC LEXIS 989, at *14–18 (Opinion and Order entered June 21, 2012).
10. A utility may not enter into a private contract with a customer that sets forth rates or terms and conditions of service that is not set forth or authorized by its tariff. *Phila. Suburban Water Co.*, 808 A.2d at 1054–57.
11. There is no legal basis for the Commission to simply order PGW to extend the duration (term) of the 1996 Contracts and Rate GTS-F.

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12. Requiring PGW to continue to serve GFCEP/VEPI under the soon to be terminated contract would be grossly unfair to PGW and its ratepayers and contrary to the public interest.
13. The Commission lacks legal authority to extend or modify the 1996 Contracts under Section 508 of the Public Utility Code. 66 Pa. C.S. § 508 because the contract is about to terminate and thus the issue is moot.
14. The Commission may utilize its Section 508 powers to modify or abrogate an existing contract only when it finds that it would be in the public interest and the general wellbeing to do so.
15. Even if the 1996 Contracts were available for the Commission to consider applying its Section 508 power, it would neither be in the public interest nor consistent with the general wellbeing to renew these contracts and continue to have them apply to PGW.

The claims for a special rate, by GFCEP/VEPI, must be denied and dismissed.

16. GFCEP/VEPI have not sustained their burden in proving that a special rate is justified.
17. A utility cannot unreasonably discriminate for or against one of its customers by establishing a special rate for them. *Popowsky v. Pa. PUC*, 683 A.2d 958, 961 (Pa. Commw. Ct. 1996).
18. A special rate should not be approved absent a compelling reason, and is limited to cases where there is a serious and credible threatened of loss of load and where revenues from the customer exceed the cost of serving the customer. *PPL Electric Utilities Corp.*, 2012 Pa. PUC LEXIS 989.
19. Simply having a large volume of usage does not entitle a customer to a preferred rate. *U.S. Steel Corp. v. Pa. PUC*, 390 A.2d 849, 857 (Pa. Commw. Ct. 1978) (citing *Carpenter v. Pa. PUC*, 15 A.2d 401 (Pa. Super. Ct. 1940)).
20. The size of GFCEP/VEPI's load is not a unique and compelling circumstance so as to justify a special rate. *U.S. Steel Corp.*, 390 A.2d at 857.
21. That GFCEP/VEPI have not met their burden of proof showing that unique and compelling circumstance exist so as to justify a special rate.
22. That GFCEP/VEPI are not entitled to a special rate.
23. That GFCEP/VEPI may be served by either PGW's Rate GS or Rate IT and be eligible to also subscribe to stand-by service.
24. All of services currently provided by PGW to GFCEP/VEPI use a portion or all of PGW's distribution system, and thus GFCEP/VEPI should be allocated a share of the costs of that system in any cost of service study.

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25. That Alternative Receipt Service (“ARS”) could not be provided to GFCEP/VEPI without the use of PGW’s distribution system.
26. If the Commission determines that GFCEP/VEPI are eligible for a special rate, the rate should: (i) provide firm transportation service at a rate reflecting the cost of providing that service and PGW’s use of its distribution service to do so (as determined by the cost of service study submitted either by PGW or the OCA); (ii) provide for an Alternative Receipt-type service rate that recognizes PGW’s need to utilize its distribution system to provide the service; and (iii) contain other terms and conditions, including balancing, as PGW deems necessary.

The sales and marketing claims of GFCEP/VEPI against PGW must be denied and dismissed.

27. GFCEP/VEPI have failed to satisfy their burden of proof to prove that PGW’s offering of discounts and incentives to attract and retain customers violates the Public Utility Code, the Commission’s regulations, the Orders of the Commission or PGW’s Commission-approved Tariff.
28. That PGW may, consistent with its Technology and Economic Development Rider and Micro-Combined Heat and Power Incentives (“TED Rider”), offer incentives to eligible customers.
29. That PGW’s offering of discounts and incentives to attract and retain customers is in furtherance of its obligations to provide adequate and reasonable service and to maintain its rates as just and reasonable, as required by 66 Pa. C.S. §§ 1301, 1501.
30. PGW’s sales and marketing efforts are fully compliant with its Tariff and constitute reasonable and appropriate steps to attempt to gain new load and maintain existing load, which directly benefits existing customers.
31. PGW has accurately followed its tariff rules and administers them to the benefit of all its customers.

All other claims of GFCEP/VEPI, at Docket at C-2021-3029259, against PGW must be denied and dismissed.

32. GFCEP/VEPI have failed to satisfy their burden of proving that PGW has violated the Public Utility Code, the Commission’s regulations, the Orders of the Commission or PGW’s Commission-approved Tariff in any other respect.

PROPOSED ORDERING PARAGRAPHS

1. That the Formal Complaint of Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc., against Philadelphia Gas Works, Docket No. C-2021-3029259, is hereby denied and dismissed.
2. That Philadelphia Gas Works is authorized to provide gas transportation service to Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc., under existing rate schedule Interruptible Transmission (Rate IT), either with or without a subscription to stand-by service thereunder – as elected by to Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc., – consistent with service agreement(s) agreed to by and between Grays Ferry Cogeneration Partnership and/or Vicinity Energy Philadelphia, Inc. and Philadelphia Gas Works, for service rendered on and after January 1, 2023.
3. That if Grays Ferry Cogeneration Partnership and/or Vicinity Energy Philadelphia, Inc., are unwilling or unable to receive service under Rate IT consistent with Ordering Paragraph No. 2 above, that Philadelphia Gas Works is authorized to provide gas transportation service to Grays Ferry Cogeneration Partnership and/or Vicinity Energy Philadelphia, Inc., under existing rate schedules general service (Rate GS) and Daily Balancing (Rate DB) for service rendered on and after January 1, 2023.
4. That this matter be marked closed.

In the Alternative:

1. That the Formal Complaint of Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc., against Philadelphia Gas Works, Docket No. C-2021-3029259, is hereby granted in part and denied in part.
2. That the claim for a special distribution/transmission rate, by the Complainants Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc., is granted.
3. Within thirty (30) days of the entry of a Commission Order, Philadelphia Gas Works shall file as a compliance filing setting forth a tariff supplements and/or tariff revisions designed to produce a new special rate schedule for service rendered on and after January 1, 2023 for which Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. would be eligible that would: (i) provide firm transportation service at a rate reflecting the cost of providing that service and Philadelphia Gas Works; used of its distribution system to do so (as determined in the cost of service studies submitted either by PGW or the OCA), (ii) provides for an Alternative Receipt type service the price and terms of which recognizes Philadelphia Gas Works' need to utilize its distribution system to provide the service, and (iii) contains other terms and conditions, including balancing, as recommended by Philadelphia Gas Works. Comments to the compliance filing shall be filed within fifteen (15) days.
4. Upon review of the compliance filing and any comments thereto, PGW shall implement the proposed tariff supplement — on at least one day's notice — for service rendered on or after January 1, 2023.

Appendix C

5. That all other claims of Complainants Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc., at Docket No. C-2021-3029259, are denied and dismissed.
6. That, upon acceptance and approval by the Commission of the tariff, tariff supplements and/or tariff revisions filed by Philadelphia Gas Works, consistent with Ordering Paragraph No. 4, this matter be marked closed.

Attachment A

Map of PGW's Facilities Used to Provide GF/VEPI Services

