ECKERT SEAMANS
ATTORNEYS AT LAW

Eckert Seamans Cherin & Mellott, LLC
213 Market Street
8th Floor
Harrisburg, PA 17101

TEL: 717 237 6000
FAX: 717 237 6019

Daniel Clearfield
717.237.7173
dclearfield@eckertseamans.com

October 4, 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") Reply 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

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 Reply Brief, upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email Only

Dennis A. Whitaker, Esquire
Kevin J. McKeon, Esquire
Todd S. Stewart, Esquire
Hawke McKeon & Sniscak LLP
100 N 10th Street
Harrisburg, PA 17101
dawhitaker@hmslegal.com
kjmckeon@hmslegal.com
tsstewart@hmslegal.com

Gina L. Miller, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street, 2nd Floor
Harrisburg, PA 17120
ginmiller@pa.gov

Charis Mincavage, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108
cmincavage@mcneeslaw.com

Harrison W Breitman, Esquire
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street
Form Place, 5th Floor
Harrisburg, PA 17101-1923
hbreitman@paoca.org

Sharon E. Webb
Office of Small Business Advocate
555 Walnut Street
1st Floor, Forum Place
Harrisburg, PA 17101-1923
swebb@pa.gov

Craig W. Berry, Esq.
Senior Attorney
Philadelphia Gas Works
800 W. Montgomery Ave.
Philadelphia, PA 19122
Craig.berry@pgworks.com

Dated: October 4, 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' REPLY BRIEF

PUBLIC VERSION

Of Counsel:

Craig W. Berry, Esq. (I.D. No. 26183)
Senior Attorney
Philadelphia Gas Works
800 W. Montgomery Ave.
Philadelphia, PA 19122
215.684.6049
215.684.6798 (fax)
Craig.Berry@pgworks.com

Daniel Clearfield, Esq. (I.D. No. 26183)
Carl R. Shultz, Esq. (I.D. No. 70328)
Cody T. Murphey, Esq. (admitted *pro hac vice*)
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Fl.
Harrisburg, PA 17101
717.237.7173 (direct dial)
717.255.3742 (direct dial)
717-237-6019 (fax)
dclearfield@eckertseamans.com
cshultz@eckertseamans.com
cmurphey@eckertseamans.com

Dated: October 4, 2022

Counsel for Philadelphia Gas Works

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Administrative Decisions

Statutes

Regulations

I. INTRODUCTION AND PROCEDURAL HISTORY

Philadelphia Gas Works ("PGW" or "Company") hereby submits this Reply Brief in response to the briefs of Grays Ferry Cogeneration Partnership ("Grays Ferry") and Vicinity Energy Philadelphia, Inc. ("Vicinity") (collectively, "GFCP/VEPI"), the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), and the Philadelphia Industrial and Commercial Gas Users Group ("PICGUG").[1]

GFCP/VEPI's Brief presents a barrage of confusing, sometimes contradictory claims and demands. They twist the Public Utility Code and the record in a vain attempt to somehow achieve their demands devoid of any consideration of what would be reasonable or in the public interest. Their arguments are distinguished by their lack of evidentiary or legal support, the most material (and the most unreasonable) include the following:

GFCP/VEPI made the astonishing and unsupported claim that their going forward rate for firm transportation service (a rate that is over $5.00/Mcf plus various surcharges for any other industrial customer!) could be as low as the <u>current</u> (grandfathered and unbundled[2]) rate of $0.08 per Dth for transportation/distribution service.[3] That argument is absurd and is not supported by any cost of service analysis in the record. Even GFCP/VEPI's own witness admitted that the cost of providing service to GFCP/VEPI was at least $0.21/Dth. Therefore, continuing service at the current, grandfathered rate—using GFCP/VEPI's own cost of service analysis—would mean that

---

[1] The Bureau of Investigation and Enforcement ("I&E") did not be file a Main Brief.

[2] This rate is unbundled and does include charges/costs related to (a) operations and maintenance or (b) the use of PGW's capacity during the Winter (ARS).

[3] GFCP/VEPI Brief at 36, 44.

PGW's other customers would be paying at least *$1.7 million*[4] *annually* to subsidize the cost of providing service to these two for profit businesses.

But the record also shows that GFCP/VEPI's cost of service study results are ridiculously low cost (compared to all the other studies in the record) because it assumes that PGW's provision of Alternate Receipt Service, a service without which GFCP/VEPI cannot meet their peak demand, *has no cost*. GFCP/VEPI presently (and for the last twenty-five years) pay just $54,000/year for this necessary service, which apparently GFCP/VEPI want to continue.

The record shows that GFCP/VEPI's Alternative Receipt Service ("ARS") is only available because PGW uses its distribution system to replace the gas PGW makes available to GFCP/VEPI pursuant to ARS. For this reason, the cost of service studies of both PGW and OCA properly allocated to GFCP/VEPI a share of the costs of the distribution system and produced a cost of service of between $0.70 and $0.75/Dth (rounded). That means that the subsidy that GFCP/VEPI would continue to enjoy (if their current, soon to end, grandfathered rate were continued) would be *more than $8 million*.[5] And these cost of service results do not include the subsidies and foregone revenues that the current GFCP/VEPI Contracts force on PGW's Gas Cost Rate ("GCR") customers. The evidence shows that this amounts to *another* $3.6 million, for a total subsidy to GFCP/VEPI of *$11.8 million*.[6]

Even if the Commission were to conclude that GFCP/VEPI should not receive a full allocation of distribution costs based on the volumes of gas that PGW transports on its behalf, the

---

[4] $0.13 is the difference between $0.21 and $0.08. Multiplying $0.13 by the by the annual units (13,373,288, PGW St. 4R at 7) is $1,738,527.

[5] The product of multiplying Ms. Heppenstall's updated rate ($0.698, PGW St. 4SR at 3), by the annual units (13,373,288, PGW St. 4R at 7) is $9,334,555. Reducing that amount by the amount paid by GFCP/VEPI ($1.1 million, GFCP/VEPI Statement JC-1 at 26) leaves $8.2 million in costs that need to be paid by others.

[6] *See* infra note 177.

cost results would still be far above the claimed "floor" that GFCP/VEPI cynically put forth. The below table shows the cost-based rate that would be produced if the distribution system allocation was reduced so that GFCP/VEPI were allocated only a percentage of distribution system costs:

% of costs	$ per Dth
0%	$0.212
25%	$0.33[7]
50%	$0.46[8]
75%	$0.58[9]
100%	$0.698[10]

PGW submits that forcing PGW's remaining customers to provide massive subsidies to pay for the cost to serve GFCP/VEPI is not in the public interest. GFCP and VEPI are both for-profit entities that are owned by a foreign private equity firm.[11] The evidence in the record establishes that GFCP/VEPI could, if they choose to, modify their accounting practices and assign all or a portion of the tens of millions of dollars Gray's Ferry makes each year in selling the electricity it generates through its gas-powered combined heat and power (electricity) plant (none of which is allocated to VEPI customers today) and avoid or substantially mitigate any rate

---

[7] The cost of service under Mr. Crist's analysis can be calculated multiplying Mr. Crist's rate ($0.212, GFCP/VEPI Statement JC-1 at 17) by the annual units (13,373,288, PGW St. 4R at 7) for the resulting cost of service of $2,835,137. That amount is less than the amount in Mr. Crist's surrebuttal testimony ($2,839,000). GFCP/VEPI Statement JC-1 at 17.

The difference between the costs in Mr. Crist's analysis ($2,835,137 – .212 x 13,373,288 Dth) and the cost in Ms. Heppenstall's analysis ($9,334,555, as noted above) is $6,499,000. Adding $1,624,854 ($6,499,000 times 25%) to Mr. Crist's number ($2,835,137,) results in a total cost of service of $4,459,991.55. Diving that number by the annual units (13,373,288, PGW St. 4R at 7) results in a cost-based rate of $0.33.

[8] The difference between the costs in Mr. Crist's analysis ($2,835,137) and the cost in Ms. Heppenstall's analysis is $6,499,000. Adding $3,249,709 ($6,499,000 times 50%) to Mr. Crist's number ($2,835,137) results in a total cost of service of $6,084,846.04. Dividing that number by the annual units (13,373,288, PGW St. 4R at 7) results in a cost-based rate of $0.46.

[9] The difference between the costs in Mr. Crist's analysis ($2,835,137) and the cost in Ms. Heppenstall's analysis is $6,499,000. Adding $4,874,563.48 ($6,499,000 times 75%) to Mr. Crist's number ($2,835,137) results in a total cost of service of $7,709,700. Diving that number by the annual units (13,373,288, PGW St. 4R at 7) results in a cost-based rate of $0.58.

[10] PGW Brief at 12, 44–48.

[11] PGW St. 1R at 3–4; PGW St. 5R at 4.

increase that might result from requiring GFCP/VEPI to pay just and reasonable rates.[12] This would have the added benefit of enhancing the competitiveness of VEPI.[13] Since the electricity is generated as part of the process of producing steam, which is in turn sold to VEPI to serve VEPI's 230 non-residential customers, it is neither unreasonable nor illogical to do so. After all, since the production of steam is simply a "waste" byproduct of GFCP/VEPI's main interest—producing electricity for sale at substantial profits—the "cost" of the steam is completely at the discretion of GFCP/VEPI. But rather than considering this option, GFCP/VEPI want PGW's other gas customers to subsidize the generation of electricity by GFCP and the sale of steam by VEPI—for the sole purpose of returning maximum profits to its private equity owner. To be clear, the fact that an otherwise reasonable and necessary rate increase might raise prices at the secondary level is *not* a valid legal or reasonable basis for ignoring the mandates of the Public Utility Code, as GFCP/VEPI suggest.[14] The Commission has ruled that any arguments about "ability to pay" must be based upon substantial evidence, of which there is none in this record.[15] The record does show that if GFCP/VEPI are actually concerned about this, it is within their power to mitigate or eliminate any such increase altogether.

---

[12] PGW witness Lacey showed that, collectively, GFCP/VEPI chooses to account for revenues and expenses separately. Steam customers pay for the fuel to power Grays Ferry but no corresponding Grays Ferry revenues from electricity sales (from electricity used to produce the steam) are used by Vicinity to offset the costs to steam ratepayers. PGW St. 5R at 6–14. GFCP makes substantial profits through the sale of electricity it produces as part of the dual process of electricity/steam production. Mr. Lacey explained that, according to forms filed with the FERC, Grays Ferry earned $41.6 million in electricity revenues in 2021. Yet, none of those profits were used to offset the cost of steam to VEPI steam customers. *Id.* If Vicinity reallocated its accounting and corrected this flaw, its steam customers could see an overall rate decrease, even if the gas transportation rate from PGW increased.

[13] *Id.*

[14] Customers of PGW have an obligation to pay bills when due. 52 Pa. Code § 56.116; *see*, *e.g.*, *Mill v. Pa. PUC*, 447 A.2d 1100, 1102 (Pa. Commw. Ct. 1982).

[15] *Pa. PUC v. Columbia Gas*, Docket No. R-2020-3018835, 2021 WL 757073, at *33 (Opinion and Order entered Feb. 19, 2021) (citing *Lloyd v. Pa. PUC*, 904 A.2d 1010, 1020 (Pa. Commw. Ct. 2006)) ("While we acknowledge the gravity of these unemployment statistics, it has not been demonstrated in this case with substantial evidence or explanation that the impact of any rate increase on unemployed customers will lead to harm that outweighs all other valid ratemaking concerns 'especially the polestar – cost of providing service.'")

Second, GFCP/VEPI are using the threat of a bypass to justify a demand that they receive drastically below-cost rates. But the record is devoid of evidence of:

- The cost of any bypass alternative;
- The time period over which a bypass alternative could be constructed;
- Whether the only available interstate pipeline has either the technical capacity or the inclination to permit an existing natural gas distribution system customer to directly connect to Vicinity's facilities;
- Whether it is in fact possible to receive all the local state and federal authorizations and permits Vicinity would need to effectuate the construction of a gas line through the middle of a major urban area;
- Whether it is in fact possible to obtain any needed rights of way or easements from private residential and commercial property owners who would be affected;
- Whether GFCP/VEPI would undertake to spend the tens of millions of dollars that will undoubtedly be necessary to create their own pipeline when they have announced publicly their intent to replace a large portion of their gas use with electricity by 2030; and
- Whether bypass would eliminate the need to determine rates for GFCP/VEPI since, even if they did bypass, they would still need to rely on PGW's system to obtain capacity for some 21,000 Dth/Day that they are short of their peak demand (which they receive through their present ARS service).

Nonetheless, GFCP/VEPI insist that the Commission must award them a rate as low as their current, twenty-five-year-old, non-PUC approved rate or, they are "almost certain"[16] to bypass.

PGW respectfully suggests that the Commission should resist this extortion. As detailed above, GFCP/VEPI remit just $1.1 million in base rate revenues annually, which is millions of dollars less than the base rate cost they impose. In addition, GFCP/VEPI impose on PGW GCR customers some $3.6 million annually in additional subsidies and lost revenue opportunities,[17] all of which would end if GFCP/VEPI did indeed leave the system. Moreover, the facilities that are now used to serve GFCP/VEPI can be used to serve other customers (in fact, PGW is already in talks in which such deployment is being considered).[18] It is certainly not clear, therefore, that the costs of keeping GFCP/VEPI on the distribution system would necessarily outweigh the benefits. In any event, all of the Parties except GFCP/VEPI agree that they have simply not made out a case that bypass is actually a real threat rather than a mere possibility. There is not even enough information to justify a "bypass flex rate" as offered by the OSBA. In PGW's view, rates for GFCP/VEPI should be based on sound public utility principles of which cost based rates are the "polestar", and GFCP/VEPI's attempts to blackmail this Commission and PGW's customers into charging unjust and unreasonable rates that are unreasonably discriminatory to other customers should be rejected. If bypass ever becomes a viable issue rather than an empty threat GFCP/VEPI can renew discussions with PGW about a customized rate.

Finally, it should not be overlooked that GFCP/VEPI have stubbornly refused to be treated like PGW's other firm service customers by, among other things, helping to contribute to the cost

---

16 GFCP/VEPI Brief at 33.

17 *See* infra note 177; PGW Brief at 23 (citing PGW St. 2R at 13, Ex. RER-2).

18 *See* PGW St. 1R at 22; Tr. 149–50.

of low-income assistance programs. GFCP/VEPI are demanding firm service from PGW, but are unwilling to pay any surcharges, including PGW's Universal Service and Energy Conservation Surcharge ("USEC") that otherwise applies to all other PGW firm customers.[19] The record does not justify such special treatment. They could avoid surcharges, if they were interruptible customers (since Rate IT customers are not required to remit any surcharges). But, GFCP/VEPI have adamantly refused to consider service under Rate IT (in an apparent attempt to enhance their demand for a special rate). The question is on what basis should these customers be exempt from the responsibility to assist in covering the cost of providing energy assistance to the thousands of PGW low-income customers who depend on PGW's Customer Responsibility Program to keep their homes warm in the winter? On what possible basis should GFCP/VEPI continue to be exempt after avoiding their responsibility for the last *twenty-five years*? This is just one of many reasons why GFCP/VEPI's complaint and their many demands should be rejected.

II. STATEMENT OF THE CASE

PGW fully addressed the Statement of the Case in its Main Brief.

III. SUMMARY OF ARGUMENT

PGW fully addressed the Summary of Argument in its Main Brief and the above Introduction.

IV. LEGAL STANDARDS

PGW argued that, as the proponent of special rates for themselves, GFCP/VEPI have the burden of proof in this matter pursuant to 66 Pa. C.S. § 332(a).[20] GFCP/VEPI also have the burden

---

[19] *See* OSBA Statement No. 1-R, Ex. RDK-2 (OSBA-Complainants-I-2).

[20] PGW Brief at 13–14.

of proving that PGW violated the Public Utility Code, since this is a complaint proceeding initiated by GFCP/VEPI against PGW.

GFCP/VEPI agreed that pursuant to 66 Pa. C.S. § 332(a), they have the burden of proving that PGW's conduct constituted a violation of the Public Utility Code.[21] But they argued that PGW has the burden regarding proving that a "proposed rate hike" is just and reasonable.[22] **That argument is incorrect**, since 66 Pa. C.S. § 315(a) is not implicated in customer complaint proceeding,[23] such as this case. That argument is also misleading, since PGW argued that existing rates should apply[24] and GFCP/VEPI are the ones who are seeking special rates (that depart from PGW's tariffed rates). For example, GFCP/VEPI placed emphasis on the *PPL* case,[25] which was a base rate proceeding (as opposed to a complaint proceeding).[26] But there, the Commission held just the opposite – that the burden of proving the special rates was still on the parties (PPLICA and Donsco) seeking the special rate.[27]

It should be clear therefore, that the burden of proof is on GFCP/VEPI to prove that the challenged rates and Tariff provisions are no longer just and reasonable.[28] PGW submits that

---

21 GFCP/VEPI Brief at 10–12.

22 *Id.* at 11.

23 *Pa. PUC v. Duquesne Light Co.*, R-2021-3024750, 2021 PA. PUC LEXIS 604, at *70 (Opinion and Order entered Dec. 16, 2021); *see also Zucker v. Pa. PUC*, 401 A.2d 1377 (Pa. Commw. Ct. 1979) (which involved a customer challenge to an existing rate that had been approved by the Commission in a prior general rate increase case five years earlier and that was not proposed to change in the subsequent tariff filing).

24 PGW Brief at 62–69.

25 GFCP/VEPI Brief at 28–30.

26 *See Pa. PUC v. PPL Elec. Utils. Corp.*, R-2010-2161694, 2012 Pa. PUC LEXIS 989, at *2 (Opinion and Order entered June 21, 2012).

27 *Id.* at *12–14 ("Although PPL had the burden of proof in the underlying rate proceeding, PPLICA has proposed a special rate for Donsco that is outside the scope of PPL's original rate increase request. . . . Accordingly, as the proponent of a rule or order, PPLICA bears the burden of proof in this proceeding pursuant to Section 332(a) of the Code, 66 Pa. C.S. § 332(a)."); *see also* PGW Brief at 39–40.

28 PGW Brief at 17–18; GFCP/VEPI Brief at 15; *see also Cup v. Pa. PUC*, 556 A.2d 470 (Pa. Commw. Ct. 1989) (holding that where the complaint involves an existing rate, the customer has the burden to prove that the charge is no longer reasonable).

GFCP/VEPI did not carry their very heavy burden to prove that facts and circumstances have changed so drastically as to render unreasonable an existing, Commission approved tariff provision.[29] Nor did GFCP/VEPI show that the existing tariffed rates under Rate IT or Rate GS are unreasonable.[30] Regarding the difference between tariffed rates and the cost of service results, PGW 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.[31] That is not an unusual result.[32] 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.[33]

Even though GFCP/VEPI agreed that pursuant to 66 Pa. C.S. § 332(a), they have the burden of proving that PGW's conduct constituted a violation of the Public Utility Code,[34] they went on to allege that they met that burden by allegedly showing that PGW provided "inadequate service" during negotiations with GFCP/VEPI.[35] **That is nonsense**. PGW must adhere to its tariff.[36] Anticipating the need for negotiated rates, the record shows that PGW made a non-binding proposal to GFCP/VEPI in February 2021.[37] That proposal contained a rate ($0.75 per Dth) that (a) was below any tariffed rate for transportation service,[38] (b) made clear that PGW was willing

---

29 *See* PGW Brief at 19–27.

30 PGW Brief at 62–69.

31 PGW St. 1R at 18.

32 *Id.*

33 *Id.*

34 GFCP/VEPI Brief at 10–12.

35 *Id.* at 11, 25

36 PGW Brief at 17; 66 Pa. C.S. § 1303.

37 PGW Brief at 4, 44.

38 *Id.* at 44 (Table 1).

to provide additional services—such as Standby Service—so that GFCP/VEPI's service would be sufficiently "firm,"[39] and (c) would constitute just and reasonable rates (if accepted/adopted).[40] The non-binding proposal was based on Rate IT[41] and was a reasonable starting point for discussion with the GFCP/VEPI—pursuant to PGW's perceived obligation to attempt to provide the most suitable tariff rate available to a customer requesting service in its service territory.[42] GFCP/VEPI rejected that non-binding proposal in June 2021 and filed this Formal Complaint in October 2021.[43] Notably, other than mentioning this issue in the Legal Standard portion of their Brief, GFCP/VEPI did not develop or advance this allegation in their Brief.

Nothing in the record shows that PGW's 2021 non-binding proposal constituted inadequate service, was unreasonable, or was discriminatory to GFCP/VEPI. PGW attempted to assist GFCP/VEPI in selecting the rate schedule to be applied at the end of PGW's Gas Transportation Service – Rate GTS-Firm Service ("Rate GTS-F") and the 1996 Contracts.[44] That PGW did not offer what GFCP/VEPI wanted cannot be inadequate service. The mere offering of a "negotiated" rate (that is lower than the tariffed rate)—and offered under tariff provisions that authorize

---

[39] PGW St. 1R at 17.

[40] PGW Brief at 44, n.211 (noting that OCA examined the February 2021 rate proposal by PGW and found that it was reasonable); *see also* OCA St. 1R at 3–4, 7.

[41] PGW Brief at 63–65.

[42] PGW St. 1R at 10.

[43] PGW Brief, Appx. A, ¶ 24; PGW St. 1R at 10.

[44] PGW identified Rate IT as being advantageous to GFCP/VEPI. "PGW's suggestion to [GFCP/VEPI], based upon the lowest cost to them, has consistently been that service under Rate IT with a subscription to a standby service provides the firm service that they request." PGW St. 3R at 4. Further, PGW made this proposal under the assumption that GFCP/VEPI are eligible under the terms of the Rate IT. *Id.* That assumption was confirmed during the cross examination of Mr. Crist when he acknowledged that GFCP/VEPI have dual-fuel facilities that enables them to withstand some interruptions by burning oil. Tr. 76–78. However, as noted above, Mr. Crist did not know how much of the GFCP/VEPI load had dual-fuel capabilities. Consistent with said assumption, PGW's initial offer to GFCP/VEPI was that they would be served on the lowest priced Interruptible Transportation rate class with additional provisions—such as standby service—so that GFCP/VEPI would be able to receive the level of firmness they desired. PGW intended to utilize its Rule 2.3 customized rate power to modify the existing provisions of the applicable rate schedule to try to accommodate GFCP/VEPI's needs. *See* PGW St. 1R at 11.

negotiated rates—does not constitute "unreasonable service." Holding otherwise would have a chilling effect on PGW's and other utilities' willingness to attempt to use Commission-authorized provisions that allow negotiated rates.

V. GFCP/VEPI CURRENT USE OF THE PGW SYSTEM

A. GFCP/VEPI's Payment for Distribution Service

In the Argument section of their Main Brief, GFCP/VEPI challenge PGW's inclusion of costs associated with Alternative Receipt Service ("ARS") into PGW's cost of service study. In its Main Brief, PGW described in detail how the record clearly demonstrates that, contrary to GFCP/VEPI's assertions, ARS could not be provided without the use of PGW's distribution system.[45] OCA agreed in its Main Brief and stated that GFCP/VEPI witness Crist "ignores the costs that [ARS] has and its relation to the integrated PGW system and therefore is mistaken in his belief that only the costs associated with the four-mile line should be assigned to the cost of service study."[46]

GFCP/VEPI's argument that the cost of service study should not allocate any distribution system costs associated with ARS is narrowly focused on how gas physically flows to GFCP/VEPI.[47] To be clear, PGW is not contending—despite GFCP/VEPI's repeated assertions to the contrary—that a portion of the costs of PGW's distribution system should be allocated to GFCP/VEPI based on the claim that the majority of the gas delivered to them somehow flows through the entirety of PGW's distribution system.[48] But the Naphtha Line and the Distribution

---

[45] PGW Brief at 24–26, 44–48.

[46] OCA Brief at 9–10 (citing OCA St. 1R at 5–6).

[47] *See e.g.*, GFCP/VEPI Brief at 18 ("First, at no time does any gas, including ARS gas, that [GFCP/VEPI] use[] . . . use any path other than the four mile, high pressure pipeline. So, from a physical movement of gas perspective, [GFCP/VEPI] do[] not 'use' the low pressure PGW system.").

[48] *See* GFCP/VEPI Brief at 21–22. PGW's position is *not* based on the claim that all GFCP/VEPI gas travels through the entire distribution system. While only about 2% of the gas delivered to GFCP/VEPI flows through the

Extension (i.e., what GFCP/VEPI insists on calling the "four mile line") that are used to provide service to GFCP/VEPI *are* part of PGW's distribution system, and therefore, for this reason alone, their cost allocation should reflect the overall distribution system costs.[49] OCA agreed and explained in its Main Brief:

> While [GFCP/VEPI] utilizes the system in a unique way that may differ from other customers, this uniqueness is not dispositive as to its reliance on the whole of the PGW system. [GFCP/VEPI] is a customer of PGW. Like all PGW customers, [GFCP/VEPI] relies on the entirety of PGW's distribution assets to receive and utilize natural gas service. As a PGW customer, [GFCP/VEPI]'s rates should be set in a manner that reflects its impact on PGW's operations.[50]

Moreover, GFCP/VEPI are reliant on ARS to meet their winter peak; without it GFCP/VEPI would not be able to receive all the gas that they need, as the TETCO Philadelphia Lateral is very constrained. Because of their reliance on ARS service GFCP/VEPI should be allocated a portion of distribution system costs (in proportion to its ARS use). Again, PGW is *not* suggesting that ARS gas somehow flows through PGW's distribution system; but PGW's ability to use some of its capacity on the Philadelphia Lateral is directly dependent on PGW's ability to use its distribution system to move gas delivered by GFCP/VEPI at the Skippack Lateral and deliver this replacement gas to customers in South Philadelphia. As PGW witness Reeves explained, "[GFCP/VEPI's] approach does not give appropriate consideration to how ARS

---

rest of PGW's distributions system into the PGW Distribution Extension and then to GFCP/VEPI (*See* GFCP/VEPI Statement JC-1 at 22), the Naphtha Line and the Distribution Extension themselves are part of PGW's distribution system. Moreover, PGW relies on its distribution system to enable it to provide ARS Service. When asked on cross-examination whether Ms. Heppenstall was under the impression that ARS gas actually flowed through PGW's distribution system, rather than being facilitated by the distribution system, she answered "No, that's not what I am saying – for perhaps the bundled sales service [this is true] . . . all that ARS gas and the regular gas go through the four-mile transmission line. However that ARS gas is not available, would not be available to Grays Ferry, without the rest of the distribution system that PGW has." Tr. 184–85. Despite this clear testimony, GFCP/VEPI chose to mischaracterize Ms. Heppenstall's and PGW's position anyway.

[49] PGW Brief at 46–48.

[50] OCA Brief at 10.

impacts the gas flows on PGW's distribution system to PGW customers in South Philadelphia. . . ."[51] Indeed, Mr. Crist himself admitted that ARS was dependent on the use of PGW's distribution system:

> When ARS is in use, PGW's volume of gas received in South Philadelphia is reduced and the volume they receive into North Philadelphia is increased by the identical amount. **As PGW has multiple gas receipt points on multiple pipelines around the perimeter of the City, and significant LNG capabilities in both North and South Philadelphia, . . . the use of ARS does not noticeably impact their ability to route gas to customers in South Philadelphia.**[52]

In an attempt to discredit the cost allocation approach used by PGW (and OCA), GFCP/VEPI make the unsubstantiated allegation that PGW "directed" Ms. Heppenstall to assign distribution system costs to GFCP/VEPI in order to increase PGW's revenues from GFCP/VEPI and "subsidize" PGW's other customers.[53] In fact, Ms. Heppenstall testified to the contrary during cross examination:

> 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**.[54]

---

51 PGW St. 2FSR at 1–2.

52 PGW Hearing Ex. 2, Answer to PGW Set VIII No. 13 (Crist Respondent) (emphasis added).

53 GFCP/VEPI Brief at 19.

54 Tr. 184–85 (emphasis added).

Ms. Heppenstall's cost of service study, therefore, allocates costs in the way it does not because of any alleged direction from her client but based on "actual facilities usage and operational realities, . . . which is the foundation for just and reasonable rates" according to GFCP/VEPI witness Crist.[55]

The fact that OCA witness Mierzwa also assigned a portion of PGW's distribution system costs to GFCP/VEPI also contradicts GFCP/VEPI's groundless assertion that Ms. Heppenstall assigned distribution system costs to GFCP/VEPI at the direction of PGW.[56] OCA properly concluded that GFCP/VEPI's "proposals bear no relationship to the full cost of service that [GFCP/VEPI] imposes on the system."[57]

OSBA appeared to reject the conclusions of Ms. Heppenstall and Mr. Mierzwa claiming, again, that the ARS service is merely a "swap" that does not utilize PGW's distribution system.[58] Frankly, OSBA's position appears to be based upon a failure to understand how PGW actually provides ARS. In response to OSBA witness Knecht's position in his testimony, Mr. Reeves responded and explained Mr. Knecht's error:

> **Q. WHAT DOES YOUR DESCRIPTION OF THE GAS FLOWS INVOLVED IN IMPLEMENTING ARS SUGGEST ABOUT MR. KNECHT'S SIMPLIFIED ANALOGY ON PAGE 2, LINES 19–26, CONCERNING HYPOTHETICAL CUSTOMERS AT GATE 060 AND GATE 034?**
>
> A. I understand Mr. Knecht's point, but I believe he has overlooked key facts in providing his example. In contrast, in Mr. Knecht's hypothetical, an industrial customer with load in Northeast Philadelphia would not be purchasing capacity on the Philadelphia Lateral to deliver to its meter. That would be far too expensive, and there would be no way to transport the gas to the Industrial

---

55 GFCP/VEPI Statement JC-1SR at 15 (testifying that "[i]n a legitimate COSS, actual facilities usage and operational realities drive allocation of facility costs, which is the foundation for just and reasonable rates.").

56 *See* OCA Brief at 10–11; OCA St. 1R at 6, Ex. JDM-2; OCA St. 1S at 1–2., Ex. JDM-3.

57 OCA Brief at 11.

58 OSBA Brief at 10, 14, 18.

> Customer's Northeast Philadelphia location other than using PGW's distribution system. **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.[59]

Despite having the opportunity to do so,[60] Mr. Knecht never responded to this testimony.

GFCP/VEPI also criticized Ms. Heppenstall on the grounds that her cost allocations diverged from prior PGW cost of service studies that she and other PGW consultants undertook and did not "directly assign" costs. But Ms. Heppenstall explained that, in past cases GFCP/VEPI's rates were subject to the 1996 Contracts.[61] For this reason, PGW witnesses simply directly assigned costs to GFCP/VEPI and did not address the effect of ARS on costs. This, Ms. Heppenstall testified, was understandable because GFCP/VEPI were under contract rates and there was no need to conduct such a detailed analysis.[62] Therefore, the cost of service study PGW entered into the record in this case "is the first cost study presented which will actually affect the rates that GFCP/VEPI will be required to pay if the rate is to be established pursuant to cost of service principles."[63]

With respect to directly assigning costs, Ms. Heppenstall explained that her cost of service study did not directly assign costs because, since the costs of the Four Mile Line were contributed by GFCP/VEPI pursuant to the 1996 Contracts there were no costs to assign.[64] Ms. Heppenstall

---

59 PGW St. 2FSR at 2–3 (emphasis added).

60 Tr. 43.

61 PGW St. 4SR at 3–4.

62 *Id.*

63 *Id.* at 4.

64 *Id.* at 2 ("However, as the 4-miles of main that directly service GFCP/VEPI are contributed capital, PGW maintains that there are no costs to directly assign. Stated another way, the capital costs directly assigned for service along the 4-mile line are $0 and therefore not included in the cost of service study.").

testified that, in light of GFCP/VEPI's either direct (bundled sales service) or indirect (ARS Service) use of PGW's distribution system her approach of allocating a portion of the distribution system to GFCP/VEPI was more reasonable.[65] And, as noted above, OCA agreed.

B. GFCP/VEPI's Operation and Maintenance Expense

PGW fully addressed GFCP/VEPI's Operation and Maintenance expense under the 1996 Contracts and Rate GTS-F in its Main Brief.[66] GFCP/VEPI contend that PGW cannot recover operations and maintenance expenses from GFCP/VEPI in the future outside of PGW's Commission-approved tariffs.[67] As stated in PGW's Main Brief, PGW agrees that there would be no need for a separate operations and maintenance fee as those costs would be recovered through the transportation charges, as they are for all other customers.[68]

C. GFCP/VEPI's Payment for Capacity Release

PGW fully addressed GFCP/VEPI's payment for capacity release under the 1996 Contracts and Rate GTS-F in its Main Brief.[69] But GFCP/VEPI now claim that their purchases of summer capacity under the 1996 Contracts was somehow a "subsidy" that GFCP/VEPI paid to PGW. This is simply untrue.

First, the release of capacity to GFCP/VEPI in the summer was a term of the 1996 Contracts, which will end shortly. GFCP/VEPI witness Crist testified that GFCP/VEPI obtained

---

[65] *Id.* GFCP/VEPI also took a completely unfair and unsupported shot at Ms. Heppenstall claiming that she had limited experience with natural gas companies. GFCP/VEPI Brief at 19, n.4. In fact, Ms. Heppenstall has appeared as the expert cost of service witness for PGW in its prior rate case and her firm, Gannett Fleming, have participated in literally scores of natural gas cases. *See* PGW St. 4R at 3. Moreover, Ms. Heppenstall has submitted class cost of service studies in scores of cases. *See id.*, Appx. A. Her cost of service experience is far greater that Mr. Crist, who is a former gas company marketing executive. *See* GFCP/VEPI Statement JC-1, Ex. JC-1.2.

[66] *See* PGW Brief at 21–22.

[67] GFCP/VEPI Brief at 20.

[68] PGW Brief at 61, 69; *see also* PGW St. 1R at 21.

[69] PGW Brief at 22–24, 48–51

additional capacity on its own behalf and, during rate negotiations, explained that they no longer require PGW's release capacity in the summer.[70] In response, 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.[71]

Not content with PGW's representation that it will not attempt to continue this provision, GFCP/VEPI nonetheless claims that PGW's willingness to forgo any future requirement that GFCP/VEPI purchase summer capacity is an "admission that PGW's claims that ratepayers have been subsidizing [GFCP/VEPI] are simply untrue."[72] This is self-serving nonsense.

First, the record unequivocally demonstrates that PGW's customers subsidized GFCP/VEPI's payment for capacity release in the summer—not the other way around. As PGW explained in its Main Brief, PGW must purchase this capacity—and charge those costs to GCR customers—at tariffed rates.[73] GFCP/VEPI, however, pay the charge set forth in the 1996 Contracts for capacity release instead of the tariffed rate that PGW GCR customers must pay.[74] The difference between the cost incurred by PGW for that capacity and the rate charged to GFCP/VEPI has been between $1,00,000 and $1,700,000 for the past three years.[75]

Moreover, even if this part of the 1996 Contract somehow represented a "subsidy" that GFCP/VEPI paid to PGW (which it does not), this is only a piece of the overall present

---

70 GFCP/VEPI Statement JC-1 at 15–16.

71 PGW St. 1R at 23.

72 GFCP/VEPI Brief at 21.

73 PGW Brief at 23–24.

74 *Id.*; *see also* PGW St. 2R at 13.

75 PGW St. 2R at 13, Ex. RER-2. That, based on average market prices, GFCP/VEPI could have perhaps paid less for this capacity is of no moment. GCR ratepayers still paid much more for this capacity than GFCP/VEPI remitted. Absent this arrangement, it is possible that PGW might have been able to return that capacity to the pipeline or otherwise dispose of it at the prices that GCR customers were forced to pay. And GFCP/VEPI's claim conveniently neglected to detail whether GFCP/VEPI were able to resell the capacity (as they were entitled to do) at prices higher than they paid for it, thereby incurring a profit from the arrangement.

arrangement with GFCP/VEPI. As detailed elsewhere in this Brief, the total subsidy that PGW customers were forced to provide was over *$11.8 million annually*, several times higher than Mr. Crist's bogus calculation of "subsidy." And, most importantly, this argument is about a soon to be discontinued agreement and is thus moot.

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

PGW fully addressed in its Main Brief and previously in this Reply Brief the allocation of costs associated with the use of PGW's distribution system to provide ARS as well as the lost capacity revenues for PGW's GCR customers created by ARS.[76] In their Main Brief, however, GFCP/VEPI distort the dispute by contending that "ARS is only necessary because PGW refuses to release to [GFCP/VEPI] the underlying interstate pipeline capacity that it uses to provide ARS."[77] PGW does not "refuse" to release capacity to GFCP/VEPI because PGW cannot release that capacity. The record shows that PGW certainly does not have excess capacity on the Philadelphia Lateral.

First, PGW is bound by the terms of the 1996 Contracts and Rate GTS-F, which do not require capacity release during the winter months but permit GFCP/VEPI to obtain capacity via ARS.[78] This does not provide meaningful monetary benefit to PGW's customers.[79] The record actually demonstrates that ARS creates a lost revenue opportunity for PGW's GCR customers of between $690,000 and $1.7 million annually.[80]

---

[76] PGW Brief at 24–26, 44–48.

[77] GFCP/VEPI Brief at 21.

[78] *See* PGW Brief at 49–50

[79] *See id.* at 25–26.

[80] PGW St. 2R, Ex. RER-2; PGW St. 2SR at 4 (noting that "the present ARS arrangement, in which GFCP/VEPI receives up to 21,000 Dth/day for approximately $55,000/year is grossly subsidized").

Second, as the record clearly shows, PGW cannot permanently release capacity to GFCP/VEPI on the Philadelphia Lateral at the level required by GFCP/VEPI "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)."[81] OCA agreed, stating that "because PGW does not hold more firm capacity than it would need on its design day, PGW should not be required to release additional capacity to [GFCP/VEPI]."[82] As with most of their allegations, GFCP/VEPI's claims here just do not hold up.

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

PGW fully addressed GFCP/VEPI's management of balancing and compliance with TETCO tariff requirements in its Main Brief.[83] GFCP/VEPI are incorrect when they criticize the provision in PGW's proposal for post-2022 service as somehow different than what was provided for in the 1996 Contracts, claiming that the 1996 Contracts "*require*[] [GFCP/VEPI] to balance its service with TETCO."[84] This statement is untrue. As PGW explained in its Main Brief, under the 1996 Contracts, PGW has the *option* to balance the gas that GFCP/VEPI's supplier delivers to PGW's city gate, but currently PGW does not do so.[85]

Additionally, balancing provisions will be necessary for PGW to serve GFCP/VEPI going forward. The record clearly demonstrates that PGW intends to serve new customers off the

---

81 PGW St. 2SR at 2–3; *see also* PGW St. 2SR, Ex. RER-1SR.

82 OCA Brief at 12.

83 PGW Brief at 26.

84 GFCP/VEPI Brief at 22 (emphasis added).

85 PGW Brief at 26 (citing PGW St. 1R at 16–17, 22).

Naphtha Line and the Distribution Extension.[86] Since these are PGW's facilities, the Company has every right—even a duty—to use them in the most efficient manner possible. As a result, PGW proposed balancing provisions in order to ensure reliability and avoid imposing excessive costs when additional customers take service from the Naphtha Line and Distribution Extension in the future.[87]

VI. RATE SETTING FOR GFCP/VEPI

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

Service pursuant to PGW's existing Tariff, Rate GTS-F, is no longer available to GFCP/VEPI after the expiration of the legacy 1996 Contracts on December 31, 2022.[88] All the Parties—except GFCP/VEPI—agree with this position.

GFCP/VEPI argued that Rate GTS-F is available to <u>any PGW customer</u> who was eligible for Rate GTS-F on September 1, 2003.[89] This is simply wrong**.** Their argument ignores the plain meaning of the phrases "pursuant to" and "currently valid." As written, service under Rate GTS-F must be in conformity with ("pursuant to") a service contract that was in existence on *September 1, 2003* ("currently valid"). No service contract in existence <u>after</u> September 1, 2003, can comply with the plain language of that rate schedule. It would be an absurd result for each and every customer eligible for Rate GTS-F to remain eligible for service under Rate GTS-F after the expiration of their <u>then-existing</u> service contract.

---

86 PGW St. 1R at 22; Tr. 149–50.

87 PGW St. 1R at 29–20.

88 PGW Brief at 27–30.

89 GFCP/VEPI Brief at 23–24.

But even if Rate GTS-F was still somehow available it would be for naught because Rate GTS-F requires individual service agreements.[90] The Tariff itself does not contain a rate for transportation service.[91] Nor does it provide for an ARS-type service.[92] So, those rates and services are within PGW's lawful discretion in the negotiation of common, legal, contract terms.[93]

That being said, GFCP/VEPI stated that it "would be far easier to modify the existing Rate [GTS-F] than to create a new rate class from whole cloth."[94] They did not, however, explain or describe the changes that they seek to Rate GTS-F. Moreover, to extend Rate GTS-F would require a finding that this existing Tariff provision which was approved by the PUC in 2003 and in its Tariff since then, was now somehow unjust and unreasonable. But GFCP/VEPI have put on absolutely no evidence that would support such a finding. Accordingly, this cryptic statement lacks support in the record and should be disregarded.

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

The only way in which GFCP/VEPI could continue to receive service under Rate GTS-F would be for the Commission to *order* PGW to extend the existing or enter into a new contract and to decide that the new contract qualifies for service under Rate GTS-F. But there is no legal basis for the Commission to simply order PGW to extend the contract or duration (term) of the legacy 1996 Contracts.[95] OSBA agreed and argued that continuation of the 1996 Contracts "would be inconsistent with [PGW's] existing tariff and with today's regulatory environment."[96]

---

90 PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 118.

91 PGW Brief at 1–2; PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 118.

92 PGW Brief at 59; PGW St. 1R at 18–23; PGW St. 3R at 6; PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 118–23.

93 *See* PGW Brief at 33–34.

94 GFCP/VEPI Brief at 41; *see also* GFCP/VEPI Brief at 42.

95 PGW Brief at 30–34.

96 OSBA Brief at 12.

No Party appears to dispute that the 1996 Contracts will automatically end upon expiration of their agreed-upon duration (of twenty-five years).[97] To avoid this fact, however, GFCP/VEPI argued that the Commission can "extend" the duration (term) of the 1996 Contracts for "some reasonable period" (and then, apparently totally revise virtually all the rate and other material provisions in the contract, although this is not spelled out).[98]

In making this demand, GFCP/VEPI appear to make two arguments. They argue either that the PUC has the power to order PGW to enter into a new contract to remedy "unreasonable service or rates," or that the PUC can use its powers under Section 508 of the Code to "reform" the existing contract by extending the term and changing virtually all the rate provisions.[99]

But, while the PUC certainly has the authority to order a utility to improve its service under Section 1501 or to begin to charge reasonable rates under Section 1301, that does not extend to simply ordering a utility to enter into a contract that the utility does not believe is in its best interests or the best interests of its ratepayers. Tellingly, GFCP/VEPI's Brief is devoid of a single citation to any PUC or appellate case supporting that proposition. To the contrary, as a general matter, the courts and the PUC have ruled that entering into a contract is a decision of utility management, that "utility management is in the hands of the utility and the Commission may not interfere with lawful management decisions . . . unless, on the basis of record evidence, it finds an abuse of the utility's managerial discretion."[100] GFCP/VEPI have presented no evidence that PGW abused its

---

[97] GFCP/VEPI Statement JC-1 at 5 ("The contract has an expiration date of 12/31/2022 . . . ."); PGW St. 1R at 8; Formal Complaint ¶ 7.

[98] GFCP/VEPI Brief at 27–28.

[99] GFCP/VEPI Brief at 26–27.

[100] *Nat'l Fuel Gas Distrib. Corp. v. Pa. PUC*, 464 A.2d 546, 559 (Pa. Commw. Ct. 1983); *see also ALLTEL Pennsylvania, Inc. v. West Penn Power Company*, Docket No. C-00992532, 2000 Pa. PUC LEXIS 88 (Initial Decision dated Sept. 26, 2000), *adopted as modified by*, 2001 Pa. PUC LEXIS 27 (Opinion and Order entered July 26, 2001).

discretion by refusing to renew the 1996 Contracts.[101] Indeed, even GFCP/VEPI admit that renewing the contracts on the same terms and conditions would not be in the public interest and instead demands different rates and the elimination of various terms and conditions. Importantly, the Courts have previously ruled that the only authority the Commission has to abrogate or amend an existing utility contract resides in Section 508 of the Code.[102] However, for the following reasons, Section 508 is not available to extend the term of the existing term of the 1996 Contracts and then rewrite virtually all of its terms.

First, and most importantly, the Commission's Section 508 power only extends to existing contracts.[103] The Commission has specifically held that any attempt to apply Section 508 to a contract that has or is going to expire (for the period at issue) is "moot."[104] That is because the Section 508 authority is to "vary, reform, and revise" a contract. The Commission cannot "vary or revise" something that no longer exists.

---

[101] GFCP/VEPI also seem to argue that the (unaccepted) non-binding proposal by PGW constituted "unreasonable service" in violation of the Public Utility Code. First, making a proposal to resolve an issue as to what rate a customer can or should be on has never been found by the PUC to constitute "unreasonable service" since service is the actual provision of the utility service. Moreover, the preliminary offer that PGW made was in fact reasonable. The non-binding offered rate ($0.75 per Dth) plus an arrangement to provide standby service to provide sufficient "firmness" was a reasonable rate (if accepted/adopted). The use of Rate IT as the starting point was reasonable, given that Mr. Crist acknowledged that GFCP/VEPI have dual-fuel facilities that enables them to withstand some interruptions by burning oil. *See* Tr. 76–78. Finally, even if the "offer" was deemed "unreasonable" somehow, the appropriate response from the PUC would be to level a fine for the "unreasonable service," not to grant GFCP/VEPI grossly unreasonable and subsidized rates.

[102] *ARIPPA v. Pa. PUC*, 792 A.2d 636, 662 n.38 (Pa. Commw. Ct. 2002).

[103] *See* PGW Brief at 31, n.143.

[104] *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").

But, just as important, Section 508 does not extend to all aspects of every contract that ever existed. GFCP/VEPI focus on the first sentence of Section 508.[105] They ignore the second sentence which describes the important limitation on the power conferred by Section 508. The second sentence only permits the Commission to "vary, reform, and revise" contractual obligations if it is determined that said obligations "are unjust, unreasonable, inequitable or otherwise contrary or adverse to the public interest and general well-being of the Commonwealth."[106]

The point is that the Commission does not have the authority to vary, reform, or revise the duration (term) of the 1996 Contracts because the result will be undesirable to, or have adverse consequences on a Party such as GFCP/VEPI. Contractual provisions regarding duration (term) of obligations are a legitimate, useful, and common element of Pennsylvania contracts. These provisions encourage the formation of contractual relationships by allowing contracting parties to adjust to changing conditions without the necessity of litigation to end the relationship. "Were the Commission to use the provisions of 66 Pa. C.S. § 508 to alter the Agreements' termination provision it would be usurping management's right to exercise lawful discretion in the negotiation of common, legal, contract terms" and invite other parties contracting with public utilities to avoid negotiations and seek terms directly from the PUC.[107]

In addition, GFCP/VEPI have failed to present evidence or argument that the agreed-upon twenty-five-year duration (term) of the 1996 Contracts is unjust, unreasonable, inequitable, or adverse to the public interest or well-being of the Commonwealth. They have also failed to present

---

105 GFCP/VEPI Brief at 27–28; GFCP/VEPI Brief, Appendix B at ¶ 5.

106 *See* 66 Pa. C.S. § 508 ("Whenever the commission shall determine, after reasonable notice and hearing, upon its own motion or upon complaint, that any such obligations, terms, or conditions are unjust, unreasonable, inequitable, or otherwise contrary or adverse to the public interest and the general well-being of this Commonwealth, the commission shall determine and prescribe, by findings and order, the just, reasonable, and equitable obligations, terms, and conditions of such contract.").

107 *See ALLTEL Pennsylvania, Inc.*, 2000 Pa. PUC LEXIS 88, at *51.

evidence or argument that the way to rectify the situation is an *even longer* duration for the 1996 Contracts. The parties to those contracts are sophisticated entities with considerable knowledge and understanding about the provision of utility service (especially since one of the counterparties is a PUC regulated utility). GFCP/VEPI could have negotiated a renewal term, but they did not, opting instead for a below cost rate and special service provision for a period of twenty-five years. They have been receiving the benefit of the original bargain for the agreed-upon duration. The only interests that would be served by extending this contract would be GFCP/VEPI's interest, certainly not the public interest. In similar circumstances, the Commission forcefully rejected a demand by a party to revise a contract where there had been no showing that revising a term was in the public interest:

> Altering the Agreements' termination provision as argued for by the joint complainants would not be in the public interest. Such action by the Commission would undoubtedly have a chilling effect on the willingness of regulated public utilities to enter into contracts of all types in which the ability to terminate upon changed business or economic conditions is a primary consideration in entering into the contract in the first place. Additionally, and specifically in this case, such Commission action would arguably contravene both Federal and Pennsylvania constitutional provisions regarding the impairment of the obligation of contracts and deprivation of property without compensation. It must also be remembered that the Commission is not a "super board of directors" for the Commonwealth's regulated public utility companies . . . "As a general matter, utility management is in the hands of the utility and the Commission may not interfere with lawful management decisions . . ." Were the Commission to use the provisions of 66 Pa.C.S. § 508 to alter the Agreements' termination provision it would be usurping management's right to exercise lawful discretion in the negotiation of common, legal, contract terms.[108]

[108] *Id.* at *50–51 (internal citations omitted).

Contrary to the Complainants' claim,[109] extension of the duration of the 1996 Contracts is also not available under 66 Pa. C.S. § 2212(o). The plain language of Section 2212(o) simply binds a customer to a contract for service entered into prior to PGW coming under the jurisdiction of the PUC (in 2000) and restricts a customer from receiving natural gas service from some other utility during its term. In fact, one could argue that the plain language in the section actually stands for the proposition that a pre-PUC contract is valid only according to its explicit terms and does not permit extensions unless permitted by the terms of that existing contract.[110] Certainly, nothing in Section 2212(o) empowers the Commission to extend the duration of any service contract that was in existence prior to Commission's jurisdiction over PGW.

Further, extension of the duration of the 1996 Contracts is not available under 66 Pa. C.S. § 502. GFCP/VEPI argued that, to "the extent necessary to continue the existing contract and to otherwise provide for adequate time to resolve this matter, the Commission is able, under its injunctive powers under 66 Pa. C.S. § 502, to effectuate such efforts."[111] But this is a complete misreading of this section. Section 502 of the Public Utility Code instructs that the Commission is authorized to "institute injunction . . . or other appropriate legal proceedings" *in the courts*.[112] Accordingly, the PUC's Section 502 power would only be available if the Commission found that PGW (or another party) was explicitly violating a Commission directive; it would then be authorized, pursuant to Section 502, to apply to a court for an order seeking to enforce its legal

---

109 GFCP/VEPI Brief at 24.

110 66 Pa. C.S. § 2212(o) ("Notwithstanding the provisions of this chapter, where an agreement for natural gas service, evidenced by a signed writing between a city natural gas distribution operation and any customer, exists prior to the date the commission assumes jurisdiction over a city natural gas distribution operation, the customer shall be bound by its terms and conditions and shall not have the right to receive natural gas service from another source until the expiration of the term of the agreement or otherwise pursuant to the terms and conditions of the agreement.").

111 GFCP/VEPI Brief, Appx. C at ¶ 4; *see also* GFCP/VEPI Brief at 28.

112 66 Pa. C.S. § 502 (emphasis added).

directives. Section 502 does not give the Commission some sort of general equitable power to enjoin or direct actions itself. Injunctive relief is an equitable remedy. Generally speaking, the Commission lacks the power and jurisdiction to order "equitable" remedies.[113]

At bottom, GFCP/VEPI's arguments here are a just a cynical attempt to avoid the obvious conclusion that their ability to receive service under existing Rate GTS-F is at an end because that rate was grandfathered and limited only to customers that had an "agreement" with PGW as of September 1, 2003 and that was still valid.[114] Both parties presumably knew that Rate GTS-F was grandfathered and would end once the existing contract ended. The 2003 Tariff provision clearly states this, and it was approved by the Commission. It has been in PGW's Tariff ever since and GFCP/VEPI never raised any concern either publicly or privately. Certainly, GFCP/VEPI have done nothing to show that the plain grandfathering language in Rate GTS-F is somehow unreasonable or unfair. Moreover, forcing PGW to enter into a new contract (which the PUC cannot do) would not be a "currently valid agreement" as of September 1, 2003. These arguments appear to be simply a distraction and a way of avoiding the fact that GFCP/VEPI have utterly failed to justify being served on a new special rate, as discussed in greater detail below.

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

A New Special Rate for GFCP/VEPI is not Justified. GFCP/VEPI argued that the logic of the *PPL* case[115] applies, and mandates application of a special rate for them.[116] But neither the

---

113 *See, e.g.*, *Pa. PUC v. IDT Energy, Inc.*, Docket No. C-2014-2427657, 2014 Pa. PUC LEXIS 715, at *44 (Opinion and Order entered Dec. 18, 2014) (ordering "[t]hat the following question is answered in the negative: Does the Commission have the authority and jurisdiction to order equitable remedies including restitution?").

114 *See* PGW Brief at 28; PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 118.

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

116 GFCP/VEPI Brief at 28–30.

PPL case, nor any of the other cases cited by PGW or GFCP/VEPI (*U.S. Steel*,[117] *SEPTA*,[118] and *MCI*[119]), mandate a special rate for GFCP/VEPI.[120] Just the opposite. The Briefs of OCA and OSBA do not discuss or apply the legal standards applicable to special rates. The OCA does not take a position on whether a special rate is justified but does discuss considerations to be applied to special rates;[121] and, OSBA explicitly argues that a special rate for GFCP/VEPI is justified.[122] The reasons given by GFCP/VEPI and OSBA do not satisfy the legal standard for a special rate.

1. Legal standard

The Commission has the authority to approve special pricing for a particular customer,[123] but those rates must still be just and reasonable and reasonably non-discriminatory.[124] Importantly, the Commission has held that "individualized ratemaking generally is poor public policy, and that a special rate should not be provided absent a compelling reason for doing so."[125] 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.[126] However, a customer must also

---

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

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

119 *MCI Airsignal of Pa., Inc. v. Pa. PUC*, 518 A.2d 600, 603 (Pa. Commw. Ct. 1986) ("*MCI*").

120 PGW Brief at 34–41.

121 OCA Brief at 7 ("The OCA takes no position on this issue, beyond the request that the reasonable rate of $0.75/Dth recommended by Mr. Mierzwa be adopted.") and 15 ("GFCP/VEPI, as a customer of PGW, must pay rates that reflect cost of service principles as any customer taking service under PGW's Commission-approved tariffs must").

122 OSBA Brief at 4–5, 12, 23.

123 *See* 66 Pa. C.S. §§ 1301, 1303, and 1502.

124 *PPL Elec. Utils. Corp.*, 2012 Pa. PUC LEXIS 989, at *17–18.

125 *Id.* at *46.

126 *Id.* at *28.

show that the applicable Commission-approved tariff rates, as applied to that customer, are unjust, unreasonable, and discriminatory.[127]

As explained in detail in PGW's Main Brief, GFCP/VEPI have failed to meet their heavy burden of proving, by a preponderance of the evidence, that compelling circumstances exist that justify a special rate. GFCP/VEPI do not apply the "compelling reason" standard. They describe the legal standard as some "significant reason for a customer to receive such a [special] rate, [such as] the ability to bypass or something else of the same significance."[128] GFCP/VEPI placed emphasis on the *PPL* case,[129] which applied the "compelling reason" standard.[130] In doing so, however, they fail to acknowledge that no special rate was ordered in that case.[131] And the Commission actually rejected the position that the size of the load can qualify a customer for a more favorable rate than other customers.[132]

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

The examples of special rates in Pennsylvania that GFCP/VEPI identify in their Main Brief actually demonstrate why GFCP/VEPI are not a unique customer justifying a special rate. GFCP/VEPI contend that Columbia Gas of Pennsylvania's Main Line Distribution Service rate ("Rate MLDS") and the Commission's decision in *PUC v. PPL Elec. Utils. Corp*. ("*PPL*") establishes the following criteria for a customer to receive a special rate: (1) "the load for a special

---

127 *See MCI Airsignal of Pa., Inc.*, 518 A.2d at 603 (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"); *Phila. Suburban Water Co. v. Pa. PUC*, 808 A.2d 1044, 1059–60 (Pa. Commw. Ct. 2002) (citations omitted); *PPL Elec. Utils. Corp.*, 2012 Pa. PUC LEXIS 989, at *14–18.

128 GFCP/VEPI Brief at 30.

129 *Id.* at 28–30.

130 *Id.* at 28–29 (citing *PPL Elec. Utils. Corp.*, 2012 Pa. PUC LEXIS 989, at *11).

131 PGW Brief at 40.

132 *Id.*

customer must be substantial;" and (2) "there must be some other significant reason for a customer to receive such a rate, the ability to bypass or something else of the same significance."[133] PGW disagrees that a customer's substantial justifies establishing a special rate. On the other hand, PGW does not dispute that GFCP/VEPI must show that it is able to bypass, which it has failed to do in this case.

GFCP/VEPI first cite to Columbia's MLDS rate as an example of a special rate.[134] PGW addressed GFCP/VEPI's arguments regarding Columbia's Rate MLDS in its Main Brief.[135] In sum, PGW explained that Rate MLDS is inapplicable because: (a) Rate MLDS "offers a lower rate to customers located within two miles of an interstate transmission line" and GFCP/VEPI are located further than two miles;[136] (b) Rate MLDS is based on an internal calculation comparing Columbia's lost revenue to the customer's cost to interconnect to an interstate pipeline, which would create an exponentially higher rate in PGW's service territory due to the cost of construction in a dense urban setting;[137] (c) because interstate pipelines in the Philadelphia area are so constrained, there is no basis for assuming the availability or likelihood that the pipeline would be able to add another customer;[138] and (d) Rate MLDS is available where a customer is directly connected to the interstate pipeline and doesn't utilize Columbia's distribution system, whereas GFCP/VEPI directly connect to and utilize PGW's distribution system and are not connected directly to the interstate pipeline.[139]

---

133 GFCP/VEPI Brief at 30.

134 *See id.*

135 *See* PGW Brief at 40–41.

136 *Id.* at 40 (citing PGW St. 3R at 9). GFCP/VEPI admit that their facilities are 2.75 miles from the TETCO Philadelphia Lateral. GFCP/VEPI Brief at 37.

137 PGW Brief at 40–41.

138 *Id.* at 41 (citing PGW St. 3R at 9).

139 *Id.*

GFCP/VEPI also contend that Columbia's rate MLDS as well as the Commission's holding in PPL establish that substantial load is one of the "eligibility criteria" for a special rate.[140] However, as PGW's Main Brief demonstrates, numerous decisions, including the *PPL* decision relied on by GFCP/VEPI, hold that a large volume of usage *does not* qualify a customer for a special rate.[141] For instance, the Pennsylvania Commonwealth Court, in *U.S. Steel*, affirmed a PUC order rejecting a request to be served under a separate rate similar to the special rate GFCP/VEPI seeks.[142] In that case, the Court expressly held that a large volume of use "does not entitle a customer to a preferred rate."[143]

The *PPL* decision on which GFCP/VEPI appear to rely to argue that the size of load creates a unique customer actually holds the opposite. In that case, the Commission denied a request for a special rate and rejected the claim that "the size of [the customer]'s load qualifies it for a more favorable rate than other" customers in its rate class.[144] The Commission reasoned that "if 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."[145] Moreover, the ALJ in that case determined that a special rate was not justified because "there is no evidence of a competitive threat from either bypass to an alternative supplier or an alternative fuel."[146]

---

140 GFCP/VEPI Brief at 30.

141 *See* PGW Brief at 35–41.

142 *See id.* at 36–37.

143 *U.S. Steel Corp.*, 390 A.2d at 857.

144 *PPL Elec. Utils. Corp.*, Docket No. R-2010-2161694, 2012 Pa. PUC LEXIS 989, at *52.

145 *Id.* at *51.

146 *Id.* at *10–11 (quoting the ALJ's Recommended Decision at 42–43).

The Court also upheld a Commission decision denying an extension of a contract creating a special rate where radio common carrier customers argued that they were entitled to a special rate because they served a greater number of paging customers than any other provider taking service under the tariff.[147] In so doing, the Court held that "[a] large volume of use . . . alone does not entitle the customer to a singular rate."[148]

3. Application of Standard

The principal contention of GFCP/VEPI is that they are a unique customer thereby meeting the standard of a special rate. As PGW proved in its Main Brief, GFCP/VEPI have failed to meet their burden of proving that they are a unique customer justifying a special rate.

GFCP/VEPI's new claim in its Brief is that they are a unique customer because they already receive service under a special rate, "and that nothing has changed in [twenty-five] years to deviate from that special rate going forward."[149] However, neither of these conditions is used to determine a special rate, and even GFCP/VEPI acknowledged that these are not the "special rate" standard.[150] The 1996 Contracts established rates, terms and conditions for GFCP/VEPI pursuant to a negotiated agreement and PGW proposed to continue to honor those agreements upon coming under the jurisdiction of the PUC by incorporating the Contracts into a rate class –

---

[147] *MCI Airsignal of Pa., Inc.*, 518 A.2d 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.").

[148] *Id.* (citing *U. S. Steel Corp.*, 390 A.2d at 857; *Carpenter v. Pa. PUC*, 15 A.2d 473 (Pa. Super. 1940)). Importantly, the Court also "[found] no authority in either the Code or contract law entitling the RCCs to the continuation of preferential, but terminated, contract rates." *Id.* at 605. 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 because the RCCs have benefited from an advantageous contract rate, now properly terminated." *Id.*

[149] GFCP/VEPI Brief at 31.

[150] *Id.* at 28–29. GFCP/VEPI recognize that a legal standard for special rates comes from *PPL* and *U.S. Steel*. The Commission in those cases, however, does not identify service under a current special rate or consistency of circumstances as a legal standard in establishing a special rate.

Rate GTS-F – that was grandfathered for the life of that contract and closed to any other customer. The Commission never authorized a special rate under the standards established by the PUC. Moreover, a customer is not entitled "to the continuation of preferential, but terminated, contract rates."[151] Therefore, the fact that PGW served GFCP/VEPI under the 1996 Contracts has no bearing on whether, *going forward,* GFCP/VEPI is a unique customer justifying a special rate under the applicable PUC standards.

In conclusion, GFCP/VEPI have failed to meet their heavy burden of proving, by a preponderance of the evidence, that compelling circumstances exist that justify a special rate. The size of GFCP/VEPI's load is not a unique circumstance that justifies a special rate under Pennsylvania law. Moreover, GFCP/VEPI's threat of bypassing PGW is neither, serious, credible, nor substantiated.

a. A Special Rate is Not Justified By the Threat of Bypass

GFCP/VEPI's main argument for a special rate seems to be that unless they are allowed to be served on a deeply discounted special tariff rate with the features and terms, they demand they will simply "bypass" PGW. That is, GFCP/VEPI threaten to construct their own pipeline from their facility to the closest interstate pipeline, thereby depriving PGW and its customers of any revenue from them. Their main arguments are that they received approval to "bypass" twenty-five years ago, before deciding to enter into a contract with PGW for service, and that they have demonstrated that bypass is a real threat that they are "almost certain" to undertake unless they get the (unspecified) reduced rate levels that they demand.[152] But those claims, like so many of the claims in GFCP/VEPI's Brief, are completely unfounded.

---

151 *MCI Airsignal of PA, Inc.*, 518 A.2d at 605.

152 GFCP/VEPI Brief at 33.

First, and in fact, GFCP/VEPI's twenty-five-year-old efforts to construct a pipeline to receive service directly from TETCO are of little relevance today not least because *it was not even a bypass application*. PGW explained, as did FERC twenty-five years ago, that the prior plans/application did not involve a "bypass" because GFCP/VEPI had never previously received natural gas service from PGW.[153] (This means that GFCP/VEPI are incorrect every time they claim in their Brief that they already obtained FERC approval for bypass). That has obviously changed because GFCP/VEPI have been (and are) receiving service from PGW.[154] This is more than a technicality. Not revealed by GFCP/VEPI in the numerous incorrect references to the FERC "approval" of its prior plans were the facts that: 1) FERC determined that construction and service to GFCP/VEPI would "not result in a bypass of [PGW];" and 2) that a key player in any "bypass" had specifically stated that it would not cooperate if it *were* a bypass triggering a contract demand ("CD") reduction.[155]

On the record in the FERC proceeding, TETCO, the pipeline whose acquiescence is absolutely required if GFCP/VEPI were to actually bypass PGW, told FERC that it (TETCO) would not construct the facilities if FERC determined that service to GFCP/VEPI (then Trigen) constituted a bypass triggering a CD reduction:

> Texas Eastern explains that while Trigen is located in the service area of Philadelphia Gas Works (Philadelphia Gas), a customer of Texas Eastern, Philadelphia Gas has never provided Trigen with gas service in the past. Texas Eastern states that its proposed direct service to Trigen will thus not constitute a bypass of Philadelphia Gas and will not trigger a CD reduction option for Philadelphia Gas.

---

[153] PGW Brief at 54, n.255; *see also Texas Eastern Transmission Corporation*, Docket No. CP95-2-000, 71 F.E.R.C. ¶ 61,020, 61,088 (Apr. 5, 1995), *vacated by*, 75 FERC ¶ 61,236 (May 31, 1996) ("In this proceeding, Trigen has never received natural gas service from any gas supplier, including [PGW]. . . . Texas Eastern's proposed construction and service to Trigen would thus not result in a bypass of [PGW].").

[154] PGW Brief at 28–29, 67. PGW is also supplying gas to a GFCP/VEPI affiliate, VEEPA, so there is no gas using Vicinity entity to which PGW is not delivering gas in Pennsylvania.

[155] *Texas Eastern Transmission Corporation*, 71 F.E.R.C. ¶¶ 61,085, 61,088.

> **If the Commission determines that its proposed service to Trigen would constitute a bypass triggering CD reduction, Texas Eastern states that it will not construct the proposed facilities**. . . .[156]

GFCP/VEPI's failure to even mention TETCO's position in the previous FERC proceeding, or to establish whether their threatened bypass would or would not result in PGW having to reduce its contract demand on the TETCO pipeline, certainly casts a dark cloud on GFCP/VEPI's actual bypass potential.

Second, contrary to GFCP/VEPI's characterizations to the contrary,[157] GFCP/VEPI's plans are as sketchy and full of holes as a month-old piece of Swiss cheese. GFCP/VEPI claimed that their "mapping and construction" drawings are 65% complete.[158] Yet those plans themselves are specifically listed as **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** Importantly the documents in the record do not show that TETCO has sufficient capacity at the proposed point of interconnection to permit such a tap-in. Just a crucial, GFCP/VEPI have not even mentioned, let alone demonstrated, that TETCO's Philadelphia Lateral has sufficient capacity to serve their needs.[161] GFCP/VEPI have explained that, during the winter, they require additional capacity on TETCO's Philadelphia

---

156 *Id.* ¶ 61,0085 (emphasis added).

157 GFCP/VEPI have described their plans as significant (GFCP/VEPI Brief at 30, 32, 40); substantial (*Id.* at 30, 31, 33, 40); within their "ability" (*Id.* at 31, 33, 37, 38, 39, 40, 41); on-track (GFCP/VEPI Brief at 37); ongoing (*Id.* at 40); persistent (*Id.* at 5); and prudent (*Id.* at 5, 13).

158 GFCP/VEPI Brief at 32.

[redacted]

161 PGW Brief at 59.

Lateral that they do not currently have.[162] This acknowledges that the proposed bypass would be limited to GFCP/VEPI's own capacity,[163] and means that the proposed bypass would do nothing to solve the capacity shortfall (of 21,000 Dth) faced by GFCP/VEPI in the winter.[164] As a result, **even if GFCP/VEPI did construct a bypass line they would not be able to fully provide the natural gas GFCP/VEPI claim they need and would likely still have to rely on PGW for some of its transportation service**.[165]

Just as important, GFCP/VEPI did not provide any construction costs for their proposed bypass. PGW explained that GFCP/VEPI provided no information showing the cost to construct or operate[166] a bypass upon which to base a special rate.[167] OSBA reached the same conclusion.[168] However, GFCP/VEPI claim *in their Brief* that they have "received initial construction estimates that would justify a special rate."[169] They do not cite to anything in support of this – because there is nothing in Mr. Crist's testimony or any of the Highly Confidential documents in the record that presents any total cost for the threatened project.

GFCP/VEPI contends that "there is no indication that PGW will agree to provide service at rates that will cost less than [GFCP/VEPI]'s bypass options."[170] Obviously, PGW cannot agree

---

162 GFCP/VEPI Brief at 38.

163 GFCP/VEPI Statement JC-1 at 15–16, 23.

164 *See* OSBA Brief at 19; OSBA Statement No. 1-R at 15–16.

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

166 GFCP/VEPI did not give a clear projection of O&M costs for their proposed bypass. They argued that O&M costs for their proposed bypass is not significant. To support that argument, GFCP/VEPI refer to "PGW's O&M cost for the four-mile line." GFCP/VEPI Brief at 32. But those costs are almost $1 million annually (PGW St. 4R, Ex. CEH-1, Sch. C at 2) and would likely be higher for GFCP/VEPI because they would not benefit from the economies of scale and scope that PGW enjoys.

167 PGW Brief at 51–59.

168 OSBA Brief at 17.

169 GFCP/VEPI Brief at 32.

170 *Id.*

to serve GFCP/VEPI at a rate lower than what it would cost to bypass if PGW doesn't know what it will cost GFCP/VEPI to bypass. As noted, there are no documents in the record establishing—or even alluding to—the cost for GFCP/VEPI to bypass.[171] The OSBA, in its Main Brief, agreed that "it would not be possible to set a bypass rate based on the information available at present."[172] It is for all these reasons that OSBA witness Knecht also concluded that GFCP/VEPI had not supported that it should receive a discounted rate because of bypass.[173]

To shift focus away from the many missing aspects of their proposed bypass, GFCP/VEPI attempted to redirect attention to the (alleged) harm the bypass—if completed—would place on PGW. But the focus of this proceeding should be rates that reflect well established cost of service principles. The focus should not be on what would happen to PGW if GFCP/VEPI built a bypass that is speculative based on this record. Nevertheless, GFCP/VEPI's claim that PGW would lose $2.5 million in (gross) revenues, if they build their proposed bypass[174] **is incorrect** and overstated by $1.4 million.[175] With that amount removed, the amount of (gross) revenues that GFCP/VEPI contribute is only $1.1 million.[176] In fact, GFCP/VEPI's current arrangements have a cost to PGW ratepayers of **$11.8 million, including $3.6 million in GCR subsidies or lost revenue**

---

171 PGW Brief at 51–59.

172 OSBA Brief at 17.

173 OSBA Statement No. 1-S at 4. The OSBA even acknowledges that "no full cost estimate has been developed, nor has a credible time frame been offered." OSBA Brief at 17 (citing Tr. 116).

174 GFCP/VEPI Statement JC-1 at 26; GFCP/VEPI Brief at 2, 33, 44.

175 PGW has shown that, in terms PGW ratepayers the $1.2 million payment actually masks a $1.4 subsidy that PGW GCR customers pay for capacity that is bought by PGW for GCR customers at tariffed rates and then released to GFCP/VEPI customers at rates fixed by the 1996 Contracts at levels that are significantly below tariffed rates. PGW St. 2R at 13, Ex. RER-2. In any event GFCP/VEPI has vehemently opposed continuing to have to pay for summer capacity release or for maintenance expense on a going forward basis and PGW agreed that these rate terms would either be eliminated or covered by a cost-based transportation rate.

176 PGW St. 4R at 7. OCA and OSBA also agree. *See* OCA St. 1-R, Ex. JDM-2; OSBA Brief at 9; OSBA Statement No. 1-R at 4.

opportunities.[177] If GFCP/VEPI did bypass PGW, PGW's ratepayers would lose the $1.1 million in revenues it currently receives but its GCR customers *would also* no longer have to subsidize GFCP/VEPI. PGW is also likely to be able to use the Naphtha Line and the Distribution Extension to serve other customers and generate additional margin. As a result, it is far from clear that PGW or its ratepayers would necessarily be better off keeping GFCP/VEPI as customers, if the only way to do that would be to continue the highly subsidized and unreasonable rates, terms, and conditions it enjoys today. The question for the Commission is whether it is in the public interest to give in to GFCP/VEPI's vague threats and award them such an enormous subsidy in light of the scant evidence and substantial questions about the credibility of their threat to bypass. PGW submits that it is not.

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

Nonetheless, 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.[178] GFCP/VEPI agreed that in establishing special rates, the law is clear that such a rate must consider the cost of service.[179] OCA and OSBA made similar statements regarding the cost of service.[180] The problem is that GFCP/VEPI has very different views on what constitutes "cost of service" for them and what is required to support their position.

---

[177] In fact, today, the subsidy or lost revenue that PGW customers are asked to pay pursuant to the existing contract is over $11.8 million annually: Base Rate Subsidy: $8.2 Million; Sales Service Subsidy: $0.9 Million; Summer Capacity Release: $1.5 Million; ARS: $1.2 Million (lost revenue); Total: $11.8 Million. PGW St. 2R, Ex. RER-1 at 14–16. Other than the base rate subsidy these other costs are charged to customers through the GCR. *Id.* The sales service subsidy, summer capacity release, and ARS (lost revenue) may be referred to as the "GCR Subsidy."

[178] PGW Brief at 12, 43.

[179] GFCP/VEPI Brief at 33.

[180] OCA argued that GFCP/VEPI, as a customer of PGW, must pay rates that reflect cost of service principles as any customer taking service under PGW's Commission-approved tariffs must. OCA Brief at 15. OSBA argued that a special rate could take the form of cost-based rates that rely on assignment of the facilities' costs. OSBA Brief at 4–5, 12, 23.

1. Gas Transportation Rate, Cost of Service – Special Rate

PGW argued that 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.[181] PGW's evidence shows that the cost to serve GFCP/VEPI is at least $0.698/Dth.[182] OCA argued that the $0.756 per Dth charge proposed by PGW[183] (in February 2021[184]) for distribution service to GFCP/VEPI is reasonable and consistent with cost of service principles.[185]

Regarding gas transportation charges, GFCP/VEPI argued that the rate for transportation service, on and after January 1, 2023, should be set no higher than the rate its own cost of service study indicates—$0.212 per Dth—and no lower than the current grandfathered rate—$0.08 per Dth.[186] Neither those rates, nor any rate within or close to that range, are just, reasonable, and non-discriminatory.

There is simply no justification to continue the current (grandfathered) rate of $0.08 per Dth. The current (for the next three months) rate was the product of a pre-PUC contract and never determined to be just and reasonable pursuant to Section 1301 of the Public Utility Code. Moreover, all of the cost of service testimony demonstrates that the costs are higher than the

---

181 PGW Brief at 12, 44–48.

182 *Id.* at 44 (Table 1). Ms. Heppenstall's study used the Average and Extra Demand Method (or Average/Excess) as in the text "Gas Rate Fundamentals," published by the American Gas Association's Rate Committee. PGW St. 4R at 3.

183 OCA Brief at 4–5, 7, 1 (Mr. Mierzwa utilized the Peak & Average ("P&A") method to allocate distribution mains costs.); PGW Brief at 45.

184 PGW Brief at 4, 44.

185 PICGUG argued that questions regarding the use of Average and Excess ("A&E") methodology or P&A methodology for PGW's Cost of Service Studies would be more appropriately raised and, if necessary, reviewed, as part of PGW's next base rate proceeding. *See* PICGUG Brief at 2–3, 6–7. That being said, PICGUG stated that the Commission should accept PGW's use of the A&E methodology for purposes of the COSS presented in this proceeding, since the Commission approved the use of the A&E methodology for purposes of PGW's COSS in PGW's last fully litigated base rate proceeding. PICGUG Brief at 7, 9.

186 GFCP/VEPI Statement JC-1SR at 17; GFCP/VEPI Brief, Appx. A ¶ 98.

current rate. Therefore, the reality is that keeping the rate at $0.08 per Dth—or any rate within GFCP/VEPI's artificially concocted "range"—would not only depart from cost of service principles, but also accrue to the benefit of GFCP/VEPI and require PGW's customers to continue to subsidize these for-profit businesses.

Moreover, GFCP/VEPI's cost of service study—which claims that a cost-based rate would be $0.212 per Dth—is based on the (incorrect) underlying assumption that facilities used to provide service to GFCP/VEPI are separate and distinct from all other parts of PGW's System. That is not the case. Contrary to the positions taken by GFCP/VEPI and OSBA,[187] the Four-Mile Line (Naphtha Line and the Distribution Extension) do not exist in isolation from PGW's integrated distribution system, and it is wrong to characterize the Four-Mile Line as being "dedicated" to GFCP/VEPI, either in whole or in part. Neither the Naphtha Line nor the Distribution Extension are forever dedicated (or devoted) to a single task or purpose. PGW explained that the Naphtha Line connects TETCO 060 Gate Station with both PGW's Passyunk Plant and the Distribution Extension.[188] That connection enables PGW to take gas from the Naphtha Line for use at the Passyunk Plant or for use throughout PGW's distribution system.[189] The Distribution Extension is also not dedicated to GFCP/VEPI because there is no restriction or limitation on PGW's ability to connect other customers to the Distribution Extension.[190] PGW is in the process of evaluating several new load opportunities that would utilize the Naphtha Line to deliver gas to PGW's

---

187 *See* GFCP/VEPI Brief at 1–2, 5–6, 8, 17–19, 32, 41, 43; OSBA Brief at 2, 4, 13.

188 PGW Brief at 18.

189 *Id.*

190 *Id.* at 18–19.

existing 150lb pipeline and then to new customers.[191] No party contradicted PGW's testimony regarding the design and functions of Naphtha Line or the Distribution Extension.

In addition, GFCP/VEPI's cost of service should include an allocation of a share of PGW's distribution system because a crucial service for GFCP/VEPI—ARS—can only be facilitated by PGW's distribution system. However, if a determination is made to set GFCP/VEPI's rate using a cost of service study that does *not* allocate some portion of the distribution system to GFCP/VEPI (i.e., Mr. Crist's COSS), then, as explained in more detail below, the Commission must recognize that it either must determine that PGW has no further obligation to provide ARS or it must establish a rate for ARS that fully reflects the tremendous value of the Philadelphia Lateral capacity that PGW uses to effectuate ARS.

Mr. Knecht on behalf of OSBA, did not, opine on the appropriate cost-based transportation rate for transportation service to GFCP/VEPI. OSBA argued that the Commission should defer the development and evolution of specific tariff rates and charges to future base rates and GCR proceedings.[192] OSBA suggested that a follow-up proceeding be used to establish "placeholder" values for service on and after January 1, 2023 that would be finalized in future rate proceedings.[193] No opinion was expressed as to the appropriate "placeholder" values.

PGW does not oppose a "placeholder" and "follow-up" review or GFCP/VEPI's rates, but it is not clear when PGW's next base rate case will be filed. In the interim, the Commission should

---

191 *Id.* at 19.

192 OSBA Brief at 3–4. OSBA further recommended that, for such future proceedings, the Commission should direct PGW to develop a cost of service study with GFCP/VEPI as a separate class, and to directly assign the costs of mains, regulating equipment and metering equipment used by GFCP/VEPI to that class, based on the best records available, reflecting contributions in aid of construction made by GFCP/VEPI related to those facilities. *Id.* at 14.

193 *Id.* at 4.

direct that GFCP/VEPI should be placed on Rate IT (with standby service) or on a new special rate that reflects the cost of service as determined by PGW or OCA.

2. PGW Capacity Assets and Nondiscriminatory Availability of Such – Special Rate.

Although GFCP/VEPI have stated that they no longer need or desire direct releases of capacity in the summer (between May 1 and September 30),[194] GFCP/VEPI seek to have the Commission order PGW to make direct releases of capacity to them in the winter (between October 1 and April 30). Winter releases would be unreasonable and discriminatory and potentially threaten the reliability of service to other customers. PGW explained that mandatory and direct releases during the Winter were 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.[195] Mr. Crist conceded that any capacity released would need to be recallable.[196] Mr. Crist further conceded that any recallable capacity distributed to GFCP/VEPI would have to be recalled by PGW, if GFCP/VEPI experienced a design day on the same day as PGW.[197]

PGW opposes being directed to make direct releases of recallable capacity to GFCP/VEPI. PGW does not release capacity in this way to any other customer. If PGW has excess capacity and offers to release it, it should be done on a non-discriminatory basis. This means that the release should occur in the open market,[198] as opposed to only being released to GFCP/VEPI. Only an open-market offer of release assures PGW GCR customers that the price for the capacity release

---

194 PGW Brief at 22–24, 48–49.

195 *Id.* at 50–51.

196 Tr. 72.

197 Tr. 75–76.

198 PGW Brief at 51.

will fully reflect its value. GFCP/VEPI could participate in the open market and bid for this recallable capacity, since the capacity is available on a non-discriminatory basis.[199]

Others also oppose direct releases of recallable capacity to GFCP/VEPI. OCA argued that PGW should not be required to release additional capacity to GFCP/VEPI.[200] OSBA argued that GFCP/VEPI should not be granted any entitlement to PGW's capacity.[201] OSBA explained that "[o]btaining upstream deliverability capacity is the responsibility of transportation service customers."[202]

Going beyond recallable capacity, GFCP/VEPI are asking the Commission to compel PGW to sell capacity to them.[203] Capacity on TETCO's Philadelphia Lateral is owned by PGW (on behalf of its GCR customers) and others, including GFCP/VEPI. However, GFCP/VEPI require more capacity on TETCO's Philadelphia Lateral in the winter than they currently have.[204] To obtain this capacity, GFCP/VEPI urge the Commission to force PGW to sell assets to them—so that they will need fewer (or zero) services from PGW. First, a forced divestiture would be an extraordinary remedy for which there is no legal support. As PGW has shown in another context, the PUC does not have the authority to simply order PGW to enter into a contract against its will (here, a contract to transfer capacity) and certainly cannot order the sale to a specific counterparty.[205] Moreover, there is no basis for doing so. Here, the capacity is used and useful to PGW, since that capacity is used by PGW to serve customers and avoid system failures. No

---

199 *Id.* at 48–51.

200 OCA Brief at 4, 12.

201 OSBA Brief at 14.

202 *Id.*

203 GFCP/VEPI Brief at 2.

204 *See* PGW Brief at 49 (citing OSBA Statement No. 1R at 15; PGW St. 2R at 8).

205 *See* supra Section VI.B.

evidence was provided to conclude that the PGW abused its discretion or acted arbitrarily in refusing to sell capacity to GFCP/VEPI.[206] PGW actually showed that the release of the capacity as GFCP/VEPI demands would create the potential of system curtailments in 8 of 11 scenarios tested.[207] That unrebutted evidence establishes that it would clearly not be in the public interest to order such a divestiture. The proper forum to examine the reasonableness of PGW's upstream pipeline capacity contracts is in PGW's 1307(f) proceeding. PGW's most recent case again approved PGW's upstream pipeline capacity levels as reasonable and in the public interest.[208] Although GFCP/VEPI were parties to that proceeding, they took no issue with the levels of pipeline capacity that PGW included in its proposed GCR rates.[209]

3. Bypass Considerations – Special Rate

PGW has extensively discussed GFCP/VEPI's claims of bypass in an earlier section of this Reply Brief.[210] Nevertheless, it is worth reiterating that seeking to prevent a customer from bypassing and maintaining them on the distribution system could be a legitimate consideration in determining a reasonable rate level. Rather than designing the transportation rate to reflect the cost of service, the transportation rate could be designed to reflect the GFCP/VEPI's cost to bypass PGW's system. When PGW considers using that rate methodology, PGW examines the expected capital cost of the project and the expected O&M.[211]

---

206 It is not within the province of the Commission to interfere with the management of the utility unless abuse of discretion or arbitrary action is established. PGW Brief at 10–11, 33–34; *see* supra Section VI.B.

207 PGW St. 2SR at 2–3, Ex. RER-2.

208 *Pa. PUC v. PGW*, Docket No. R-2022-3030686, 2022 PA. PUC LEXIS 236 (Opinion and Order entered July 14, 2022) (adopting the Recommended Decision dated June 7, 2022).

209 *Id.*

210 *See* supra Section VI.C.3.a.

211 Tr. 173

However, the problem here is the most crucial information needed to rationally consider GFCP/VEPI's bypass options does not exist. As both PGW and OSBA pointed out, it is not possible to set a bypass rate based on this record. GFCP/VEPI provided no information showing the cost to construct a bypass, the timeline for such potential bypass or the annual operating costs that GFCP/VEPI would incur,[212] and the OSBA agreed.[213] Therefore, GFCP/VEPI's special rate should be based on cost, as determined by PGW or OCA. If GFCP/VEPI want to raise bypass as a reason for a reduction in their rate in a future PGW base rate case they may do so, but presumably with hard facts and not mere threats.

4. ARS Type service rates, costs, terms, and conditions – Special Rate

PGW's position is that, moving forward, if the costs and volumes delivered via ARS are fully reflected in the cost of service based rate for GFCP/VEPI, then a separate ARS rate would not be necessary because the cost of ARS should be part of transportation/distribution charge.[214] However, if the cost of ARS is not fully included as part of said charge, then the Commission must either declare that PGW has no further obligation to provide ARS or it must direct PGW to establish a rate for ARS that fully reflects the tremendous value of the Philadelphia Lateral capacity that PGW uses to effectuate ARS. Such an ARS rate should reflect the comparable cost that GFCP/VEPI would incur if they were to obtain essentially equivalent capacity via capacity

---

212 PGW Brief at 51–59.

213 OSBA Brief at 17.

214 PGW Brief at 59–60. GFCP/VEPI agreed, as part of an alternative position, by stating that the cost for ARS do not apply if a special rate for transportation service is based on the cost of service. *See* GFCP/VEPI Brief at 44.

release.[215] That rate would be between the range of $0.25/Dth/Day to $0.60/Dth/Day, which is $0.425 on average.[216] GFCP/VEPI pays about a penny per Dth/Day today![217]

The OCA and OSBA agreed that there should be a cost for ARS service. The OCA argued that GFCP/VEPI should also be assessed balancing and lost and unaccounted for gas charges.[218] The OSBA recommended, to the extent an ARS-type service is provided to GFCP/VEPI, that GFCP/VEPI pay a market-based capacity rate for using PGW's capacity on the TETCO's Philadelphia Lateral.[219] PGW agrees, as the OSBA's recommendation is consistent with PGW's above-stated position and the above-described range of rates for ARS service.

5. Bundled Supply Service rates terms and conditions – Special Rate

GFCP/VEPI should obtain bundled sales service from PGW in the same way and at the same rates that any other entity would.[220] This means that the gas sold by PGW to GFCP/VEPI would be priced at PGW's GCR.[221] The delivery charge for gas purchased by GFCP/VEPI reflects the rate that any other customer would pay for firm sales service. GFCP/VEPI have provided

---

215 PGW Brief at 59–60.

216 *Id.* at 60.

217 Tr. 58–59. GFCP/VEPI acknowledge that ARS involves managing gas deliveries and administrative duties. However, they argue that these costs are de minimus and ARS should be provided by PGW at no charge. GFCP/VEPI Brief at 38–39. But it is not the physical effort that is expended that drives the cost but the fact that PGW uses its distribution system to move gas from one part of its system (the Skippack Lateral) to customers in South Philadelphia to replace the gas it otherwise would have delivered on the Philadelphia Lateral, which is instead delivered to GFCP/VEPI.

GFCP/VEPI also argued, in an effort to reduce the costs allocated to them, that they are served by an isolated system. That is a mischaracterization. GFCP/VEPI Brief at 38–39. The facilities that are used every day (the Naphtha Line and the Distribution Extension) are part of PGW's distribution system. In fact, the Naphtha Line actually moves gas from the Philadelphia Lateral to PGW's Manyunk LNG facility; only then is the gas moved on to the Distribution Extension and GFCP/VEPI's facilities. *See* PGW Brief at 18–19; *see also* PGW Brief, Att. A (Map of PGW's Facilities Used to Provide GFCP/VEPI Services). Therefore, the very existence of this type of service depends upon the use PGW's integrated system.

218 OCA Brief at 4.

219 OSBA Brief at 18–19, 23.

220 PGW Brief at 61.

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

absolutely no argument for continuing their enormously discounted rate, other than that they have been receiving it for twenty-five years. This is obviously not a cogent basis for such an enormous subsidy that must be absorbed by other customers. If GFCP/VEPI have some legitimate, verified reason why they should receive bundled sales service at rates different than those charged to any other firm industrial customer, GFCP/VEPI can raise them in a future PGW base rate case.

6. Other Rate Elements, rates, terms, and conditions – Special Rate

a. Surcharges

In addition to being charged a legitimately cost base rate if they are to receive a special rate, GFCP/VEPI have presented no reason why they should not be subject to all the surcharges to which any other firm customer is subject. GFCP/VEPI have not justified special treatment on a going-forward basis regarding surcharges. If GFCP/VEPI receive firm service, they should be subject to the same surcharges as other firm customers.

Most importantly, any GFCP/VEPI special rate should be subject to the Universal Service and Energy Conservation Surcharge ("USEC"). As firm customers, it would simply be unreasonably discriminatory for GFCP/VEPI to not have to pay some contribution to cover the costs of low-income programs. The USEC is charged to all firm customers on PGW's system *including* industrial and commercial customers. Having demanded firm service, GFCP/VEPI failed to present any reason for exempting them from the USEC, other than they simply do not want to pay.

Regarding surcharges, OSBA argued that if the Commission establishes special rates for GFCP/VEPI under Rate IT, then PGW's USEC surcharge should apply to GFCP/VEPI.[222] Currently, Rate IT customers are not required to remit any surcharges, because, at least

[222] OSBA Brief at 5, 20–22, 23.

theoretically, they do not have a right to demand that PGW use its distribution assets to assure that they receive gas deliveries to their meter. Accordingly, any reevaluation of surcharge applicability beyond GFCP/VEPI should be raised in PGW's next base rate case.[223] It would be appropriate here, however, to assign surcharges (or at least the USEC surcharge) to any Standby Service that GFCP/VEPI decide to take.

b. Duration – Special Rate

GFCP/VEPI argued that special rates should last for the next twenty-five years (until January 1, 2047).[224] After that date, GFCP/VEPI argued that PGW should be restricted from adjusting the special rates for GFCP/VEPI no more frequently than every five years (in a general base rate case).[225]

The twenty-five-year duration proposed by GFCP/VEPI is unreasonable, discriminatory, and frankly absurd. The duration proposed by GFCP/VEPI would hinder the ability of PGW to ensure that special rate for GFCP/VEPI reflects the costs of providing service to them. PGW negotiates service contracts with a maximum five-year duration,[226] which allows PGW and the customers to adjust to changing conditions. Mr. Zuk testified that he did not believe that a twenty-five-year duration would be viewed as reasonable by the Commission.[227] He was not aware of any other customer service contracts with twenty-five-year terms where the rates would not be subject to revision over time.[228] Mr. Crist gave no examples of service contract with terms that long. Nor

---

223 To this degree PGW agrees with PICGUG which argued that questions regarding the application of PGW's USEC charge to Rate IT customers would be more appropriately raised and, if necessary, reviewed, as part of PGW's next base rate proceeding. *See* PICGUG Brief at 2–3, 8–9.

224 *See* GFCP/VEPI Brief, Appx. C ¶¶ 3, 5.

225 *Id.*, Appx. C ¶ 3.

226 PGW Gas Service Tariff – Pa. P.U.C. No. 2 at 115; *see* PGW St. 1R at 13–14.

227 PGW St. 1R at 13–14.

228 *Id.*

did Mr. Crist provide any evidence or analysis that a twenty-five-year duration would be consistent with cost of service principles. This suggestion should be rejected.

c. Forced Sale of PGW's Assets to GFCP/VEPI

On top of everything else, GFCP/VEPI have asked the Commission, for the first time, to *compel* PGW to sell the Four-Mile Line (Naphtha Line and the Distribution Extension) to them.[229] It is unclear how that would work, since no details were provided by GFCP/VEPI.

GFCP/VEPI did not raise the forced divestiture issue prior to their Brief. Mr. Crist opined, in surrebuttal, that PGW could voluntarily agree to sell assets to GFCP/VEPI.[230] New claims raised in a party's brief or reply brief are impermissible and must be deemed waived.[231] A voluntary sale is fundamentally different from a forced divestiture, which GFCP/VEPI did not raise on the record. Considering this new claim would be a serious violation of PGW's due process rights as, obviously, there was no opportunity to investigate or respond to this new claim on the record.

If the Commission were to consider this demand, however, PGW submits that it is simply not within the Commission's powers under the circumstances presented here. It is unclear what standard and what circumstances would justify the Commission to compel a utility to sell a used and useful asset to a particular customer (since GFCP/VEPI cited nothing to support its demand). The Commission's only authority is to determine if the Public Utility Code was violated.[232] Absent

---

229 GFCP/VEPI Brief at 2, 39–40.

230 GFCP/VEPI Statement JC-1SR at 18.

231 *Application of Aqua Pennsylvania Wastewater, Inc.*, Docket No. A-2021-3027268, 2021 WL 3027180, at *88 (Opinion and Order entered July 8, 2022) (citations omitted) (rejecting a claim raised for the first time in a reply brief and noting that "[t]he Commonwealth Court and this Commission have determined that permitting new claims at a late stage in a proceeding raises significant due process concerns because opposing parties would not have an adequate opportunity to respond to adverse positions").

232 66 Pa. C.S. § 701.

a violation, the Commission is not empowered (when acting on a customer's complaint) to require any action by PGW.[233] If a violation is found, the Commission can impose a penalty[234] and/or direct "remedies" to the violation. GFCP/VEPI fail to cite a single legal precedent for this extraordinary demand. And it runs counter to the long-standing proposition that: "Customers pay for service, not for the property used to render it . . . [b]y paying bills for service they do not acquire any interest, legal or equitable, in the property used for the convenience or in the funds of the company."[235] Moreover, GFCP/VEPI's divestiture argument exceeds the scope of the relief sought on the face of GFCP/VEPI's Formal Complaint. The gist of the Formal Complaint is that GFCP/VEPI are seeking to have the Commission determine the just and reasonable rates services provided, on or after January 1, 2023, by PGW to them.[236]

PGW also doesn't believe that it would be prudent to voluntarily sell these facilities. Mr. Crist's above-described opinion regarding a non-existent voluntary sale is based on the (incorrect) underlying assumption that facilities used to provide service to GFCP/VEPI are separate and distinct from all other parts of PGW's System and can only be used to provide them with service. That is not the case, as discussed above. Notably, the Naphtha Line enables PGW to take gas from the Philadelphia Lateral for use at the Passyunk Plant or for use throughout PGW's distribution system. PGW is also in the process of evaluating several new load opportunities that would utilize these assets. PGW believes that the Naphtha Line and the Distribution Extension are viable and used and useful parts of its distribution system regardless of whether GFCP/VEPI stays on the

---

233 *See West Penn Power Co. v. Pa. PUC*, 478 A.2d 947, 949 (Pa. Commw. Ct. 1984).

234 66 Pa. C.S. §§ 3301 (civil penalties for violations), 3302 (criminal penalties for violations).

235 *Bd. of Pub. Util. Comm'rs v. New York Tel. Co.*, 271 U.S. 23, 32 (1926).

236 66 Pa. C.S. § 1309. This proceeding is not about a voluntary change in rates by PGW under 66 Pa. C.S. § 1308.

system, and it would be potentially imprudent for PGW to simply sell them to GFCP/VEPI or anyone else.

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

GFCP/VEPI argued that if the Commission concludes that they have not justified a special rate (which is the case), that they "would be left in limbo."[237] That argument fails to properly consider the service available under both Rate IT and Rate GS. Going beyond the existing tariff, Mr. Crist suggested that a new bypass rate schedule should be created by PGW.[238] PGW rejected that suggestion.[239] In their brief, GFCP/VEPI have abandoned the suggestion of a new bypass schedule in favor of modification to Rate GTS-F.[240] As explained above, this suggestion—as well as GFCP/VEPI's proposal to modify Rate GTS-F—should be disregarded, as Rate GTS-F is simply no longer available.

1. Existing Tariffed Rates

Service under Rate IT would be reasonable.[241] GFCP/VEPI did not agree and presented contradictory positions. On one hand, GFCP/VEPI argued that they are not eligible for service under Rate IT.[242] On the other hand, GFCP/VEPI conceded that service under Rate IT could be made to resemble service under the soon-to-expired Rate GTS-F.[243]

Regarding the application of Rate GS to GFCP/VEPI, PGW argued that service under Rate GS would be reasonable—if GFCP/VEPI were unwilling or unable to receive service under Rate

---

237 GFCP/VEPI Brief at 40.

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

239 PGW St. 3R at 9.

240 GFCP/VEPI Brief at 41–42.

241 PGW Brief at 62–69.

242 GFCP/VEPI Brief at 40.

243 *Id.* at 40–41.

IT.[244] GFCP/VEPI argued that the rate under Rate GS would be too high for them, since it was not specifically designed for a customer like them.[245] That argument is just another plea for special rates. PGW must adhere to its tariff.[246] The application of Rate GS cannot be avoided if service is not available under Rate IT; as noted, the soon-to-expire Rate GTS-F is not available after the end of this year. It is GFCP/VEPI that has continually insisted that they must be served on a "firm" rate. The fact that application of Rate GS will be undesirable to, or have adverse consequences for, GFCP/VEPI is not sufficient justification to negate (or ignore) the existence of Rate GS. That being said, GFCP/VEPI's argument overlooks the fact that service agreements under Rate GS could be modified under Rule 2.3 of PGW's Tariff.[247]

2. Potential Modifications

PGW explained that, if GFCP/VEPI are receiving gas transportation under Rate IT or Rate GS, PGW could add provisions or make adjustments by way of service agreements under the appropriate rate schedule to accommodate specific special service needs—if the Commission authorized such provisions.[248]

a. Daily Balancing

PGW argued that daily balancing provisions will be required in any service agreement, since GFCP/VEPI acquire their own gas.[249] Moving forward, the coordination of gas deliveries would occur under Rate DB. OCA noted that PGW's proposal for imbalance and lost and

---

244 PGW Brief at 62–69.

245 GFCP/VEPI Brief at 41.

246 PGW Brief at 17; 66 Pa. C.S. § 1303.

247 PGW Brief at 65.

248 *Id.* at 65–69.

249 *Id.* at 65–66.

unaccounted for gas charges was reasonable, given the logistics needed to provide service to GFCP/VEPI.[250]

PGW argued that it is reasonable and necessary to require GFCP/VEPI to balance on PGW's System.[251] PGW's position is in the public interest because it provides greater flexibility to PGW to manage PGW's System and utilize the Naphtha Line and the Distribution Extension to serve new customers and grow its customer base.[252] In contrast, GFCP/VEPI argued that they must be allowed to continue to manage and balance their own deliveries on TETCO's Philadelphia Lateral.[253] GFCP/VEPI's position would provide a benefit only to GFCP/VEPI to the detriment of PGW and PGW's other customers and should be rejected.

b. Metering

GFCP/VEPI did not take a position on separate metering in their brief.

c. Rates for Transportation Service

PGW has fully addressed the arguments regarding (lower) special rates for GFCP/VEPI.

d. Surcharges

GFCP/VEPI did not take a position on surcharges in their brief. PGW notes that if GFCP/VEPI is placed on Rate IT with Standby Service, or Rate GS, they should be subject to whatever surcharges are otherwise applicable to those rate schedules.

e. Alternative Receipt Service

Arguments regarding ARS have been fully addressed by PGW.

---

250 OCA Brief at 13–14, 17

251 PGW Brief at 26, 59–60, 61, 65–66.

252 *Id.*

253 GFCP/VEPI Brief at 9, 16–17, 22–23, 41.

f. Summer Capacity Releases

Arguments regarding capacity releases have been fully addressed by PGW.

g. Separate Maintenance Fee

Arguments regarding the maintenance fee have been fully addressed by PGW.

VII. PGW AND VICINITY MARKETING ACTIVITIES

PGW completely refuted each and every allegation regarding unreasonable service regarding PGW's preliminary negotiations with GFCP/VEPI for a new rate as well as sales and marketing activities.[254] PICGUG noted, as did PGW,[255] that GFCP/VEPI seem to have dropped their concerns over PGW's sales and marketing activities.[256] GFCP/VEPI argue that they did not withdraw their concerns.[257] They conceded, however, that there is "insufficient evidence" to support them.[258] Therefore, the unrefuted evidence in the record requires that these allegations be dismissed.

For example, GFCP/VEPI have failed to carry their burden of proof regarding any allegations of misapplication of PGW's tariff. The only specific situation raised by Mr. Crist, on behalf of VEPI, involves the alleged application of Rate IT and the Red Cross building in Philadelphia.[259] Mr. Crist alleged that the Red Cross was an example of misapplication of Rate IT

---

[254] PGW Brief at 72–75; PGW St. 3R at 16–17; PGW St. 5R at 15–28. PGW notes that it also challenged the imposition of restrictions on its sales and marketing activities. *See, e.g.*, PGW St. 3R; PGW St. 3SR; PGW St. 5R; PGW St. 5SR; PGW St. 6R. PICGUG argued that restrictions suggested by Mr. Crist on PGW's use of Rate IT (GFCP/VEPI Statement JC-1 at 32–35) would be more appropriately raised and, if necessary, reviewed, as part of PGW's next base rate proceeding. *See* PICGUG Brief at 2–3, 9. The same could be said of other restrictions proposed by Mr. Crist. *See* GFCP/VEPI Statement JC-1 at 28–29, 31, 34–35.

[255] PGW Brief at 73.

[256] PICGUG Brief at 9.

[257] GFCP/VEPI Brief at 42.

[258] *Id.*

[259] PGW St. 3R at 13, 16.

to give a discount, since that building does not qualify for Rate IT.[260] **Mr. Crist was completely wrong**. The Red Cross is served under Rate GS, not Rate IT.[261] PGW never offered to install an electric boiler.[262] Electric heating is not PGW's line of business.[263] Of course, PGW did discuss the availability of natural gas and rates with the Red Cross.[264] In those discussion, it was clear that the Red Cross did not and would not qualify for Rate IT.[265] Use of Rate IT was not pursued further with the Red Cross,[266] and the Red Cross was placed on Rate GS,[267] as noted.

VIII. CONCLUSION

PGW respectfully requests that the Commission: (a) dismiss the Complaint of GFCP/VEPI; (b) determine that: (i) GFCP/VEPI have not shown that it would be legal or in the public interest to extend the terms of their existing contract and continue to receive service under Rate GTS-F; (ii) GFCP/VEPI have failed to show that they are entitled to a special rate; (iii) that having failed to prove they are entitled to a special rate, GFCP/VEPI may be served on and after January 1, 2023 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 transportation service at a rate reflecting the cost of providing that service as determined in the cost of service study presented by PGW or OCA, (ii) if the cost for item (i) does not reflect the cost of utilizing

---

260 GFCP/VEPI Statement JC-1 at 32.

261 PGW St. 3R at 17.

262 *Id.*

263 *Id.*

264 *Id.*

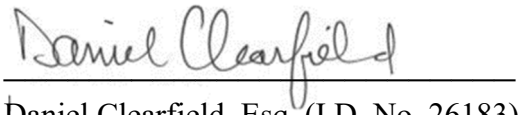
265 *Id.*

266 *Id.*

267 *Id.*

the distribution system, or does so only in part, provide for an Alternative Receipt Service and 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 recommended by PGW; (d) find that GFCP/VEPI have not met their burden that their potential of bypassing PGW's distribution system to provide service justifies the provision of a special rate that is inconsistent with the appropriately determined cost of service; and (e) take any other action determined to be in the public interest.

Respectfully submitted,



Daniel Clearfield, Esq. (I.D. No. 26183)
Carl R. Shultz, Esq. (I.D. No. 70328)
Cody T. Murphey, Esq. (admitted *pro hac vice*)
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Fl.
Harrisburg, PA 17101
717.237.7173 (direct dial)
717.255.3742 (direct dial)
717-237-6019 (fax)
dclearfield@eckertseamans.com
cshultz@eckertseamans.com
cmurphey@eckertseamans.com

Counsel for Philadelphia Gas Works

Of Counsel:

Craig W. Berry, Esq. (I.D. No. 26183)
Senior Attorney
Philadelphia Gas Works
800 W. Montgomery Ave.
Philadelphia, PA 19122
215.684.6049
215.684.6798 (fax)
Craig.Berry@pgworks.com

Dated: October 4, 2022