



Dennis A. Whitaker  
Office: 717 236-1300 x226  
Direct: 717 703-0805  
[dawhitaker@hmslegal.com](mailto:dawhitaker@hmslegal.com)

Kevin J. McKeon  
Office: 717 236-1300 x235  
Direct: 717 703-0801  
[kjmckeon@hmslegal.com](mailto:kjmckeon@hmslegal.com)

Todd S. Stewart  
Office: 717 236-1300 x242  
Direct: 717 703-0806  
[tsstewart@hmslegal.com](mailto:tsstewart@hmslegal.com)

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 [www.hmslegal.com](http://www.hmslegal.com)

October 4, 2022

**VIA ELECTRONIC FILING**

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

RE: Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. v.  
Philadelphia Gas Works; Docket No. C-2021-3029259; **REPLY BRIEF**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the Reply Brief of Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. in the above-captioned proceeding. Copies of this Brief have been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. If you have any questions related to this filing, please do not hesitate to contact me.

Very truly yours,

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

TSS/jld

Enclosure

cc: Administrative Law Judge Marta Guhl (via electronic mail – [mguhl@pa.gov](mailto:mguhl@pa.gov))  
Athena Delvillar, Legal Assistant (via electronic mail – [sdelvillar@pa.gov](mailto:sdelvillar@pa.gov))  
Per Certificate of Service

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party)

**VIA ELECTRONIC MAIL ONLY**

Daniel Clearfield, Esquire  
Carl R. Shultz, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
213 Market Street, 8<sup>th</sup> Floor  
Harrisburg, PA 17101  
[dclearfield@eckertseamans.com](mailto:dclearfield@eckertseamans.com)  
[cshultz@eckertseamans.com](mailto:cshultz@eckertseamans.com)  
*Counsel for Philadelphia Gas Works*

Lauren M. Burge, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
U.S. Steel Tower  
600 Grant Street, 44<sup>th</sup> Floor  
Pittsburgh, PA 15219  
[lburge@eckertseamans.com](mailto:lburge@eckertseamans.com)  
*Counsel for Philadelphia Gas Works*

Cody T. Murphey, Esquire  
Eckert Seamans Cherin & Mellott, LLC  
919 E. Main Street, Suite 1300  
Richmond, VA 23219  
[cmurphey@eckertseamans.com](mailto:cmurphey@eckertseamans.com)  
*Counsel for Philadelphia Gas Works*

Craig W. Berry, Esquire  
Philadelphia Gas Works  
800 West Montgomery Avenue  
Philadelphia, PA 19122  
[Craig.Berry@pgworks.com](mailto:Craig.Berry@pgworks.com)

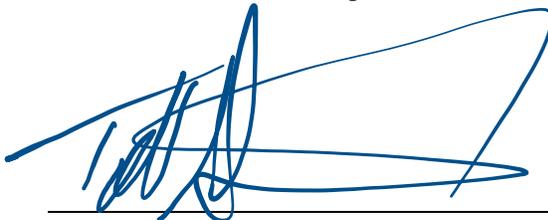
Robert D. Knecht  
5 Plymouth Road  
Lexington, MA 02421  
[rdk@indecon.com](mailto:rdk@indecon.com)

Harrison W. Breitman  
Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
[HBreitman@paoca.org](mailto:HBreitman@paoca.org)

Sharon E. Webb  
Assistant Small Business Advocate  
Office of Small Business Advocate  
Forum Place  
555 Walnut Street, 1<sup>st</sup> Floor  
Harrisburg, PA 17101  
[swebb@pa.gov](mailto:swebb@pa.gov)

Gina L. Miller, Esquire  
Pennsylvania Public Utility Commission  
Bureau of Investigation and Enforcement  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120  
[ginmiller@pa.gov](mailto:ginmiller@pa.gov)

Charis Mincavage, Esquire  
McNees Wallace & Nurick LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108  
[cmincavage@mcneeslaw.com](mailto:cmincavage@mcneeslaw.com)  
*Counsel for Philadelphia Industrial and Commercial Gas User Group*



---

Dennis A. Whitaker  
Kevin J. McKeon  
Todd S. Stewart

DATED: October 4, 2022

**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.	:	

---

**REPLY BRIEF  
OF GRAYS FERRY COGENERATION PARTNERSHIP  
AND VICINITY ENERGY PHILADELPHIA, INC.**

---

Dennis A. Whitaker, Attorney ID No. 53975  
Kevin J. McKeon, Attorney ID No. 30428  
Todd S. Stewart, Attorney ID No. 75556  
Hawke McKeon & Sniscak LLP  
100 North Tenth Street  
Harrisburg, PA 17101  
(717) 236-1300  
(717) 236-4841 (fax)  
[dawhitaker@hmslegal.com](mailto:dawhitaker@hmslegal.com)  
[kjmckeon@hmslegal.com](mailto:kjmckeon@hmslegal.com)  
[tsstewart@hmslegal.com](mailto:tsstewart@hmslegal.com)

*Counsel for Grays Ferry Cogeneration  
Partnership, and Vicinity Energy Philadelphia,  
Inc.*

DATED: October 4, 2022

**TABLE OF CONTENTS**

I. INTRODUCTION AND SUMMARY ..... 1

    A. Introduction..... 1

    B. Summary ..... 2

        1. PGW’s characterization of the means by which PGW began serving Vicinity is misleading. (PGW Main Brief “MB” at 1-2)..... 5

        2. PGW’s Rate demand was anything but “non-binding.” (PGW MB 4)..... 6

        3. PGW’s Rate Demands are illegal and bad policy. (PGW MB 4-5; OCA MB 4)..... 6

        4. Vicinity’s service is not being subsidized by low pressure distribution system customers. (PGW MB 5-7). ..... 8

II. COUNTER STATEMENT OF THE CASE..... 9

III. SUMMARY OF THE REPLY ARGUMENT ..... 9

    A. Rate GTS Can Continue to be available. (PGW MB 10). ..... 9

    B. Mr. Crist did not testify that \$0.21/Dth was an appropriate rate for Vicinity. (PGW MB 11)..... 10

    C. PGW’s recitation of the requirements of Section 508 is inaccurate. (PGW MB 10-11). ..... 11

    D. PGW’s Refusal to Offer a Special Rate for Vicinity is Discriminatory and Unreasonable. (PGW MB 11-12). ..... 11

    E. Vicinity has Proven that it is entitled to a special rate. (PGW MB, 11-12)..... 12

    F. The OSBA’s contention that Vicinity should be assessed any surcharge is untenable. (OSBA MB 20-22). ..... 13

    G. PGW’s Proposed Rates are neither just nor reasonable and ignore fundamental ratemaking principles. (PGW MB 12). ..... 14

    H. Any Special Rate Charged to Vicinity must include the essential elements of the current Contract. (PGW MB 12-13). ..... 16

IV. LEGAL STANDARDS ..... 17

    A. Overall Burden of Proof..... 17

        1. Contrary to PGW’s assertion, the Code makes it clear that it is the utility that has the burden of proving the justness and reasonableness of any rate demanded by a utility. (PGW MB 13-14)..... 17

    B. Rates Must be Just and Reasonable and Non-Discriminatory ..... 17

    C. Legal Standard for Special Rate ..... 17

    D. Legal Standard for Cost of Service Ratemaking..... 18

        1. PGW’s proposed rates are not based on the cost to serve Vicinity. (PGW MB 16)..... 18

E.	Adherence to Tariff.....	19
F.	Challenges to Existing Rates .....	19
V.	GFCP/VEPI CURRENT USE OF THE PGW SYSTEM.....	19
A.	GFCP/VEPI’s Payment for Distribution Service.....	19
1.	Vicinity Receives Service over a Purpose Built Facility on which it is the only customer.....	19
2.	ARS does not use PGW’s low pressure distribution system. (OCA MB 9-11). .....	19
3.	PGW has not proven that ARS costs more than what it collects from Vicinity. ....	20
4.	Vicinity’s service is not contractually firm.....	21
B.	GFCP/VEPI’s Operation and Maintenance Expense.....	22
C.	GFCP/VEPI’s Payment for Capacity Release .....	22
1.	The OCA Misstates Vicinity’s Capacity Release Request (OCA MB 11-2). .....	23
D.	GFCP/VEPI’s Payment for Alternative Receipt Service.....	24
1.	PGW’s demand to increase rates for ARS are not supported by the record. (PGW MB at 24-26).....	24
E.	GFCP/VEPI’s Management of Balancing and Compliance with TETCO Tariff Requirements. ....	25
1.	There is no present need for PGW to balance the gas on the four mile pipeline or to charge a fee for lost and unaccounted for gas. ....	25
VI.	RATE SETTING FOR GFCP/VEPI.....	26
A.	Is Service Under Rate GTS Available to GFCP/VEPI After December 31, 2022? .....	26
1.	Contrary to PGW’s argument, Rate GTS could be available after December 31, 2022. (PGW MB at 27-30; OSBA MB 11-12).....	26
B.	May GFCP/VEPI receive service by an Extension of the Existing Contract? .....	27
1.	PGW can continue to serve Vicinity under the Contract. (PGW MB 30-31). ....	27
2.	PGW incorrectly argues that extending the Contract under Section 508 would not be in the public interest. (PGW MB at 32-34).....	27
C.	Is a New Special Rate for GFCP/VEPI Justifiable? .....	29
1.	Vicinity has met the burden of proving that it is entitled to a special rate. (PGW MB 34-5). ....	29
2.	Legal standard.....	29
3.	Examples of Special Rates or rejection of Special Rates in Pennsylvania	30

4.	Application of Standard .....	32
D.	What Considerations Should be Applied to Determine the Special Rate for GFCP/VEPI? .....	33
1.	Gas Transportation Rate, Cost of Service .....	34
2.	PGW Capacity Assets and Nondiscriminatory Availability of Such.....	36
3.	By-Pass Considerations .....	37
4.	ARS Type service rates, costs, terms and conditions .....	38
5.	Bundled Supply Service rates terms and conditions.....	38
6.	Other Rate Elements, rates, terms and conditions .....	38
E.	If GFCP/VEPI Has Not Justified a Special Rate, What Rates, Terms, and Conditions of Service Should Apply to GFCP/VEPI? .....	39
1.	Existing Tariffed Rates .....	39
2.	Potential Modifications .....	39
VII.	PGW AND VICINITY MARKETING ACTIVITIES .....	39
VIII.	CONCLUSION.....	39

**TABLE OF AUTHORITIES**

**Cases**

*Building Owners and Managers Assoc. v. Pa. PUC; SEPTA v. Pa. PUC*,  
470 A.2d 1092 (Pa. Cmwlth. 1984) ..... 32

*Joint Petition for Generic Investigation of Rulemaking Regarding “Gas-on-Gas” Competition  
between Jurisdictional Natural Gas Distribution Companies*, Docket Nos. P-2011-2277868, I-  
2012-2320323 (Opinion and Order entered May 4, 2017 (“*Gas Wars Order*”)..... 11, 12, 29, 34

*Lloyd v. Pa. PUC*,  
904 A.2d 1010 (Pa. Cmwlth. 2006)(“*Lloyd*”)..... 18

*MCI Airsignal of Pa., Inc. v. Pa. PUC*,  
512 A.2d 600 (Pa. Cmwlth. 1986) ..... 32

*Pa PUC v. PGW*, Docket No. M-00021612, et al.,  
(Opinion and Order entered March 31, 2003)..... 6

*Pa. PUC v. PPL Elec. Utils. Corp.*, Docket No. R-2010-2161694, 2012 Pa. PUC LEXIS 989  
(Opinion and Order entered June 21, 2012)(“*PPL Electric Utilities*”)..... 18, 30

*Philadelphia Suburban Transp. Co. v. PUC*,  
281 A.2d 179 (Pa. Cmwlth. 1971) ..... 33

*US Steel Corp. v. Pa PUC*,  
390 A.2d 849 (Pa. Cmwlth. 1978) ..... 18, 31

**Statutes**

66 Pa. C.S. § 1304..... 12

66 Pa. C.S. § 315(a) ..... 17

66 Pa. C.S. § 508..... 11, 26, 27

66 Pa. C.S. §§ 1301, 1304, and 1501 ..... 7, 8

**Other Authorities**

James H. Cawley & Norman James Kennard, *Rate Case Handbook: A Guide to Utility  
Ratemaking Before the Pennsylvania Public Utility Commission*, at 144 (2018) ..... 19

## **I. INTRODUCTION AND SUMMARY**

### **A. Introduction**

This matter is and continues to be about fairness. Vicinity's predecessor revitalized the City of Philadelphia's district thermal system by adding cogeneration – the ability to generate electricity and use the waste heat to supply the district thermal system. Vicinity currently provides critical energy services to approximately 100 million square feet of hospital, educational, research, and office space within Philadelphia. Cogeneration is more efficient than traditional power generation technology and better for the environment. The combustion turbines used in Vicinity's cogeneration requires natural gas at high pressures (450 psig). Although in 1996 Vicinity had designed and obtained Federal Energy Regulatory Commission ("FERC") approval to build its own dedicated, high pressure connection to TETCO's high pressure facilities, Vicinity, after negotiations with the City and other parties, agreed to pay Philadelphia Gas Works ("PGW") to construct the dedicated, high pressure connection. Partnering with PGW allowed PGW to utilize an otherwise abandoned PGW line to transport TETCO gas to Vicinity. The parties negotiated and executed a fair contract, one that covered all PGW's costs to serve Vicinity, and then some. But now, with the pending expiration of that Contract, PGW seeks to leverage Vicinity into rates that are unjust and unreasonable solely because it thinks it can. PGW's proposed rates will drive Vicinity off the PGW system and will be the direct cause of the PGW's loss of income generated by Vicinity which will leave PGW customers worse off. The Commission should not condone PGW's brazen conduct. The record demonstrates that PGW incurs virtually no costs to transport natural gas to Vicinity – certainly no greater costs than the existing contract provides. Allowing PGW to strong-arm Vicinity in this fashion would be contrary to law, would result in a myriad of unintended and bad consequences, and would simply be unfair.

## **B. Summary**

The current Contract contains rates that are just and reasonable and nothing has transpired since the inception of that Contract to change PGW's costs of transportation. The current Contract should be extended.

In every rate case since the time that PGW fell under the regulation of the Commission, including its most recent case, PGW has argued that Vicinity is entitled to a special rate that allocates zero costs of providing distribution services through PGW's low pressure distribution system. PGW's justification has always been simple: Vicinity is served through a purpose built, dedicated high pressure facility – a facility paid for entirely by Vicinity and for which Vicinity continues to pay for operations and maintenance (“O&M”). Now, for the first time in its history, PGW flip-flops on this ratemaking approach based solely on the expiration of the contract, which only highlights PGW's duplicity in seeking to impose much higher rates on Vicinity to subsidize its other customers, because PGW believes that Vicinity can afford higher rates.

PGW has yet to propose a single rate that is just and reasonable to charge Vicinity for gas transportation. PGW's initial offer was \$0.75/Dth; its consultant, Ms. Heppenstall initially testified that the appropriate rate was \$0.68/Dth; and now PGW states, after Ms. Heppenstall corrected the gas volumes in her Cost of Service Study (“COSS”), that the appropriate rate is \$0.61/Dth. Moreover, PGW attempts to mislead the Commission and states that Mr. Crist “admitted” Vicinity isn't paying a cost of service based rate. That's clearly not what Mr. Crist said. Rather, he said the COSS offered by PGW's own consultant can only support a maximum rate of \$0.21/Dth when PGW's COSS error is corrected. Mr. Crist's testimony is clear that the current contract rates satisfy

PGW's actual *de minimis* costs of service but that under PGW's own model any new rate must be less than \$0.21/Dth.<sup>1</sup>

The Office of Small Business Advocate ("OSBA"), which has actively participated in this matter and agrees that "from a cost causation perspective, [PGW's assertion that Alternative Release Service (ARS) volumes are transported using PGW's integrated low pressure distribution system] is nonsense." "[T]here is no reason to charge Complainants with the distribution system costs for which they bear no cost causation responsibility."<sup>2</sup> To be sure, Vicinity disagrees with some of OSBA's other positions. The OSBA's hybrid approach, which suggests that the Commission use this case to establish the regulatory parameters of PGW's service to Vicinity is promising but does not deliver any certainty. While Vicinity agrees with OSBA that it should not be assessed the Universal Service surcharge,<sup>3</sup> it strongly disagrees with OSBA's position that Vicinity has failed to prove that it is a bypass threat. Mr. Crist's testimony made it clear that while Vicinity may not be ready to bypass PGW on the date the Contract expires, Vicinity's process is moving steadily and rapidly in that direction.<sup>4</sup> There is no doubt that the rates in the 1996 Contract were negotiated in an effort to gain Vicinity's load, nothing has changed in 25 years that should alter that result here, and if PGW is permitted to exploit Vicinity in the way it proposes, PGW's customers will forfeit the benefit of the revenues Vicinity presently provides.

The OSBA's argument that any rate charged to Vicinity should include the Other Post-Employment Benefits ("OPEB") surcharge is simultaneously self-serving and self-destructive and would result in an even greater increase to Vicinity's costs than anything proposed by PGW. Interruptible customers are not subject to surcharges nor are customers whose rates are based on

---

<sup>1</sup> Statement ("St.") JC1-SR, 16:2-17:11.

<sup>2</sup> OSBA Main Brief ("MB") at 13.

<sup>3</sup> OSBA MB at 5.

<sup>4</sup> St. JC1, 11:7-23.

the ability to bypass, both of which apply here. The rate increase resulting from either surcharge would be devastating to Vicinity, devastating to Vicinity's customers (including hospitals, universities, other critical loads, and many of the OSBA's constituents), devastating to the City of Philadelphia's environmental goals and would result in eventual bypass if Vicinity could survive long enough to construct the bypass.

PGW implies that the gas transmission provided through the Philadelphia Lateral via ARS is free to Vicinity. That is not true. First, Vicinity pays \$54,000 annually to PGW for ARS. Second, in order to use ARS, Vicinity must procure exactly the same volume of capacity from TETCO for delivery to the Skippack Lateral as PGW allots for delivery to the Philadelphia Lateral. In simple terms, Vicinity and PGW engage in a like-kind exchange of natural gas capacity – it is only the delivery point that changes. PGW has not offered any credible evidence showing any cost differential between capacity costs for gas delivered through the Skippack Lateral and capacity costs for gas delivered through the Philadelphia Lateral. While Mr. Reeves discussed a one-solicitation based price estimate for capacity on the Philadelphia Lateral, he presented nothing about the Skippack Lateral.<sup>5</sup> Further, PGW did not complete the transaction Mr. Reeves discussed regarding the capacity on the Philadelphia Lateral. In short, there is no record evidence to suggest that the capacity Vicinity provides PGW at the Skippack Lateral is any less valuable than the capacity PGW provides Vicinity at the Philadelphia Lateral. More importantly, from the perspective of PGW's other customers, there is zero value difference between the delivery points, as no matter where the gas enters PGW's low pressure distribution system, its way to the customers.

PGW cites to cases where special rates were not approved. However, none of those cases addressed the circumstances here: (1) the utility provides service over a dedicated high pressure

---

<sup>5</sup> Tr. 161.

facility that does not use or interact with the low pressure distribution system, (2) which only connects to the interstate transmission system, (3) the customer pays the entire cost of the connection, (4) the customer pays the O&M for the line, and (5) the customer already is being charged a special rate.

Vicinity offers responses to the arguments and claims of the other parties below, following the outline of the Main Brief. Even though a subject is not addressed in this Reply Brief, all issues remain contested, and Vicinity relies upon the arguments of its Main Brief and the contents of the record.

1. PGW's characterization of the means by which PGW began serving Vicinity is misleading. (PGW Main Brief "MB" at 1-2).

PGW characterizes the inspiration for the 1996 Contract as a "bypass dispute" and suggests that the construction/rehabilitation of the four-mile, high pressure pipeline was business as usual for PGW. It was not. The FERC matter was not a mere "bypass dispute" – it was a case in which the FERC had approved the bypass of PGW's facilities to serve Vicinity.<sup>6</sup> Indeed, the Contract terms make it clear that PGW was intent on ensuring that Vicinity's load was served by PGW. Finally, there is no evidence that there was any intention expressed in the Contract or otherwise that after 25 years, Vicinity's status as a bypass-ready facility would change. PGW's argument that the parties expected that Vicinity would become a regular tariff customer after building its entire business structure on the premise that it would be able to obtain economic gas supply well into the future, which was the goal of the initial action before FERC, is neither factually supported nor even plausible.<sup>7</sup> There was no discussion in the Commission's Orders that the contract with Vicinity would not be renewed, which is hardly surprising since the contract itself contains a

---

<sup>6</sup> PGW MB at 1-2.

<sup>7</sup> PGW MB at 3.

renewal provision.<sup>8</sup> For PGW to suggest that the language in its tariff is “crystal clear” is reflective of the cavalier arrogance with which PGW has boldly misstated the material elements of this case.

2. PGW’s Rate demand was anything but “non-binding.” (PGW MB 4).

Despite years of Vicinity’s efforts to discuss renewal rates, and several bona fide offers from Vicinity, PGW’s last minute demand included a 10-fold rate increase and other unreasonable terms and conditions. PGW’s demands were premised on the notion that PGW can allocate costs from PGW’s entire low pressure distribution system to Vicinity.<sup>9</sup> When it became obvious that further negotiation would be fruitless and no negotiated rate would be in place when the Contract expired, Vicinity filed this Complaint with the Commission.<sup>10</sup> PGW’s delay tactics appear to have been targeted toward depriving Vicinity of the time needed to construct bypass facilities prior to the contract expiration. Before filing its Complaint seeking the Commission’s assistance in obtaining a reasonable rate for service, Vicinity renewed the process of preparing for bypass.

PGW initially demanded that Vicinity take service via an interruptible rate which Vicinity resisted based on its view of the present interruptibility of its service.<sup>11</sup> Vicinity’s present service is indeed interruptible, the ARS on which it depends in the winter is interruptible up to fifteen days per year and VEPI has dual fuel capability to produce steam if natural gas is curtailed. Vicinity would be able to take service that provides for similar interruptibility in the future.

3. PGW’s Rate Demands are illegal and bad policy. (PGW MB 4-5; OCA MB 4).

The circumstances of this case are unique and are unlikely to be repeated, but it is imperative that the Commission use its authority to first clarify that the rate demands made by

---

<sup>8</sup> *Pa PUC v. PGW*, Docket No. M-00021612, et al., (Opinion and Order entered March 31, 2003).

<sup>9</sup> St. JC1, 21:3-8.

<sup>10</sup> St. JCR-SR, 7:14-8:4.

<sup>11</sup> Tr. 76-77.

PGW (and now supported by the OCA) are unjust and unreasonable and are based on a false interpretation of facts and law. However, if the Commission decides in favor of PGW, then Vicinity would have no choice but to bypass the dedicated high pressure pipeline that Vicinity already paid for and minimize or completely sever its relationship with PGW.<sup>12</sup> The rate class under which Vicinity is served is less critical than the actual terms of service. That is, an interruptible rate could be adapted, but only if the rate justified Vicinity continuing to take transportation service from PGW. There is no rate class in PGW's current Tariff that would apply to Vicinity because Vicinity is the only PGW customer served on a dedicated high pressure facility and not by PGW's low-pressure distribution system. Thus, a new rate class of one would need to be established. However, developing such a rate class would be a waste of time if PGW clings to its new-found position that Vicinity utilizes and must pay for PGW's low pressure distribution system simply because PGW seeks to subsidize its other customers and believes Vicinity is able to pay higher rates. Setting transportation rates on a customer's ability to pay is illegal in Pennsylvania and violates the Public Utility Code by being discriminatory as well as unjust and unreasonable.<sup>13</sup> If PGW were able to set rates based on a customer's ability to pay, as it unabashedly proposes here, customers would be required to provide PGW with financial statements and rates would be set based on a customer's income. Any customer whose business makes a profit, or any above-average income residential customer could be subjected to higher rates to subsidize others simply because they have an ability to pay. Such ratemaking is plainly illegal.

---

<sup>12</sup> St. JC1, 24:11-17.

<sup>13</sup> 66 Pa. C.S. §§ 1301, 1304, and 1501.

4. Vicinity's service is not being subsidized by low pressure distribution system customers. (PGW MB 5-7).

It is axiomatic that PGW is required to provide service at rates that are just, reasonable and non-discriminatory.<sup>14</sup> In this case, PGW claims that PGW's low pressure distribution customers somehow subsidize the high pressure dedicated transportation service that PGW provides to Vicinity. The record, however, refutes PGW's claim. Under the Contract (a) Vicinity paid the entire cost to build the dedicated high pressure pipeline; (b) Vicinity pays for all maintenance; (c) Vicinity is responsible for scheduling, balancing and otherwise interacting with TETCO; (d) Vicinity pays for ALL gas delivered into the dedicated high pressure pipeline and so is already paying for any gas lost or unaccounted for during transport over the dedicated high pressure pipeline, and; (e) Vicinity compensates PGW for the minimal costs incurred by PGW to swap delivery points under the ARS. Simply put, Vicinity is already fully compensating PGW for its services – there are no uncompensated costs imposed on PGW or its other customers.<sup>15</sup> Indeed, the over \$ 2.5 million that Vicinity has annually paid PGW is largely accounted for below the line and is available for PGW to use however it sees fit because it has no corresponding costs to offset.

Vicinity receives no subsidy from PGW, or its customers and its current contract continues to be reasonable. PGW now wants to impose system cost allocations on Vicinity, which clearly violate not only the rules of ratemaking, but years of PGW's admissions during its own rate case sworn testimony. Specifically, until this case, PGW had consistently declared that Vicinity is served by a purpose built high pressure facility that serves only Vicinity and that therefore, Vicinity is plainly entitled to a special rate based on the direct allocation of the costs to serve it.<sup>16</sup>

---

<sup>14</sup> 66 Pa. C.S. §§ 1301, 1304, and 1501.

<sup>15</sup> St. JC1-SR, 3:3-4:7; JC1-SR, 4:12-21.

<sup>16</sup> St. JC1-SR, 12:1-13:18.

## II. COUNTER STATEMENT OF THE CASE

Vicinity addresses the counterstatement of the case in the body of its Reply Arguments.

## III. SUMMARY OF THE REPLY ARGUMENT

### A. Rate GTS Can Continue to be available. (PGW MB 10).

Whether Rate GTS can remain available after the termination of the Contract is significant because its continued existence would make the new contract with Vicinity akin to the existing contract. As discussed in Vicinity's Main Brief, the Rate GTS language in PGW's tariff is ambiguous at best and is subject to interpretation that it remains open to those entities taking service pursuant to a contract that was valid as of September 1, 2003.<sup>17</sup> It is undisputed that the Contract was valid as of that date and remains so today. Moreover, neither the tariff nor the underlying contract prevents the Contract from being renewed or extended. Vicinity asks the Commission to do so immediately in order to preserve the status quo while it deliberates. In short, Rate GTS can continue in existence without question if the Contract is renewed.

The Commission has the authority under the Code to modify any term of any contract with a Public Utility when doing so is in the "public interest." In this case, the Parties explicitly stated within the Contract itself that it is in the public interest.<sup>18</sup> It simply is not credible for PGW to argue that *the* natural gas Contract that allows Vicinity to produce one million megawatt hours of electricity annually and provide heat, cooling and process steam for approximately 100 million square feet of hospital, educational, research and office space within Philadelphia is now not in the public interest. Extending the Contract is not the same as requiring a utility to enter into a new obligation, rather, it is modifying an existing obligation.

---

<sup>17</sup> Vicinity MB at 23-24.

<sup>18</sup> Contract, p 2.

**To the extent that the Commission’s consideration of this matter extends beyond the expiration date of the Contract, Vicinity believes the Commission must extend the existing contract to ensure that there is no premature expiration and to maintain the status quo while it deliberates. The Commission should also consider in any such extension, the period necessary for the modifications to the Contract, or the imposition of a new rate to be addressed. If it appears to be necessary, Vicinity will seek interim emergency relief to maintain the status quo while the Commission deliberates.**

**B. Mr. Crist did not testify that \$0.21/Dth was an appropriate rate for Vicinity. (PGW MB 11).**

Nowhere in the record did Mr. Crist state that the current rate is insufficient or that the appropriate rate for PGW to provide transportation service to Vicinity should be \$0.21/Dth. Any PGW statement to the contrary is untrue. Mr. Crist’s testimony stated unambiguously that \$0.21/Dth was the maximum rate that could be charged on the basis of Ms. Heppenstall’s corrected cost of service study, and that there were a number of adjustments required to produce an accurate rate.<sup>19</sup> Mr. Crist also testified that the current rate of \$0.08/Dth continues to be reasonable.<sup>20</sup> If the Commission were to believe that some adjustment of the transportation rate was warranted any adjusted rate would need to be between \$0.08/Dth and \$0.21/Dth. Moreover, because special rates for customers with bypass capability must be priced to provide an incentive for a customer to not bypass, that consideration would need to be included in any future rate.<sup>21</sup>

---

<sup>19</sup> St. JC1-SR, 16:2-17:11.

<sup>20</sup> Vicinity MB at 31.

<sup>21</sup> *Joint Petition for Generic Investigation of Rulemaking Regarding “Gas-on-Gas” Competition between Jurisdictional Natural Gas Distribution Companies*, Docket Nos. P-2011-2277868, I-2012-2320323 (Opinion and Order entered May 4, 2017, slip. op. at 17-18) (“*Gas Wars Order*”).

**C. PGW’s recitation of the requirements of Section 508 is inaccurate. (PGW MB 10-11).**

As discussed at length above and in Vicinity’s Main Brief, Section 508 of the Code provides that the Commission may modify the terms of any contract of any public utility upon a finding that the contract term is “contrary to the public interest”.<sup>22</sup> In this case, the provisions that are contrary to the public interest are: the duration of the contract and such items as the summer capacity release.

The record of this case shows that these provisions if not changed will permit an otherwise reasonable Contract to expire, which would not be in the public interest. Also as discussed herein and in Vicinity’s Main Brief, there can be no doubt that the Contract is reasonable. Avoiding the inefficiency and further turmoil of further negotiations, given the history prior to this case, by simply extending this existing contract for a reasonable amount of time (10-15 years) is both practical and authorized by the Code.

**D. PGW’s Refusal to Offer a Special Rate for Vicinity is Discriminatory and Unreasonable. (PGW MB 11-12).**

The crux of PGW’s argument is that Vicinity is no longer entitled to a special rate, in the form of extending the existing Contract or some new special rate, even though Vicinity has been served by such a special rate for almost 25 years. PGW argues that Vicinity has received whatever benefit the Contract provided, and is no longer entitled to a special rate, even if that means Vicinity will have no choice but to bypass PGW’s facilities. PGW makes that bold assertion even though the factual underpinnings of the Contract have not changed – Vicinity is still the only customer served by the high pressure pipeline Vicinity paid for, that still manages its own balancing and delivery, that still pays O&M costs, and still has a bypass option. PGW’s intention in this case is

---

<sup>22</sup> 66 Pa. C.S. § 508.

transparent: charge Vicinity the largest rate it can – regardless of the actual cost to serve Vicinity so that Vicinity can subsidize the rates of other PGW customers. PGW’s contention that Vicinity’s rates are subsidized is obviously wrong because Vicinity already produces over \$2.5 million in revenue in excess of the costs to serve Vicinity.<sup>23</sup> PGW asserts at several places in its Brief that the rate charged to Vicinity has not been determined to be just and reasonable.<sup>24</sup> But that is not true. In its 2017 rate case, as pointed out by Mr. Crist, the rates charged to Vicinity were at issue, and PGW’s witness asserted that the manner in which PGW accounts for those rates and the associated costs was correct, and the present rate structure was subsequently approved.<sup>25</sup>

**E. Vicinity has Proven that it is entitled to a special rate. (PGW MB, 11-12).**

The Commission’s jurisprudence on special rates is clear. Special rates cannot provide a discount below the level the utility spends to provide service.<sup>26</sup> The current contract rate complies with this principle. The unrefuted record evidence shows that Vicinity currently provides PGW with an excess of revenue over actual costs.<sup>27</sup> Special rates may not be discriminatory, i.e., provide an unreasonable benefit to one customer or class of customers to the detriment of other customers or customer classes.<sup>28</sup> In this case PGW’s customers actually benefit from PGW’s service to Vicinity. By virtue of Vicinity being served as the only customer on a purpose-built high pressure pipeline, for which it provided all of the necessary capital, and for which it continues to pay the maintenance, PGW has little or no cost to provide transportation service to Vicinity and recovers its costs of providing the other services (i.e., ARS and Sales service) in the charges for those services. The transportation rate provides revenues to PGW that it would not have received if

---

<sup>23</sup> St. JC1-SR, 9:18-10:2.

<sup>24</sup> PGW MB at 4.

<sup>25</sup> St. JC1-SR, 12:1-22.

<sup>26</sup> *Gas Wars Order, supra*, at 17-18.

<sup>27</sup> St. JC1-SR, 9:18-10:2.

<sup>28</sup> 66 Pa. C.S. § 1304.

Vicinity had bypassed PGW in 1996. To the extent that the Commission believes that any of the other services are non-compensatory, the charges for those services could be adjusted accordingly, but PGW's logic fails completely when it argues that ARS should drive transportation rates. ARS does not use PGW's low pressure distribution system and is not a reasonable basis on which to assign costs to the transportation rate. The failed logic that underpins PGW's entire assertion cannot overcome the fact the cost of serving Vicinity is no different from what PGW represented in sworn testimony in its prior rate cases and PGW has no basis to claim that Vicinity is being subsidized. Indeed, the subsidy plainly runs the other direction.

**F. The OSBA's contention that Vicinity should be assessed any surcharge is untenable. (OSBA MB 20-22).**

While the OSBA's posture in this matter may appear to take the reasonable middle of the road approach, it nonetheless overlooks the likely outcomes of its position. It is true, as asserted by the OSBA, that the positions of PGW and Vicinity do vary widely, but the OSBA's solution would be more devastating to Vicinity than that proposed by PGW.<sup>29</sup> OSBA is proposing that Vicinity be assessed the Universal Service and Energy Conservation ("USEC") surcharge if its rates are established on an allocated cost basis, but should not be assessed the surcharges if the rates are set on a bypass basis.<sup>30</sup> Charging Vicinity the USEC, at \$2.0884 per mcf would result in a rate increase of more than \$26,000,000 per year over the \$1.3 million that Vicinity currently pays for transportation service. That is more than a two thousand percent rate increase. The results from the OPEB surcharge would be similar, and the combination more than catastrophic. It appears that OSBA's motivation for seeking to apply the USEC charge to Vicinity is to leverage its own position that only residential customers should pay the surcharge. Putting that aside,

---

<sup>29</sup> OSBA MB at 20-22.

<sup>30</sup> OSBA MB at 5.

however, there simply is no scenario where Vicinity survives with a rate increase of that magnitude. Not only would it be impossible to pass such an increase to steam customers, but it would also likely result in Vicinity being unable to sustain its cogeneration operation which would take one million megawatts hours of environmentally beneficial power off the PJM grid.

While OSBA's witness Mr. Knecht did not take a firm position on whether Vicinity has proven its bypass capability, OSBA's Main Brief concludes, wrongly, that Vicinity, while making progress, has not proven its bypass ability, and thus attempts to pull the bypass rug out from under Vicinity's feet.<sup>31</sup> Vicinity has shown that it is prepared to bypass PGW just as it demonstrated in 1996. As such it should be assessed in rates that recognize that ability. It is also obvious that OSBA's assertion that Vicinity should be assessed any surcharge is contradicted by PGW's practice of not assessing the charges to interruptible customers, when Mr. Knecht conceded that service to Vicinity is not contractually firm. Rather, the OSBA's contention regarding surcharges appears to be a product of the ongoing dispute with PGW and the Commission regarding PGW's practice of assessing surcharges, that benefit only residential customers, to all firm customers. The Commission should not allow the OSBA to inextricably tie together the appropriate solution in this case and the OSBA's ongoing disagreement with the Commission's policy, even if the policy is ill-conceived. Vicinity's natural gas supply is far too important to make it a pawn in someone else's dispute.

**G. PGW's Proposed Rates are neither just nor reasonable and ignore fundamental ratemaking principles. (PGW MB 12).**

PGW correctly identifies cost of service as the "polestar" of ratemaking but then fails to navigate to the correct destination because it ignores the actual cost to serve Vicinity.<sup>32</sup> PGW

---

<sup>31</sup> OSBA MB at 16-17.

<sup>32</sup> PGW MB at 12.

employed the cost of service (“COSS”) model it used in its prior base rate proceedings but made flawed adjustments in this proceeding that predict a price of \$0.601/Dth.<sup>33</sup> However in its main brief, PGW states the rate would be between \$0.689/Dth to \$0.756/Dth. The basis for the range PGW put forth in its main brief was not stated and is not supported by any analysis. In its flawed COSS, PGW violates the fundamental principle of cost causation. PGW witness Ms. Heppenstall allocated low pressure distribution system costs to the gas volumes delivered under the ARS even though ARS gas flows exclusively through the dedicated high pressure four mile line. OSBA correctly calls PGW’s assertion “nonsense.”<sup>34</sup> A review of the facts is needed. PGW provides high pressure gas transportation service to Vicinity (for which the above quoted rates would be assessed) via a purpose built facility (the dedicated high pressure four mile line), from which only Vicinity is served, for which Vicinity paid the entire capital cost (\$10.1 million) and for which it continues to pay an annual maintenance fee of \$160,000.

In essence, it costs PGW practically nothing to provide transportation service to Vicinity and yet Vicinity’s rates provide over \$2.5 million in total annual revenue to PGW. PGW now seeks to increase the rate charged to Vicinity from \$0.08/Dth to \$0.601/Dth, which, among other things, violates the principle of gradualism. The premise for this change in PGW’s prior ratemaking approach is PGW’s false claim that ARS gas flows through (“uses”) the low pressure PGW distribution system to reach Vicinity when it does not. In reality, the ARS gas that Vicinity delivers to PGW via the Skippack Lateral cannot flow to Vicinity, because gas used by Vicinity must be delivered at 450 psig, and only the dedicated high pressure four-mile line is capable of delivering such gas. Once Vicinity’s ARS gas enters the Skippack Lateral, it becomes PGW’s gas that is consumed by PGW’s low pressure distribution system customers. Obviously PGW’s

---

<sup>33</sup> Exhibit CEH-1.

<sup>34</sup> OSBA MB at 13.

position has an internal conflict. On the one hand it purports to only apply the full allocation of low pressure system costs to ARS rates, even though all of Vicinity's gas, including its ARS gas (the equivalent volume to what is delivered to PGW at Skippack) flows only over the Philadelphia Lateral and through the high pressure four mile pipeline.<sup>35</sup> There is no logic that would allow PGW to assess the low pressure distribution system costs to gas that Vicinity neither owns nor consumes (Skippack gas) and to instead assess those costs on gas that is transported over the high pressure four mile pipeline.

**H. Any Special Rate Charged to Vicinity must include the essential elements of the current Contract. (PGW MB 12-13).**

There is an existing rate class that would serve as the best answer to the question of what rate class should be used as a basis for service to Vicinity.<sup>36</sup> That rate class, Rate GTS, with its current terms, could be applied to service to Vicinity. Nonetheless, if forced to choose a substitute, the obvious answer would be a new iteration of PGW's interruptible rate, Rate IT. It would be the best alternative because Vicinity qualifies as an interruptible customer (Vicinity has dual fuel capability for some of its boilers that allow it to produce steam for critical needs customers, even though it would not be able to produce electricity during an interruption in service).<sup>37</sup>

Vicinity could manage under a rate class that provided a similar level of interruptibility it receives presently. Importantly, any transportation service PGW provides must include some form of ARS for 21,000 Dth/day of capacity, noting that ARS is subject to interruption for up to 15 days per year under certain conditions. Finally, the bundled sales service that PGW claims should be charged at the present tariff rate is not a firm service. PGW is required to provide the service on a

---

<sup>35</sup> St. JC1-SR, 16:4-16.

<sup>36</sup> Vicinity MB at 40-41.

<sup>37</sup> Vicinity MB at 40-41.

“best efforts” basis, which means PGW can refuse to provide the service for just about any reason, but generally chooses not to do so.

It is clear that any of PGW’s existing interruptible rates would not accommodate this bundle of services without substantial modification.

#### **IV. LEGAL STANDARDS**

##### **A. Overall Burden of Proof**

1. Contrary to PGW’s assertion, the Code makes it clear that it is the utility that has the burden of proving the justness and reasonableness of any rate demanded by a utility. (PGW MB 13-14).

PGW contends that as the Complainant, Vicinity bears the burden of proving the allegations in the complaint and the illegal actions or inactions of the utility by a preponderance of the evidence, which is correct. Vicinity has amply met that burden. However, in matters such as this, where PGW is demanding a rate from Vicinity, the Public Utility Code places the burden of proving the justness and reasonableness of the rates demanded on the utility.<sup>38</sup> PGW has not met its burden and has not proven the justness or reasonableness of any of the multiple rates terms or conditions that it has demanded in this proceeding.

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

##### **C. Legal Standard for Special Rate**

In its argument over which legal standards apply to special rates, PGW cites to the 1978 *US Steel* case and the 2012 *PPL Electric Utilities* case. Both of these cases, upon which almost the entirety of PGW’s argument on this subject rest, are immediately distinguishable on their facts. For example, in *US Steel*<sup>39</sup>, the customer argued that PECO’s consolidation of several rate classes into a single rate case was unreasonable and that the corresponding increase in rates was likewise

---

<sup>38</sup> 66 Pa. C.S. § 315(a).

<sup>39</sup> *U. S. Steel Corp. v. Pa. PUC*, 390 A.2d 849, 854 (Pa. Cmwlth. 1978)(“*US Steel*”).

unreasonable and discriminatory. *US Steel* does not involve a customer using an existing special rate. In *PPL Electric Utilities*<sup>40</sup> the Commission denied the request of Donsco for a special rate based solely on factual circumstances that are vastly different from those here. Importantly, unlike here, the Commission found that Donsco had not paid the cost of the facilities that would serve it nor were those facilities exclusive. Moreover, Donsco was not taking service under a special rate at the time. Accordingly, PGW's heavy reliance on these cases is misplaced.

#### **D. Legal Standard for Cost of Service Ratemaking**

1. PGW's proposed rates are not based on the cost to serve Vicinity. (PGW MB 16).

While PGW pays homage to the *Lloyd* case in which the Commonwealth Court made it clear that rates must be based on the “polestar” cost of service,<sup>41</sup> it then goes on to propose rates based entirely on a contrived and badly modified cost of service study that seeks to assign costs which are not costs to serve. While it is correct to state that it is permissible to group customers into classes for purposes of assigning costs and that it is infeasible to put each customer into their own class, it also is unreasonable and discriminatory to put a customer such as Vicinity into a class with any other customer. PGW has zero customers that even come close to the unique set of circumstances under which PGW provides service to Vicinity. More importantly, PGW seeks to assign costs of its low pressure distribution system to Vicinity on the basis of service that does not even use its low pressure distribution system. PGW fails to provide any plausible explanation of how ARS “uses” the distribution system, nor could it; it’s “nonsense.” All of the gas Vicinity uses (with the exception of the sales gas which amounts to less than 2% of Vicinity’s consumption (and over which there is no rate dispute) flows through the purpose built four mile pipeline. The

---

<sup>40</sup> *Pa. PUC v. PPL Elec. Utils. Corp.*, Docket No. R-2010-2161694, 2012 Pa. PUC LEXIS 989 (Opinion and Order entered June 21, 2012)(“*PPL Electric Utilities*”).

<sup>41</sup> *Lloyd v. Pa. PUC*, 904 A.2d 1010 (Pa. Cmwlth. 2006)(“*Lloyd*”).

preeminent reference for ratemaking in Pennsylvania, “Cawley and Kennard”<sup>42</sup> makes it clear that “[c]osts exclusively incurred on behalf of one customer or class of customers should be directly assigned to that customer or class.” In this case, the converse also is true, costs that are not incurred to serve a customer or class, cannot be assigned to that customer or class. Unfortunately, that is exactly what PGW seeks to do, assign the costs of its low pressure distribution system to Vicinity, when Vicinity had no part in incurring those costs.

**E. Adherence to Tariff**

**F. Challenges to Existing Rates**

**V. GFCP/VEPI CURRENT USE OF THE PGW SYSTEM**

**A. GFCP/VEPI’s Payment for Distribution Service**

1. Vicinity Receives Service over a Purpose Built Facility on which it is the only customer.

As discussed at length in Vicinity’s Main Brief, Vicinity currently receives service from PGW through a purpose built four mile high pressure pipeline that is distinct from PGW’s low pressure distribution system through which it serves all its other customers. Vicinity paid for the construction/rehabilitation of the four mile line and continues to pay an O&M charge for the line that is more than the expense to maintain the line. The transportation gas that Vicinity receives (98.6% of its consumption) never touches PGW’s low pressure distribution system.

2. ARS does not use PGW’s low pressure distribution system. (OCA MB 9-11).

Despite this undisputed delivery of gas to Vicinity, PGW proclaims that some part of the 98.6% gas that PGW delivers to Vicinity over the dedicated high pressure pipe “uses” the PGW low pressure distribution system because without the low pressure distribution system, PGW could

---

<sup>42</sup> James H. Cawley & Norman James Kennard, *Rate Case Handbook: A Guide to Utility Ratemaking Before the Pennsylvania Public Utility Commission*, at 144 (2018).

not accept the ARS delivery-point swap at Skippack. PGW's contention is wrong. If PGW did not have a low pressure distribution system, we would not be having this dispute in the first instance, and Vicinity would have connected directly to TETCO. The fact is PGW does have a system and its low-pressure customers need gas. Vicinity's delivery of gas to the Skippack Lateral simply replaces gas that PGW otherwise would have delivered to itself.<sup>43</sup> It is a wholesale swap of gas delivery points, nothing more. Under PGW's logic, any party delivering gas to PGW would "use" the entire PGW system – which clearly is not true. ARS gas is charged the same \$0.08/Dth volumetric delivery rate as all the other gas that flows through the four mile dedicated pipeline and there is no distinction between ARS gas and any other such gas flowing to Vicinity.

3. PGW has not proven that ARS costs more than what it collects from Vicinity.

ARS is a substitute for PGW releasing its Philadelphia Lateral TETCO capacity to Vicinity, because PGW claims it needs the capacity for its other customers. This claim is false and being used as a smokescreen to hold Vicinity hostage to PGW by not releasing the capacity to Vicinity. For 25 years the gas Vicinity uses in the winter has been delivered using PGW's capacity on the Philadelphia Lateral and PGW's distribution system customers were provided gas through Skippack using capacity acquired by Vicinity. Vicinity pays PGW \$54,000 per year for ARS, but while PGW claims that the capacity it uses to provide the service has a substantial market value due to high demand for such capacity on the Philadelphia Lateral, it has produced no credible evidence to substantiate that claim. A verbal recounting of a single, undocumented, not-completed transaction from 2018 establishes neither high demand for Philadelphia Lateral capacity nor the \$0.25/Dth/day rate that PGW claims it was offered. PGW's witness even admitted that market

---

<sup>43</sup> Tr. 50.

conditions have changed since then, ensuring that his 2018-based estimate is not valid.<sup>44</sup> On this record PGW has not satisfied its burden of proof that the existing ARS rate is anything other than just or reasonable and has provided no basis to conclude that another rate would be just or reasonable.

4. Vicinity's service is not contractually firm.

ARS is not contractually firm, and PGW can refuse to provide the service up to 15 days per year under certain circumstances. Vicinity agreed to that level of interruptibility in the Contract, which potentially can impact Vicinity's entire service in the winter. The service is not firm, no matter how the OSBA chooses to characterize it.<sup>45</sup>

It is not clear what basis was used to calculate the current transportation rates charged to Vicinity, but it appears from an outcomes perspective that the rates had to be based on the cost of bypass rather than any assignment of cost basis, as the rates recover far more money for PGW than its expense to serve Vicinity. Accordingly, and based on Vicinity's present bypass capability, it is appropriate that Vicinity is not assessed any of the various surcharges that do not apply to interruptible customers, and which should not apply to it.<sup>46</sup> By way of illustration, applying the surcharges to any rate charged to Vicinity would increase its rate more than ten times higher than the rate demanded by PGW in this case and would result in a rate increase that would make Vicinity's business unsustainable.

It is true that Vicinity does receive sales gas (1.4% of Vicinity's gas consumption) from PGW, which does not flow on the four mile dedicated pipeline, but rather through PGW's low pressure distribution system. It also is true that Vicinity pays a higher rate for this gas; the cost of

---

<sup>44</sup> Tr. 150-151.

<sup>45</sup> OSBA MB at 11.

<sup>46</sup> PGW MB at 20.

gas plus a delivery charge of \$0.61/Dth. This small increment of gas however still provides marginal revenue for PGW that it would not otherwise receive and PGW is only obligated to provide sales gas on a best efforts basis, which by definition is not a firm service. Vicinity submits that the present rate is appropriate and there does not appear to be any dispute over this rate.

**B. GFCP/VEPI's Operation and Maintenance Expense**

Vicinity presently pays PGW approximately \$160,000 per year for O&M associated with the four mile dedicated high pressure pipeline.<sup>47</sup> PGW contends that this fee is to “cover some of the costs of operations and maintenance on the Distribution Extension” [four mile pipeline].<sup>48</sup> Mr. Crist testified that PGW was unable to produce any substantial O&M records related to the four mile dedicated high pressure pipeline and he concluded that PGW's actual incurred maintenance cost was likely significantly less than the annual O&M fees Vicinity already pays. Nonetheless, Vicinity is willing to continue to pay the fee if the present rate structure is maintained. It seems logical that because Vicinity is the sole cost causer on the four mile dedicated high pressure pipeline that it should pay for its maintenance. Vicinity should not be assessed a distribution system improvement charge (“DSIC”) however, because it paid for the dedicated facilities that serve it. Vicinity also pays to maintain those dedicated facilities and those facilities are not in need of replacement. There is no basis for a DSIC charge for Vicinity.

**C. GFCP/VEPI's Payment for Capacity Release**

PGW provides two services under the Contract that involve capacity release. First, PGW releases summer capacity to Vicinity that Vicinity needed in the early years of the contract. Since 2010, when Vicinity purchased additional capacity from TETCO in 2012, that capacity release is no longer needed. Despite Vicinity no longer needing the capacity release, for the past dozen years

---

<sup>47</sup> PGW MB at 21.

<sup>48</sup> PGW MB at 20.

Vicinity has continued to pay PGW up to \$2.4 million for this unneeded capacity. In his Rebuttal Testimony, PGW witness Zuk conceded that PGW would agree to stop charging Vicinity for summer capacity that Vicinity does not need and does not use.<sup>49</sup> The second capacity product is ARS which is discussed elsewhere.

1. The OCA Misstates Vicinity's Capacity Release Request (OCA MB 11-2).

The OCA's brief characterizes Vicinity's request for capacity release in lieu of continuation of ARS, as a request for *permanent* release of the capacity, which is incorrect. Mr. Crist made it clear under cross examination that the request was for recallable capacity.<sup>50</sup> Mr. Crist did agree that "if" Mr. Reeves' capacity estimates were correct, the PGW contrived capacity cost would be correct. Contrary to PGW's assertion, however, Mr. Crist never agreed with PGW's market analysis. Indeed, a review of Mr. Reeves' testimony makes it clear that the basis of his four year old market price analysis is vastly overstated and that at best contends that one alleged bid, from a transaction that would have taken place four years ago if it had been completed, was \$0.25/Dth/Day.<sup>51</sup> OCA's reliance on this speculation is misplaced. No estimate of the cost of service for providing ARS can be reliably calculated from this half-baked analysis. OCA's contentions regarding lost and unaccounted-for gas are similarly mis-informed. OCA's suggestion that any physical gas used by Vicinity, with the exception of sales gas, ever touches PGW's low pressure distribution system is simply wrong.

---

<sup>49</sup> PGW St. 1R at 23.

<sup>50</sup> Tr. 50.

<sup>51</sup> Tr. 161.

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

1. PGW's demand to increase rates for ARS are not supported by the record. (PGW MB at 24-26).

There is another capacity product that PGW provides that was intended to avoid an actual release of capacity by PGW, namely ARS. Under ARS, contrary to PGW's contention, and as described herein and in Vicinity's main brief, PGW swaps delivery points for gas with Vicinity. That is, Vicinity delivers a volume of gas it has procured to PGW at the Skippack lateral that is used by PGW's low pressure customers in lieu of gas that PGW otherwise would have purchased; meanwhile PGW delivers exactly the same amount of gas to Vicinity through the four mile dedicated high pressure pipeline. Vicinity pays \$54,000 per year for ARS. Despite an admission from PGW's witness that costs related to ARS are "minimal".<sup>52</sup> PGW contends that this charge is less than the market value of the capacity but has offered no substantial proof that such is true, Mr. Reeves' half-baked analysis notwithstanding.<sup>53</sup> PGW has failed to substantiate that ARS imposes any significant cost, actual cost or opportunity cost on PGW. PGW does have the contractual ability to refuse to provide ARS on days when the temperature is forecast to be less than 25 degrees Fahrenheit, and yet has never done so, raising questions of whether PGW truly needs the capacity or had a more economically favorable opportunity, neither of which appear to be the case. PGW's claims that the current rate is not compensatory fall short of disproving Vicinity's claim that the existing rate is sufficient and that any change would be unreasonable unless supported by facts.

---

<sup>52</sup> Tr. 163.

<sup>53</sup> Tr. 161.

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

1. There is no present need for PGW to balance the gas on the four mile pipeline or to charge a fee for lost and unaccounted for gas.

PGW's Main brief admits that it does not presently balance the gas that Vicinity delivers to the four mile dedicated high pressure pipeline.<sup>54</sup> PGW has leaned on Vicinity to balance its own load under the Contract, because Vicinity is the only customer. It is logical to allow Vicinity to do so because the gas in the pipeline only goes to Vicinity. PGW now proposes to balance the system itself, at a charge, and to begin charging for lost and unaccounted for gas as well. As discussed in Vicinity's Main Brief, PGW's unsupported claim that it has other potential customers to serve on the four mile dedicated high pressure line are belied by the fact that it has not served a single other customer in nearly twenty five years.<sup>55</sup> PGW's effort is merely an attempt to extract an additional fee from Vicinity for gas that Vicinity pays for; for which Vicinity is responsible; and for which PGW experiences no losses.<sup>56</sup> If and when PGW has an actual new customer to serve on the four mile high pressure pipeline, it should then propose how gas flowing on the line will be balanced between the two entities and how responsibility for lost gas will be allocated between the customers on that line. Regardless, PGW should recover no compensation for balancing or lost and unaccounted for gas, because it will not be PGW's gas that will be balanced or lost, but rather it will remain the gas of the customers on the line.<sup>57</sup>

---

<sup>54</sup> PGW MB at 26.

<sup>55</sup> Tr. 146.

<sup>56</sup> Vicinity MB at 23.

<sup>57</sup> The service pressure on the four mile pipeline often exceeds 450 psig, and so service on that line is limited to customers who can take service at that pressure. PGW's low pressure distribution system operates at less than 150 psig. (Tr. 50).

## VI. RATE SETTING FOR GFCP/VEPI

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

1. Contrary to PGW's argument, Rate GTS-Firm could be available after December 31, 2022. (PGW MB at 27-30; OSBA MB 11-12).

As addressed in OSBA's Main Brief, PGW does not have a firm transportation rate for large industrial customers.<sup>58</sup> The closest rate is the one under which Vicinity is presently served, Rate GTS. And while service under the Contract is not contractually firm, it is sufficiently firm for Vicinity.

PGW has proposed that rather than continue the current rate, which it views as being unavailable post December 31, 2022, that Vicinity be assigned to a new rate. The Contract clearly allows for extension or modification of the Contract and so any modification or extension that the parties agree to, or the Commission might require under 66 Pa. C.S. § 508, would clearly fall within the continuance of the contract provisions. PGW also argues that by its own terms Rate GTS expires at the end of 2022, which is not accurate. The tariff language says it is available to customers who had a "currently valid agreement" as of September 20, 2003. Vicinity clearly satisfies that requirement today and will continue to satisfy it if the current contract is extended. At most this provision is ambiguous and as argued in Vicinity's Main Brief, such ambiguity must be interpreted against the drafter (PGW).<sup>59</sup> Moreover, Section 508 of the Code clearly authorizes the Commission to modify any term of any contract of a public utility when doing so is in the public interest. The cases that PGW cites are all limited to scenarios in which a contract had expired or was otherwise void. However, despite PGW's argument to the contrary, the Contract in this matter remains in effect. PGW cites no case for the proposition that an existing valid

---

<sup>58</sup> OSBA MB at 11.

<sup>59</sup> Vicinity MB at 23-24.

contract cannot be extended. In the absence of such law, the plain language of the statute controls and provides that any term can be modified.

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

1. PGW can continue to serve Vicinity under the Contract. (PGW MB 30-31).

Section 508, 66 Pa. C.S. § 508, allows the Commission to extend and/or modify the Contract. However, due to the delay caused by the need to litigate this matter, it is possible that the existing contract could expire before the Commission is able to act, leaving no Commission established or approved rate to govern service to Vicinity in the interim. To address this solution, Vicinity requests that the Commission extend the existing contract for a period of time sufficient to reasonably address the matter before the Commission and any further required activity as needed to provide a rate for Vicinity. Otherwise, the parties would be left to seek emergency relief with all the extra effort that such proceedings entail.

To the extent that the Commission believes that the existing contract and the existing GTS rate class are appropriate mechanisms for PGW to serve Vicinity, both the Contract and Rate GTS would continue until the extension would expire. It is probable that in extending the Contract the Commission may see fit to modify some of its provisions, such as removing the obligation for Vicinity to purchase summer release capacity, or other provisions. Section 508 permits those adjustments as in the public interest. Moreover, to the extent that it has not already done so, a Commission extension of the Contract would necessarily impart the Commission's imprimatur of justness and reasonableness.

2. PGW incorrectly argues that extending the Contract under Section 508 would not be in the public interest. (PGW MB at 32-34).

“Public interest” is a malleable concept. Would it be in the public interest for PGW to increase the cost of natural gas delivery to Vicinity nearly 1000%? Is it in the public interest to

require Vicinity to construct a bypass facility in order to prove that it is a bypass threat (and in the process render the existing pipeline a stranded asset)? The facts are indelible: the Contract was clearly premised on the fact that Vicinity had received authority from the FERC to bypass PGW. In response, PGW executed the Contract. Nonetheless, PGW now claims that Vicinity is not entitled to the very same contract, or even one similar, because it is not in the public interest. The Contract benefits PGW ratepayers, i.e., it produces more revenue than the cost of service, and yet PGW wants to increase the subsidy even more, based on an illegal ability-to-pay theory. The Commission should see PGW's actions as decidedly not in the public interest and should simply extend that Contract with or without modifications, to continue the bargain that was struck 25 years ago (and upon which Vicinity and all of its customers are now justifiably reliant).<sup>60</sup>

The public interest is served by having the environmentally beneficial Philadelphia Energy Loop operating in downtown Philadelphia, and the low carbon energy of Grays Ferry powering the PJM grid. Eliminating the Contract or raising Vicinity's rates to the levels sought by PGW are not in the public interest because such actions will hinder if not destroy Vicinity's long term ability to operate and in the short term are likely to precipitate substantial rate increases for VEPI's steam customers, including a large percentage of small business customers, hospitals, universities, and other critical load customers. The public interest is clear. Continuing to provide the benefit of the bargain that was struck 25 years ago is to the benefit of PGW's customers and the public at large. This is not to say Vicinity is opposed to cost based rate adjustments, but on this record PGW has failed to establish any increase in the costs to serve Vicinity.

---

<sup>60</sup> St. JC1-SR, 9:18-10:2.

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

1. Vicinity has met the burden of proving that it is entitled to a special rate. (PGW MB 34-5).

If the Commission were to decide that Rate GTS was no longer available or that extending the Contract was not warranted, the Commission should nonetheless decide that Vicinity is entitled to a special rate under the current standards for special contracts. The Commission has recently stated that bypass rates for natural gas customers are justified because they contribute incremental revenue to natural gas utilities that otherwise would be lost to competition.<sup>61</sup>

Contrary to PGW's argument, however, in order to show that it is entitled to a bypass rate, Vicinity is not required to show that all the other rates in PGW's tariffs could not be applied. Because using a version of Rate IT would not recognize the bypass capability of Vicinity, and because Rate IT size parameters are not consistent with the manner in which Vicinity currently receives service (dedicated line that it paid for, and for which it pays O&M, etc.), Rate IT would not apply without substantial modification, a fact which PGW confirms. There is no other rate in the PGW tariff that would be immediately applicable to Vicinity. Mr. Teme's analysis of the available tariffs notwithstanding, PGW does not have a tariff classification other than GTS that would apply.<sup>62</sup>

2. Legal standard

- a. Vicinity meets the legal standard for a special rate.*

Vicinity has proven that it meets the legal standard for a special rate. First, Vicinity can bypass PGW, although not before the expiration of the Contract, which is due largely to its mistaken belief that PGW would negotiate a new rate in good faith and the failure of that process

---

<sup>61</sup> *Gas Wars Order.*

<sup>62</sup> PGW St. No. 3R, 3-6.

to produce results. Nonetheless, Vicinity is preparing to once again bypass PGW.<sup>63</sup> Vicinity is located near an interstate transmission line, the cost to serve it is less than the revenue that a special rate would generate, and it has been served by a special rate for almost twenty-five years. Vicinity has provided ample evidence of its continuing intention to bypass PGW if the results of this case are not satisfactory.<sup>64</sup> Vicinity has demonstrated that it provides positive revenue for PGW and that it has or will shortly have the ability to bypass PGW and take service directly from TETCO.<sup>65</sup> It has also shown that without the revenue that Vicinity provides, PGW customers would be worse off than they are today and PGW would have an unused four mile pipeline.<sup>66</sup>

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

b. *PGW's examples of Special Rates cases are inapposite and incomplete.*

As its primary precedent for special rates not being approved, PGW cites to the Commission case of *PPL Electric Utilities*.<sup>67</sup> In that case, discussed at length in Vicinity's Main Brief, Donsco was refused a special rate because it failed to meet the required standards set out by the Commission. Donsco, however, had none of the key qualifications of Vicinity (e.g. dedicated, paid-for pipeline, etc.). Vicinity clearly meets the criteria established by the Commission for a special rate and *PPL Electric Utilities* actually supports Vicinity's position.

PGW also cites repeatedly to *US Steel*.<sup>68</sup> In *US Steel*, PECO proposed to consolidate several rate classes for natural gas distribution into a single class. The change would have increased US Steel's gas costs by 74.8% and US Steel was PECO's largest customer. The

---

<sup>63</sup> St. JC1-SR, 7:13-8:4.

<sup>64</sup> See Confidential Exhibit JC-14.

<sup>65</sup> St. JC1-SR, 7:13-8:4.

<sup>66</sup> St. JC1-SR, 9:18-10:2.

<sup>67</sup> *PPL Electric Utilities, supra*.

<sup>68</sup> *US Steel Corp. v. Pa PUC*, 390 A.2d 849 (Pa. Cmwlth. 1978).

Commission held and the Court sustained that the Commission-approved rates were not discriminatory because the grouping was based on a reasonable classification. The fact that US Steel was the largest customer was not regarded as controlling and that a cost of service study showed that the rate increase would not be excessive.<sup>69</sup> *US Steel* is easily distinguishable on the facts, and even though both US Steel and Vicinity were/are the largest customers, and US Steel was served directly from the Transco pipe, the similarity ends there. US Steel's rates were increased a mere seventy four percent, which at the time when the commodity was sold by the utility and commodity rates were skyrocketing, was not found to be unreasonable. In this case we have a transportation rate that is already compensatory, proposed by PGW to be increased between seven hundred and one thousand percent, when there is no evidence that the cost to serve Vicinity has increased at all. Finally, and unlike US Steel, Vicinity fully paid for the pipe that serves it and pays ongoing maintenance. Because the question of what is a reasonable rate classification is one of fact to be made by the Commission, the Commission here has ample facts to refute PGW's unreasonable and discriminatory rate demand.

In *Building Owners and Managers Association v. Pa. PUC*,<sup>70</sup> SEPTA made the argument that it was entitled to a special rate because it had peaks that were not aligned with PECO's peaks, and other factors.<sup>71</sup> Here the rates are in a contract that is still viable, and the rates are beneficial to both PGW and Vicinity. PGW admits that nothing in the way service is provided has changed.<sup>72</sup> Accordingly, there is nothing to justify an increase of approximately seven hundred percent. In

---

<sup>69</sup> *US Steel* at 855-857.

<sup>70</sup> *Building Owners and Managers Assoc. v. Pa. PUC; SEPTA v. Pa. PUC*, 470 A.2d 1092 (Pa. Cmwlth. 1984).

<sup>71</sup> PGW cites to the case, *MCI Airsignal of Pa., Inc. v. Pa. PUC*, 512 A.2d 600 (Pa. Cmwlth. 1986) for the same proposition, but that case is incorrectly cited and cannot be found or refuted. If the facts are as PGW states them, the case also rests on the relative size of the complainants but did not have the unique circumstance we have here, namely, the rural carriers were not served over facilities for which the rural carriers had paid and here the proposed rate increases are even greater than those imposed on the rural carriers. More importantly, however is that the prior rates were found to have been preferential to the rural carriers and were stated in contracts that had since expired.

<sup>72</sup> Tr. 181.

short, these cases bring nothing new to the analysis. Availability of a special rate is not just about size of load, or just about usage characteristics, or unique, purpose-built facilities or the unique fact that Vicinity is a very real bypass threat, which was not a factor in any of the cited cases. Rather, it is the combination of all these facts and circumstances that overwhelmingly proves that Vicinity is entitled to a special rate. If Vicinity does not qualify for a special rate, then it is difficult to imagine a set of circumstances where a special rate would be warranted. Accordingly, PGW's efforts to convince the Commission that a special rate is not warranted here must fail.

4. Application of Standard

a. *PGW's attempt to show that Vicinity does not qualify for a special rate fails. (PGW MB at 41-42).*

PGW's main brief contends that Vicinity has cited only three reasons why it is entitled to a special rate, which seek to parrot the holdings from the cases it cites for purposes of establishing the standards. Not only are Vicinity's cases distinguishable, PGW misses the main point: that the determination of what is a reasonable classification of customers (i.e., establishment of special rates) is a matter of fact to be found by the Commission and here there are many more facts to consider.<sup>73</sup>

For example, not only is Vicinity the largest PGW customer, but it is also the only customer noted on the record to have been served as a result of a bypass ability. Vicinity is served from an interstate pipeline on a facility built for it by PGW but entirely paid for by Vicinity. One must also consider the services that PGW provides in addition to transportation. Why would PGW be willing to provide these services if the service as a whole would cost it more to provide than it earned? The answer is that it does not cost more than PGW earns, which is why PGW was willing

---

<sup>73</sup> *Philadelphia Suburban Transp. Co. v. PUC*, 281 A.2d 179 (Pa. Cmwlth. 1971).

to provide the service for 25 years. Now PGW is simply trying to use any leverage it can muster to increase its return, which translates into a further subsidy for its other customers, based on Vicinity's perceived ability to pay higher rates.

Vicinity's proven bypass ability, however, is a key consideration. If the Commission finds persuasive PGW's argument that it's entitled to allocate unrelated costs to Vicinity despite the unique circumstances, Vicinity will have no choice but to construct its own line (again) and PGW's windfall revenue will cease. PGW's ratepayers will no longer receive the subsidy provided by Vicinity's rates. PGW will be paying TETCO for even more excess capacity for which PGW receives no compensation and the four mile, high pressure line will go unused.

It may be true that individual issues standing alone may not justify a special rate (e.g., size of load alone, or the use of a dedicated purpose built four mile, high pressure pipeline that is used to serve only Vicinity, or the fact that PGW earns more from serving Vicinity than it costs to serve, or the service at high pressure or any of the other items mentioned in Vicinity's main brief or here, including its bypass ability), but in totality, they more than satisfy a reasonableness test.

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

If the Commission concludes, correctly, that Vicinity has satisfied the burden of proving entitlement to a special rate, Vicinity agrees that specific directions to the parties as to what such rates must recover and the parameters of any future service, considering that PGW does not have an existing tariff that could adequately service Vicinity, would be beneficial so long as no new rate is charged to Vicinity while that process is being worked out. Contrary to PGW's suggestion however, the process became hostile in Vicinity's eyes when PGW first suggested a one thousand percent increase in rates and its general unwillingness to engage in settlement talks until the time

was short. Regardless, once the Commission offers its direction, the parties should be able to resolve the issues in a reasonable manner.

Vicinity agrees with PGW that cost of service is the “polestar” of ratemaking but obviously disagrees with PGW’s attempt to heap costs upon it that Vicinity does nothing to cause. The main culprit in this deception is PGW’s “nonsense” attempt to assume that ARS volumes “use” the PGW low pressure system and are therefore subject to a full allocation of all costs associated with operating PGW’s low pressure distribution system.<sup>74</sup>

1. Gas Transportation Rate, Cost of Service

- a. *PGW’s concept of a special rate for Vicinity entirely misses the mark. (PGW MB at 44-48).*

PGW’s debunked “ARS uses the system” theory cannot be the basis for any allocation of transportation costs, and so any rate considering the cost of service, must consider only the real costs of service. PGW’s Table 1, which purports to display the proposed rates from each party, is not correct. First, it suggests an IT rate for Vicinity at \$0.855/Dth rate that is more than ten times the current rate and then proposes a special rate that is \$0.698/Dth and which again is a nearly nine hundred percent increase. Finally, PGW contends that Mr. Crist has proposed \$0.212/Dth as an appropriate transportation service rate, when that is not the case. Mr. Crist stated plainly that such rate was the highest possible rate, but that other adjustments, ones that he did not yet make, would need to be made before the rate could be considered reasonable. Mr. Crist also testified that the current \$0.08 cent rate was reasonable.<sup>75</sup> Consider also that because Vicinity has a bypass ability, rates must be set at a level to incentivize Vicinity to not bypass, which could be at a discount to cost of service in some circumstances.<sup>76</sup> What is critical is that any rate charged to Vicinity should

---

<sup>74</sup> OSBA MB at 13.

<sup>75</sup> St. JC1-SR, 16:2-17:11.

<sup>76</sup> *Gas Wars Order, supra.*

not be greater than the actual cost of service, which we know is less than \$0.21/Dth by PGW's own COSS. PGW should be ordered to recalculate its Cost of Service Study removing any impact of its theory that ARS uses the low pressure distribution system. Further adjustments should be made as recommended by Mr. Crist.<sup>77</sup> in his Surrebuttal testimony. Once completed, a rate based on Vicinity's bypass ability can be calculated. Such study should recognize that PGW admitted that it NEVER has used any part of the four mile high pressure pipeline to serve any other customers.<sup>78</sup> While it may be possible to serve other customers from the four mile line, it has never happened and so should not be the basis of PGW's speculative COSS process.<sup>79</sup> Accordingly there is no basis in the physical flow of gas to allocate any cost of service related to gas flowing on the PGW low pressure distribution system to Vicinity.

Contrary to Mr. Reeves contrived Further Surrebuttal, Mr. Crist testified, as did Mr. Knecht, that PGW's provision of ARS does not use the PGW system and cannot serve as a basis for allocating costs to Vicinity.<sup>80</sup> Again, it may be true that PGW's provision of ARS does use PGW capacity assets, but that likewise is no basis for allocation of low pressure distribution system costs. Likewise, Ms. Heppenstall's confused recitation of her theory of why ARS uses the PGW low pressure distribution system shows that her understanding of ARS is inaccurate: she erroneously claims that without PGW having distribution facilities at both Skippack and the four mile pipeline, the delivery point swap could not happen, but that is wrong, PGW could have

---

<sup>77</sup> St. JC1-SR, 16:2-17:11.

<sup>78</sup> Tr. 146.

<sup>79</sup> PGW's Main Brief at pages 45-46 attempts to confuse the reader with a convoluted recitation of the manner in which gas moves to Vicinity. The truth is far simpler than PGW describes. Gas moves from the Philadelphia Lateral to Passyunk station via the converted Naphtha line which is the segment of the four mile pipeline that was refurbished pursuant to the 1996 Contract. At Passyunk, while it is technically possible for PGW to send gas to its distribution system, PGW's witnesses clearly indicated on the record that PGW had never done so. (Tr. 146) Rather, the gas then travels over a new (new in 1996) section of line that PGW constructed to connect Passyunk to Vicinity at Grays Ferry. (See St. JC1, 7:13-19).

<sup>80</sup> Tr. 50; OSBA St. 1R at 3.

liquification or storage at a location and no distribution facility and the process would still work.<sup>81</sup> In short, any transportation rate should be based only on the actual costs of service to Vicinity, not the ARS volumes.

2. PGW Capacity Assets and Nondiscriminatory Availability of Such.

- a. *Vicinity no longer desires to purchase release capacity during the summer months and PGW has agreed. (PGW MB at 48-51).*

PGW has intentionally misstated Vicinity's position regarding capacity release. Vicinity appreciates that PGW has agreed that Vicinity should no longer be required, in the future, to purchase summer release capacity at a cost significantly above market price.<sup>82</sup> Vicinity believes that the appropriate solution to the capacity shortfall issue is for PGW to continue to provide ARS service for the winter months. The record shows that PGW has not had to use the 21,000 Dth/day of capacity included in the ARS contractual provision, for anything other than ARS, for almost 25 years.<sup>83</sup> That sort of availability is a clear indicator that the capacity is more than PGW's needs. However, to the extent that PGW can show that it continues to reasonably require that capacity, but that it no longer wishes to provide ARS service, Mr. Crist recommended that PGW release that capacity to Vicinity at market rates on a recallable basis.<sup>84</sup> Doing so would provide PGW with the security in the form of additional capacity that it claims to require and would also provide market based revenue for PGW and its customers while allowing Vicinity to continue to operate at its present level. PGW's hyperbolic claims that permanent release of the capacity could cause system failure would be completely mitigated, because PGW would be permitted to recall the capacity in

---

<sup>81</sup> OSBA MB at 13-14.

<sup>82</sup> St. JC1, 15:9-16:6; *see* Exhibit JLC-13.

<sup>83</sup> Tr. 51.

<sup>84</sup> St. JC1, 20:1-14.

dire situations as it is now, but in 25 years has not had to do. Such an arrangement would require the capacity cost to be subject to change if the market changed dramatically.

3. By-Pass Considerations

a. *Vicinity has proven that it is more than just a bypass threat.*

Vicinity is prepared to bypass PGW pending the outcome of this proceeding. The facts show that Vicinity is in the final stages of developing plans, acquiring rights of way, seeking approvals from local, state and federal agencies and other preparation work.<sup>85</sup> Vicinity has spent hundreds of thousands of dollars in these preparations.<sup>86</sup> Contrary to PGW's cynical conjecture, Vicinity's intentions are not merely to raise the specter of potential bypass, but to in fact construct its own line so that it is no longer able to be held hostage by PGW, which is clearly PGW's intent in this matter. Vicinity's ability to bypass PGW is clear on this record.

In 1995 when the negotiations for the current service commenced, Vicinity, along with TETCO had already received FERC approval to construct the facilities needed to bypass PGW. Vicinity had already purchased rights of way and received many necessary approvals.<sup>87</sup> It was only the Philadelphia Area Industrial Development Authority's last minute intervention that caused that process to halt. Now, it appears that PGW believes that it has Vicinity as a captive customer and can treat it with impunity and charge rates regardless of the facts. As discussed in Vicinity's main brief, Vicinity is currently deep in the process of implementing new plans to complete the bypass of PGW. Contrary to Mr. Teme's uninformed speculation<sup>88</sup>, Vicinity has

---

<sup>85</sup> Confidential Exhibit JC-14.

<sup>86</sup> Confidential Exhibit JC-14.

<sup>87</sup> St. JC1, 6:8-15.

<sup>88</sup> St. JCR-SR 7:14-8:4.

already conducted two engineering studies, including one upon which bidders will soon submit bids to construct the facilities and has commenced the permitting process.<sup>89</sup>

4. ARS Type service rates, costs, terms and conditions
5. Bundled Supply Service rates terms and conditions
6. Other Rate Elements, rates, terms and conditions

Regarding the other elements of service under the Contract, those are discussed at length above and in Vicinity's Main Brief. In the interests of brevity, Vicinity will not repeat those arguments, except to state that it has argued that it still requires ARS or some similar service. Likewise, Vicinity would require a backup sales service for those few times when the Philadelphia Lateral is not operating. The present service is not contractually firm and any rate for a replacement service could be as well, so long as the rates are reasonable. Finally, there is no basis in the present configuration for PGW to charge any balancing or lost and unaccounted for charges to Vicinity. Vicinity balances its own load and PGW suffers no loss of gas if some of Vicinity's gas were to go missing in the four mile dedicated high pressure pipeline. The same would be true even if another customer were served from the four mile, dedicated high pressure line, because that gas is not mixed with any other gas on the PGW system and losses could easily be allocated as between the customers on a volumetric basis with no need for PGW, who does not own the gas or have responsibility for procuring or balancing it, to collect any charge for lost gas.

---

<sup>89</sup> Vicinity MB at 32.

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

1. Existing Tariffed Rates

As discussed in Vicinity's Main Brief and herein, absent major modification there is no present tariffed rate that would apply to Vicinity or satisfy Vicinity's needs. The most logical course would be to adopt a revised version of Rate GTS and have that apply to Vicinity.

2. Potential Modifications

**VII. PGW AND VICINITY MARKETING ACTIVITIES**

**VIII. CONCLUSION**

In conclusion, Vicinity has shown that:

1. The rates in the current contract more than fairly compensate PGW for the costs PGW incurs to serve Vicinity.

2. The Commission has the power and authority to extend the current contract, with the removal of the provision of the release capacity.

3. If the Commission is not inclined to simply extend the contract with the appropriate modifications, the Commission can order a special rate that includes the same terms as the current contract. Specifically, Vicinity has demonstrated that: (a) a transportation rate of \$0.08/Dth continues to be fair and reasonable, (b) a fixed charge of \$54k/year for PGW to schedule and swap delivery points under the ARS is fair and reasonable, (c) that there is no need or basis to impose charges for lost and unaccounted for gas as Vicinity already takes the risk of any such losses, and (d) there is no need or basis to impose balancing charges as Vicinity balances its own requirements.

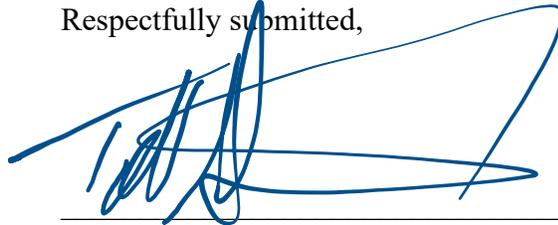
4. If the Commission would prefer to clarify the cost of service issues for the future, the Commission could order PGW to transfer title to the dedicated pipeline, already paid for by Vicinity, to Vicinity. In such event, the Commission would also need to order that the fixed charge

of \$54k/year for PGW to schedule and swap delivery points under the ARS is fair and reasonable, or alternatively order PGW to provide Vicinity with released capacity on a recallable basis.

5. The Commission must reject imposition of the USEC surcharge as it would destroy the economics of GF, VEPI, VEPI's customers (including hospitals, universities, and other critical load customers, as well as every other customer served by Vicinity and reliant upon Vicinity for steam for heating, cooling and process loads). Such an imposition would have disastrous impacts on the entire economy of Philadelphia, the power market in the region, and the environmental goals of the city and state.

Accordingly, Vicinity requests that the Presiding Administrative Law Judge and Commission grant the relief requested herein and any other relief as may be needed in the public interest.

Respectfully submitted,



Dennis A. Whitaker, Attorney ID No. 53975  
Kevin J. McKeon, Attorney ID No. 30428  
Todd S. Stewart, Attorney ID No. 75556  
Hawke McKeon & Sniscak LLP  
100 North Tenth Street  
Harrisburg, PA 17101  
(717) 236-1300  
(717) 236-4841 (fax)  
[dawhitaker@hmslegal.com](mailto:dawhitaker@hmslegal.com)  
[kjmckeon@hmslegal.com](mailto:kjmckeon@hmslegal.com)  
[tsstewart@hmslegal.com](mailto:tsstewart@hmslegal.com)

*Counsel for Grays Ferry Cogeneration  
Partnership and Vicinity Energy  
Philadelphia, Inc.*

DATED: October 4, 2022