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November 28, 2022

VIA ELECTRONIC FILING

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

RE: Vicinity Energy Philadelphia, Inc. and Grays Ferry Cogeneration Partnership v. Philadelphia Gas Works; Docket No. R-2022-3036472; C-2022-3036774 and C-2022-3036783; **ANSWER TO PHILADELPHIA GAS WORKS' PRELIMINARY OBJECTIONS**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Answer of Vicinity Energy Philadelphia, Inc. and Grays Ferry Cogeneration Partnership to Philadelphia Gas Works' Preliminary Objections in the above-captioned matter. A copy of this Answer has been served as indicated on the attached Certificate of Service.

Thank you for your attention to this matter. If you have any questions, please feel free to contact me.

Very truly yours,

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

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

TSS/jld/das
Enclosure
cc: Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Vicinity Energy Philadelphia, Inc.	:	Docket Nos.	R-2022-3036472
Complainant,	:		C-2022-3036774
	:		
and	:		
	:		
Grays Ferry Cogeneration Partners,	:	Docket Nos.	R-2022-3036472
Complainant,	:		C-2022-3036783
	:		
v.	:		
	:		
Philadelphia Gas Works,	:		
Respondent.	:		

**ANSWER OF VICINITY ENERGY PHILADELPHIA, INC.
AND GRAYS FERRY COGENERATION PARTNERSHIP,
TO PHILADELPHIA GAS WORKS' PRELIMINARY OBJECTIONS**

NOW COMES Grays Ferry Cogeneration Partnership (“Grays Ferry”) and Vicinity Energy Philadelphia, Inc. (“VEPI”) (collectively “Vicinity”) who hereby Answer the Preliminary Objections of the Philadelphia Gas Works (“PGW”) to the formal complaints filed by Grays Ferry and VEPI to PGW’s Tariff Supplement, No. 156, to its Gas Services Tariff Pa. P.U.C. No. 2, as filed by PGW on November 1, 2022 (Tariff Complaints). Grays Ferry and VEPI’s Tariff Complaints were filed November 11, 2022, and PGW’s Preliminary Objections (“POs”) were filed on November 18, 2022.

Contrary to PGW assertions through its POs that Vicinity seeks to re-litigate issues that already are before the Commission through Vicinity’s Original Complaint at docket C-2021-3029259 (“Original Complaint”), it is PGW that takes that approach. Indeed, in that matter, PGW argues that without a contract currently in-force, Vicinity is not eligible for service, and that without an in-force contract, Section 508 of the Public Utility Code (Code), 66 Pa. C.S. § 508,

cannot be used to reform an expired contract. Yet here, PGW asserts that it is sufficient to extend the tariff without regard to the Contract currently in-force, an assertion which clearly is calculated to let the Contract expire during the pendency of the Original Complaint matter, thus depriving Vicinity of the Contract terms it needs to operate and the Commission of the authority to extend the Contract under Section 508 of the Code. In support of its answer, Vicinity states and avers as follows.

PGW filed Preliminary Objections opposing the relief sought by Vicinity in its Tariff Complaint, i.e., that the Commission should preserve the status quo during the pendency of the Original Complaint matter by applying Section 508 of the Code to the existing 1996 Contract with Vicinity. However, PGW's objections completely fail to address the fact that its tariff is meaningless unless the Contract also is extended. The point of the Complaints against the Tariff Supplement filing is that the filing is incomplete. The Commission should apply Section 508 of the Code to modify/extend the Contract because if the Contract expires the Commission's ability to consider the issue will be lost, which is PGW's ultimate goal – to run out the clock on the application of Section 508. The Commission should reject these POs on that basis alone.¹

I. Introduction

In 1996, Vicinity's predecessors in interest executed the Contract with the Philadelphia Authority for Industrial Development ("PAID") and the City of Philadelphia ("City") which obligated PGW to provide natural gas delivery services and other related services to Vicinity. VEPI is a public utility subject to Commission regulation. Regardless of whether the Commission has jurisdiction over PAID (Vicinity believes it does), PAID was a party to the Contract which obligates PGW to provide natural gas delivery services, and which PGW admits was grandfathered

¹ All of Vicinity's arguments in its Original Complaint, the Tariff Complaints and its briefs in the Original Complaint proceeding are incorporated herein by reference.

by the Commission, and the Commission clearly has jurisdiction to modify the Contract under Section 508 of Code. PGW's suggestion that it was not a party to the Contract which was approved and grandfathered as part of its restructuring, under which it has provided service for 25 years, and to which the City is a party, is meritless. PGW is owned entirely by the City and the City obligated PGW to provide the service. PGW is now trying to hide behind the City and say it was not a party. PGW is wrong.

Vicinity's Contract under which PGW always has and is currently providing service expires at the end of 2022. That the Contract was not expressly reviewed by the Commission when it was grandfathered is neither here nor there where Vicinity simply seeks an extension of the Contract until the Commission rules on the Original Complaint and agrees that any changes the Commission directs will be retroactive to January 1, 2023. This point is compromised further where Vicinity sought, beginning in 2017, to negotiate renewal of the Contract on a just and reasonable basis but PGW, after dragging out negotiations, ultimately refused. Vicinity for that reason filed the Original Complaint on October 22, 2021, requesting that the Commission establish just and reasonable rates for service post 2022. In that regard, PGW's assertion that Vicinity agrees that the existing rate is "well below the current cost of service" completely misstates the evidence presented during the hearing on the Original Complaint.²

PGW claims that its Tariff Supplement is intended to maintain the status quo while the Original Complaint is pending, but the tariff as filed would produce exactly the opposite result. The Contract expires on December 31, 2022, well before a decision on the Original Complaint by presiding ALJ Guhl or the Commission reasonably can be expected. If the Contract expires, the Commission will lose the ability to consider it under Section 508 of the Code. The obvious import

² St. JC1-SR, 16:2-17:11.

of PGW's POs is that Section 508 does not apply to allow the Commission to modify/extend the Contract. Indeed, PGW's argument that Section 508 does not allow the Commission to modify the Contract is meritless. So, instead, PGW through the Tariff Supplement is trying to "run out the clock" on the Contract, by persuading the Commission to use Tariff Supplement to extend service and to ignore the applicability of Section 508. Moreover, PGW's action in filing a Tariff Supplement that purports to extend the current applicable rate without extending the Contract is a nullity because, per PGW's argument in the Original Complaint proceeding, absent the Contract, that rate does not apply. PGW's Tariff Supplement thus will be wholly ineffective at maintaining the status quo while the Commission considers the Original Complaint. If, as PGW hopes, the Contract expires without being extended, the Commission will lose the ability even to consider whether to apply Section 508. PGW's representation that approving the Tariff Supplement (without extending the Contract) will preserve all parties' arguments thus rings false. If the Contract expires, the status quo is not and cannot be maintained.

Vicinity is contemporaneously filing a Petition for Interim Emergency Relief with this Answer, directly requesting that the Commission extend the Contract for just that reason. In short, the pending Tariff Supplement will not preserve the status quo because it will not preserve the Contract and will subject the parties to rates different than the rates currently in place. Without a valid contract, the Commission loses its best tool to adjust the Contract and terms and conditions of the service PGW provides to Vicinity, which is the application of Section 508. The Commission's authority to extend the contract of a public utility such as VEPI is clear, and this case presents a prime example of an instance where the Commission should exercise that authority and extend the existing 1996 Contract. PGW's Tariff Supplement should not be approved.

Contrary to PGW's assertions, Vicinity has argued the efficacy of PGW's tariff. The basis of the Tariff Complaints is that PGW's Tariff Supplement is useless without a concurrent extension of the Contract. The Tariff Supplement, as proposed, deprives the Commission of the ability to consider all arguments necessary to reaching a just and reasonable result. PGW's argument that the Contract need not be extended beyond expiration and that the Commission lacks the authority to do so impairs that endeavor and is simply wrong. Vicinity does not seek to create a separate forum regarding the Contract. Rather, Vicinity simply seeks to allow the Commission to consider all arguments and all available relief in the Original Complaint matter, which will not occur if the Contract expires before a decision on the merits.

II. ANSWER

A. PGW's Tariff Supplement should be rejected because it is a blatant attempt to modify the rights of parties in ongoing litigation. (PGW POs, ¶¶ 6-10).

Vicinity filed its Tariff Complaints with the express purpose of maintaining the status quo during the Original Complaint proceeding, as well as the Commission's ability to consider all arguments raised and all available relief, a result which will be frustrated by Commission approval of the Tariff Supplement which does not seek extension of the Contract. The flaw of the Tariff Supplement, as regards to Vicinity's operations, is that it does not extend the Contract at the very heart of PGW's ability to serve customers under rate GTS-F. PGW's Tariff Supplement ignores the reality of its argument in the Original Complaint matter, that without a valid in-force contract, Vicinity is not eligible for service, and that without such a contract, Section 508 cannot be used to reform the Contract. PGW's Tariff Supplement is by accident or design insufficient in this regard and thus is deficient. The Tariff Supplement would have the Commission extend the tariff which alone would not preserve the status quo notwithstanding PGW's assertions that it does. Vicinity seeks only to ensure that the status quo in the Original Complaint is maintained, and not to alter

the rights of parties, as PGW contends in its POs. Accordingly, if the Tariff Complaints are dismissed because they relate to a pending proceeding, the Tariff Supplement must likewise be discarded for the same reason.

B. The Commission has Jurisdiction to extend the contracts of a public utility. (PGW POs, ¶¶ 11-14).

PGW's argument that it was not a party to the 1996 Contract and thus is not subject to the Commission's jurisdiction strains credulity. It was PGW in its own restructuring filing that sought Commission approval to grandfather the Contract. It is PGW in its capacity as a public utility that has been providing service under the Contract for over 25 years. Moreover, the City, which owns PGW, signed the Contract and thus obligated PGW to provide the services. It is telling that PGW offers no legal support for this ridiculous contention, because there is none. More importantly, however, Section 508 states that the Commission has the authority to "vary, reform, or revise . . . terms or conditions of *any contract*" entered into by "any public utility and any person, corporation or municipal corporation, which embrace or concern a public right." (emphasis added) VEPI is a public utility and, even if the Commission believes that PGW is not subject to Section 508, the Contract with PGW is subject to Commission modification under Section 508—the statute is clear.

C. Vicinity correctly relies upon Section 508 and PGW's Arguments to the contrary are a mere smokescreen. (PGW POs, ¶¶ 15-21).

What is clear from PGW's argument is that it does not want the Commission to consider its authority under Section 508, authority that for the Original Complaint matter will expire at the end of 2022 along with the Contract if the Commission does not act. PGW seeks to force consideration of the Commission's Section 508 authority in this Tariff Supplement proceeding rather than in the Original Complaint proceeding where those issues are fully briefed and ripe for decision. The law clearly allows the Commission to modify an existing contract of a public utility such as VEPI here. PGW would have the Commission believe that a tariff extension alone, without

extending the Contract, would preserve the status quo, but then argues that without a valid in-force contract, Section 508 does not apply. This sophistry should not be a basis for approving a Tariff Supplement that would alter the status quo. Vicinity has explained fully in the Original Complaint proceeding that the application of Section 508 to this matter and PGW's misconstruction of that argument here does not change the facts. In modifying the Contract, the Commission would not be "forcing" PGW to enter a contract, but rather continue, presumably on slightly modified terms, the Contract to which PGW has been a party for nearly 25 years.

D. PGW's tariff Supplement will fail to achieve its stated purpose and is thus unreasonable and must be rejected. (PGW POs, ¶¶ 22-32).

Section 1301 of the Code, 66 Pa. C.S. § 1301, requires that tariffs be "just and reasonable". PGW's Tariff Supplement is neither just nor reasonable. The purported purpose of the Tariff Supplement is to extend service under Rate GTS-F until the Commission has decided the Original Complaint proceeding, under the guise that doing so will preserve the status quo. At the same time, PGW acknowledges that the Contract, the precursor to the applicability of the tariff and which is the necessary factual predicate to the application of Section 508, will expire at the end of the year. These mutually exclusive arguments point to the fallacy of the Tariff Supplement. While PGW argues that it can extend the tariff, extending the tariff alone without extending the Contract will not preserve the status quo, which makes the extension unjust and unreasonable. Approving the Tariff Supplement, by itself, will deprive Vicinity of its rights and would authorize PGW to provide "unreasonable" and "discriminatory" service to Vicinity by stripping away its legal rights under Section 508, without allowing the Commission the opportunity to even consider the applicability of Section 508.

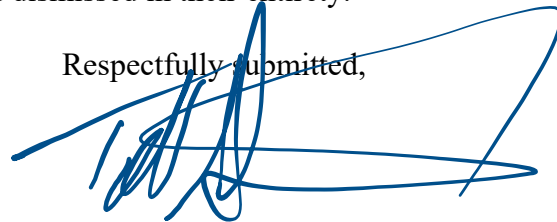
Without the Contract, the Commission loses its ability to consider the application of Section 508, before it even has a chance to consider it. Extending the Contract for sufficient time

to allow the Commission time to make such a determination is the only way to ensure that the status quo is maintained. No party will be harmed by such an extension, but the Commission and Vicinity will be harmed without it. Vicinity is seeking such an extension simultaneously with this filing. The purpose of the Tariff Complaints was not to make such a request, but rather to ensure that the Tariff Supplement is not approved under the false premise that a tariff extension alone would be sufficient to preserve the status quo. The status quo includes the Commission's authority under Section 508. The stated purpose of the Tariff Supplement is to preserve the status quo yet for the reasons stated herein and in the Tariff Complaints the Supplement does not do so. Therefore, PGW's POs should be overruled and dismissed, and the Tariff Supplement suspended pending the outcome of the Original Complaint matter.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, VEPI and Grays Ferry respectfully request that PGW's preliminary objections be overruled and dismissed in their entirety.

Respectfully submitted,



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DATED: November 28, 2022

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)

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