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November 28, 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; **PETITION FOR INTERIM EMERGENCY RELIEF**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the Petition of Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. For Interim Emergency Relief in the above-captioned proceeding. Copies of this Petition 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)
Athena Delvillar, Legal Assistant (via electronic mail – 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)

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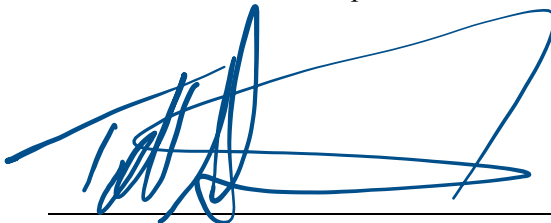
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Kevin J. McKeon
Todd S. Stewart

DATED: November 28, 2022

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PETITION
OF GRAYS FERRY COGENERATION PARTNERSHIP
AND VICINITY ENERGY PHILADELPHIA, INC.
FOR INTERIM EMERGENCY RELIEF**

NOW COME Grays Ferry Cogeneration Partnership (“Grays Ferry”) and Vicinity Energy Philadelphia, Inc, (“VEPI”) (collectively “Vicinity”) who hereby petition the Presiding Administrative Law Judge and the Pennsylvania Public Utility Commission (“Commission”) for Interim Emergency Relief pursuant to 52 Pa. Code §§ 3.6-3.7.

I. INTRODUCTION

Vicinity seeks an interim order extending its contract with Philadelphia Gas Works (“PGW”), which is set to expire on December 31, 2022, until such time as the Commission can rule on the merits of Vicinity’s pending complaint in this proceeding which seeks just and reasonable terms for service from PGW for the period commencing January 1, 2023. Interim relief is required to maintain the *status quo ante* so that the Commission has the opportunity to use Section 508 of the Public Utility

Code¹ to modify the existing contract, which is one of the remedies Vicinity has requested; absent a brief extension of the contract to assure that it remains in effect after December 31, 2022 and until the Commission is able to consider the merits of Vicinity’s complaint, there will be no contract on which the Commission can exercise its Section 508 powers, and Vicinity will be irreparably harmed.

PGW may respond that it has already addressed the problem through a recent tariff supplement that extends the availability of the tariff under which PGW provides service to Vicinity until the Commission issues a final order in this proceeding.² But as Vicinity has explained in opposition to that tariff filing,³ extending the availability of the tariff service does not fully preserve the *status quo*, because although it provides for continuity of service, it does not prevent the contract from expiring, thereby “running out the clock” on availability of an important remedy that Vicinity seeks, and depriving the Commission of the opportunity to exercise its powers under Section 508.

Vicinity’s need for interim relief because of the imminent expiration of the contract is not a problem of Vicinity’s making. Vicinity filed the complaint in this case more than a year ago, having already exhausted good faith efforts and considerable time to try to come to agreement with PGW on just and reasonable terms for post-2022 service. Although this case is now fully briefed and pending decision before Presiding Administrative Law Judge Marta Guhl, with reply briefs having been submitted on October 4, 2022,⁴ it is not possible for Administrative Law Judge Guhl to rule and for the Commission to issue a final order prior to the expiration of the contract based on the Commission’s current schedule of public meetings. A brief extension of the contract until the Commission has the chance to rule is both needed and warranted.

¹ 66 Pa.C.S. § 508.

² *RE: PGW Tariff Supplement No. 156 – Rate GTS-F Temporary Extension*; Docket No. R-2022-3036472.

³ *Grays Ferry Cogeneration Partnership v. PGW*, Docket No. C-2022-3036783; *Vicinity Energy Philadelphia, Inc. v. PGW*; Docket No. C-2022-3036774, Complaint of Gray’s Ferry at p.3.

⁴ *Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. v. Philadelphia Gas Works*, C-2021-3209259.

Vicinity does not file this unusual mid-litigation request for emergency interim relief lightly. Prior to submitting this Petition, Vicinity discussed its concerns with PGW and requested that PGW voluntarily extend the contract. PGW refused, thus leaving interim emergency relief as the only means of maintaining a critical component of the *status quo ante* between Vicinity and PGW until the Commission considers the appropriate resolution of this matter.

II. PETITION

The purpose of an interim emergency order is to grant or deny injunctive relief during the pendency of a proceeding. 52 Pa. Code § 3.1. An “emergency” is defined in the regulations as “[a] situation which presents a clear and present danger to life or property, or which is uncontested and requires action prior to the next scheduled public meeting.” *Id.* The Commission’s Regulations require Petitions submitted under Section 3.6 of its Regulations, 52 Pa. Code § 3.6, to provide verified facts to support the following: 1) that Petitioner’s right to relief is clear; 2) that the need for relief is immediate; 3) that the injury would be irreparable if relief is not granted; and, 4) that the relief requested is not injurious to the public interest. 52 Pa. Code § 3.6(b). Interim emergency relief may only be granted if all four of these elements exist. *Glade Park East Homeowners Ass’n v. Pa. Pub. Util. Comm’n*, 628 A.2d 468, 473 (Pa. Cmwlth. 1993). In support of its Petition, Vicinity states as follows:

1. Vicinity’s Right to Relief is Clear.

With respect to the first element, “it is not necessary to determine the merits of the controversy in order to determine that a petitioner’s right to relief is clear. Rather, the only required determination is that the petition raises substantial legal questions.” *Meghan Flynn Rosemary Fuller Michael Walsh Nancy Harkins Gerald McMullen Caroline Hughes Melissa Hanes v. Sunoco Pipeline, L.P.*, Docket

No. C-2018-3006116 (Opinion and Order entered Feb. 1, 2019) 2019 WL 632236 at *6 (citing *T.W. Philips Gas and Oil v. Peoples Natural Gas*, 492 A.2d 776 (Pa. Cmwlth. 1985)).

Here, the right to relief is clear. In the underlying case, Vicinity seeks reformation and extension of the contract under Section 508, but the Commission, through no fault of Vicinity, will be unable to consider and award the relief Vicinity seeks if the contract is permitted to expire on December 31, 2022. At present, however (and until December 31, 2022), the Commission has the power to use Section 508 to extend the contract for the brief period needed until the Commission enters a final order in this case, so that Vicinity's timely-raised request for merits relief under Section 508 can be considered. Granting the relief requested here will preserve both the Commission's power to use Section 508 and Vicinity's right to seek that relief. There is no reason to deny such a stop-gap interim remedy – doing so would only reward PGW for dragging out pre-litigation negotiations and running out the clock on a potential Section 508 merits remedy. At a minimum, therefore, Vicinity has made out a substantial case that it has a clear right to the relief requested.

2. The Need for Relief is Immediate.

In order for emergency relief to be granted, it must be determined that “an injunction is necessary to prevent immediate” harm.” *Summit Towne Centre, Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003). Here, the harm is immediate. The contract expires at the end of 2022. Although Vicinity filed the complaint seeking reformation of the contract more than a year ago, at this juncture it is not possible for a final Commission decision to be rendered prior to the contract's expiration at the end of 2022. Therefore, immediate relief in the form of a short duration contract extension is necessary.

3. Without the Requested Relief, the Harm will be Irreparable.

The harm absent an interim order is likewise irreparable, because if the contract does not continue in existence until the Commission decides this case on the merits, the Commission will lose the opportunity to invoke the power of Section 508, and Vicinity will lose one of the primary remedies it seeks. There is no substitute for Section 508 which authorizes the Commission, upon a finding that an existing contract of a public utility is “unjust, unreasonable or inequitable,” to “determine and prescribe. . . the just, reasonable and equitable obligations, terms and conditions of such contract”⁵ by way of varying, reforming, or revising an existing contract. The ratemaking sections of the Public Utility Code are at least facially limited to setting rates that are just and reasonable,⁶ while Section 508 allows the Commission to consider principles of equity and allows the Commission to address all terms and conditions, not just rates. The Commission’s loss of such a comprehensive tool to remedy the present situation without even having the chance to consider the merits of the case, is irreparable and senseless. There is no practical substitute for Section 508.

PGW is likely to argue that the harm is not irreparable if it can be redressed with damages, that the Commission can make either party whole, and there is, therefore, no harm that cannot be “fixed”. PGW will be wrong. Money cannot replace Vicinity not being able to continue to receive all the services it needs at reasonable, and equitable rates – the comprehensive relief available under Section 508. Moreover, the Commission cannot award damages, nor can the Commission be held liable for its rate setting decisions. *See Feingold v. Bell of Pennsylvania*, 383 A.2d 791, 794 (“[t]he statutory array of PUC remedial and enforcement powers does not include the power to award damages”). If the contract expires and the unavailability of Section 508 impacts the ability of the Commission to require adequate relief, there is no recourse available for Vicinity. It would then suffer

⁵ 66 Pa. C.S. § 508.

⁶ See 66 Pa. C.S. §§ 1308 and 1309.

under what could be unfair or inequitable terms and conditions, with no recourse, because the Commission was divested of the ability to alter them. And once those rates, terms and conditions are set, the filed rate doctrine ensures that refunds are not an option.⁷ In short, money, in the form of damages, is not available; even if it were, it would not it make Vicinity whole.

4. The Relief Requested is not Injurious to the Public.

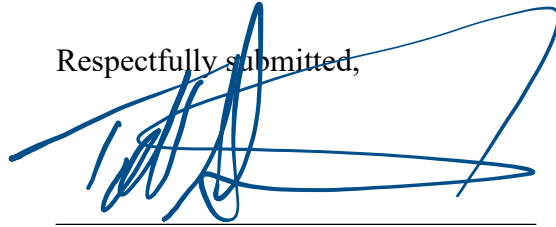
Finally, it must be shown that granting an injunction “will not adversely affect the public interest.” *Summit Towne Centre, Inc.*, 828 A.2d at 1001. Granting the relief requested – a brief extension of the contract to allow the Commission to consider all available remedies -- will not injure the public. The relief requested is a stop gap measure that is essentially procedural in nature – it simply will maintain the *status quo ante* for a brief period so that the Commission has the opportunity to consider the issues raised on their merits and devise whatever remedies – including remedies under Section 508 – the Commission deems necessary or appropriate.

III. CONCLUSION AND REQUEST FOR RELIEF

The present situation demonstrates that relief is needed to ensure that the status quo is maintained until this proceeding is resolved by the Commission, to prevent the loss of Section 508 as a tool for the Commission to provide adequate relief in the complaint matter before it. Through no fault of Vicinity, the matter was filed over a year ago and has been fully briefed, this matter will not be able to be decided before the Commission can rule on the merits and no party will be harmed by a brief extension to allow the Commission to consider the matter and the use of Section 508. Accordingly, Vicinity requests that the Commission extend the Contract at issue in this case and preserve all of its terms and conditions until the Commission is able to issue a final order on the merits.

⁷ The filed rate doctrine prevents collateral attacks, seeking damages, for rates that have been approved by the Commission.

Respectfully submitted,



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DATED: November 28, 2022

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

VERIFIED STATEMENT

In January 1996, Grays Ferry Cogeneration Partnership (“Grays Ferry”) signed a Service Contract with the Philadelphia Authority for Industrial Development (“PAID”) – a City of Philadelphia entity capable of signing this long-term Contract on behalf of Philadelphia Gas Works (“PGW”), the City’s municipally owned gas utility (“Contract”). The Contract is an integral part of Grays Ferry’s natural gas transportation assets. The Contract has an expiration date of 12/31/2022 and due to considerable uncertainty about renewal prospects, and potentially long lead times needed for certain remedies, Vicinity initiated negotiations with PGW in 2017. Those discussions were not successful in resolving the critical issues and Grays Ferry found it necessary to file the subject complaint to address several components of the Contract and seek a Commission order requiring PGW to provide service at reasonable rates and contract terms.

The Contract was intended as a surrogate for Vicinity constructing and operating its own pipeline that would have bypassed PGW entirely and instead allowed Vicinity to take service directly from Texas Eastern Transportation Company’s (“TETCO”) Philadelphia Lateral. The

most significant issues the Contract addresses include: the service that PGW is obligated to provide, namely high pressure delivery of gas using a section of repurposed pipeline in conjunction with a newly constructed section; that Vicinity was obligated to pay for the construction of the new line and repurposing the existing line; that Vicinity would balance its deliveries with TETCO and would not be responsible for PGW's system lost or unaccounted for gas; capacity issues for moving gas on the Philadelphia Lateral, which is a segment of interstate pipeline owned and operated by TETCO that allows delivery of gas into South Philadelphia; and Vicinity's need in certain limited instances to purchase a bundled sales service. Several of the Contract services, such as the Alternate Receipt Service -- which is a volume swap arrangement that allows Vicinity to receive gas in the winter months through the Philadelphia Lateral and the dedicated pipeline, while simultaneously delivering the same quantity of gas for PGW's use to the Skippack Lateral -- are not typical public utility-type services but are necessary elements of the service PGW has provided under the Contract.

As the Contract was nearing its end, beginning in 2017 and again in 2021, Vicinity approached PGW regarding revised terms and conditions for renewal of the initial Contract. PGW failed to provide any firm proposal until October 2021. Once PGW did so, and it became clear that a meeting of the minds was improbable, Vicinity filed a Formal Complaint with the Commission, seeking assistance in attaining reasonable rates, or, alternatively, providing an irrefutable basis for Vicinity to renew its plans to bypass PGW. Vicinity is proceeding on both paths. Nonetheless, the primary request for relief in this matter is that the Commission revise or reform the existing Contract to reflect revised rates that are nonetheless reasonable and appropriate for the service provided. The authority to do so is found in Section 508 of the Public Utility Code. 66 Pa. C.S. § 508.


A revised contract that recognizes the unique status that Vicinity has attained on the PGW system is a must where: Vicinity is the largest customer; it takes service over a dedicated 4 mile pipeline constructed/refurbished for its use and for which it paid; and it balances its own load on the interstate pipeline and has an agreement with PGW that allows them to swap volumes; all of which point to the need for a customized flexible contract. Without the ability to employ section 508, the Commission's authority to address the various components of the Contract could be limited. These limitations could prevent Vicinity from continuing to receive the array of services it bargained for in 1996 that are critical to its business model that supports its own role as a public utility provider of thermal services to critical needs customers including hospitals and other institutions. Accordingly, the inability of the Commission to employ Section 508 will be disastrous for Vicinity and the harm irreparable.

With the Contract set to expire, and the likelihood of a Commission decision prior to December 31, 2022 highly unlikely, Vicinity needs relief now, before the Contract expires, to extend the Contract beyond December 31, 2022 until such time as the Commission can rule on the merits of Vicinity's pending complaint. This brief extension of the Contract will assure that the Commission is able to give full consideration to the contract reformation relief Vicinity has requested and implement whatever relief the Commission finds it to be just and reasonable and in the public interest.

Critically, there is no harm to anyone if the Commission grants this request for interim emergency relief and extends the Contract until such time as the Commission can rule on the merits of Vicinity's pending complaint. Vicinity has agreed that any change in rates eventually ordered by the Commission should be effective as of January 1, 2023, thereby assuring that PGW and its other ratepayers will be made whole to the extent an increase in the existing rate is ordered. There is no harm to the public at large and no harm to Vicinity's customers, who would have otherwise

been obliged to pay any new steam rate based upon a change to natural gas delivery rates, as approved by the Commission. In short, there is no downside to granting the extension of the Contract until such time as the Commission can rule on the merits of Vicinity's pending complaint.

DATED: Nov. 23, 2022



Robert L. Arendell