



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

TEL: 717 237 6000
FAX: 717 237 6019

Norman J. Kennard
717.237.6024
nkennard@eckertseamans.com

December 5, 2022

Via Electronic Filing

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

Re: Vicinity Energy Philadelphia, Inc. and Grays Ferry Cogeneration Partners v. Philadelphia Gas Works – Docket Nos. C-2021-3029259

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' ("PGW") Answer In Opposition to Petition of Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. for Interim Emergency Relief with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely

Norman J. Kennard
Norman J. Kennard, Esq.

NJK/lww

Enclosure

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

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PGW's Answer in Opposition Grays Ferry/Vicinity's Petition for Interim Emergency Relief, upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email Only

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

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

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

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

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

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

Dated: December 5, 2022

Norman J. Kennard

Norman J. Kennard, Esquire

**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.	:	

**PHILADELPHIA GAS WORKS’ ANSWER IN OPPOSITION TO PETITION OF
GRAYS FERRY COGENERATION PARTNERSHIP AND VICINITY ENERGY
PHILADELPHIA, INC. FOR INTERIM EMERGENCY RELIEF**

Philadelphia Gas Works (“PGW,” “Company,” or “Respondent”) submits this Answer in opposition to the Petition of Grays Ferry Cogeneration Partnership (“GFCP”) and Vicinity Energy Philadelphia, Inc. (“VEPI”) (jointly, “GFCP/VEPI” or “Petitioners”) for Interim Emergency Relief (“Emergency Petition”) as filed with the Pennsylvania Public Utility Commission (“Commission” or “PUC”) on November 28, 2022.

At issue in the Petition is the proper means to ensure that GFCP/VEPI are guaranteed the continued receipt of service under all current rates, terms and conditions during the period January 1, 2023 until such time as the Commission establishes tariffed rates, terms and conditions of service (“Gap Period”) to be applied proactively as of January 1, 2023.

GFCP/VEPI’s Petition seeks emergency relief in the form of an extension of a twenty-five-year-old contract, and which terminates by its agreed upon terms on December 31, 2022. Without such an extension, continues the Petition, GFCP/VEPI allege that they will suffer “irreparable

harm” and will be unable to continue to receive the rates terms and conditions of service that they now receive – both in this interim period and, apparently, on a permanent basis.

PGW asks that Your Honor deny this unnecessary and ill-advised relief. There is no “emergency” justifying the issuance of an emergency order. *PGW has consistently agreed that, during the Gap Period, it will provide GFCP/VEPI with all of the services they currently receive under the same existing rates, terms and conditions.* It has twice offered to do so – once by tariff and, again, by the formation of a new contract.

Nor is any action necessary to preserve GFCP/VEPI’s legal opportunity to obtain the permanent rates it has sought on the record of this complaint case. The Commission can deal with the issue of the appropriate rates terms and conditions of service for GFCP/VEPI during the Gap Period in its final order in this docket. GFCP/VEPI have not lost any rights or remedies whatsoever.

The Petition falls far short of establishing the four standards necessary to be awarded the extraordinary relief of an emergency order.

GFCP/VEPI are not facing “irreparable harm,” nor is the requested relief necessary to prevent a “clear and present danger to life or property.” There is no such threat. PGW has previously offered *two* means of temporarily extending the current rates, terms and conditions of service and has included with this answer a verified statement from a senior executive at PGW pledging that it will continue to do so, until the Commission enacts new rates for GFCP/VEPI.

Nor is there any legal prejudice to GFCP/VEPI’s position that the PUC should establish a tariff for GFCP/VEPI that would reflect all of the existing rates, terms and conditions of service that would retain the terms of the 1996 contracts. GFCP/VEPI have not identified any service or rate that has not already been raised and litigated on the record of this case.

Both GFCEP/VEPI, PGW, as well as the other parties have fully briefed what such a special rate should contain. While PGW (as well as all the other parties including the Office of Consumer Advocate (“OCA”) and the Office of Small Business Advocate (“OSBA”)) vigorously oppose establishing GFCEP/VEPI’s permanent rates at the same level and terms that they have been receiving for the last twenty-five-years, the fact remains that the PUC, after consideration of all the evidence, has the power to issue such an order. Extension of the 1996 Contracts is not necessary to further preserve these arguments.

The Petition also fails to demonstrate that GFCEP/VEPI have a “clear right to relief.” PGW cannot legally extend the term of the 1996 Contracts *because PGW is not a party to those contracts*. The contract term cannot be extended using the Commission’s Section 508 powers because Commission precedent has consistently held that it will not modify the terms of a utility contract except under special circumstances that are not present here. And critically, given the timing of the Petition, any order now issued under Section 508 cannot become effective until after January 1, 2023 (any Section 508 order has a mandatory, thirty-day effective date after issuance) and, therefore, *extending the Contracts’ term before they expire is now impossible*. The 1996 Contracts will expire as a matter of law, no matter what is decided on the Petition.

Nor has GFCEP/VEPI shown that there is a need for “immediate relief” – quite the contrary. And, finally, the requested order certainly will not benefit the public. It will only benefit GFCEP/VEPI in a manner clearly not consistent with the public interest.

Accordingly, the Petition should be denied.

I. BACKGROUND

A. 1996 Contracts

In January 1996, prior to the regulation of PGW by the Commission, the predecessors in interest of GFCP and VEPI entered into a series of service agreements with the Philadelphia Authority for Industrial Development (“PAID”), which in turn contracted with the City of Philadelphia (“City”) for the provision of natural gas service by PGW (“1996 Contracts”).¹ PGW was not and is not a party to any of the 1996 Contracts with GFCP and VEDI.²

Beginning July 1, 2000, regulatory jurisdiction over PGW, including as to rates and service, was transferred from the local Philadelphia Gas Commission to this Commission.³ As part of PGW’s 2003 restructuring plan, PGW proposed, and the Commission approved, the establishment of tariffs for PGW, which included the incorporation of the terms of pre-jurisdiction contracts into a specific rate schedule – Rate GTS-Firm Service (“Rate GTS-F”).⁴ To reflect the fact that this rate schedule was only available to customers with legacy contracts, Rate GTS-F was closed and was available only to customers who were being served under a contract existing at the time – September 1, 2003 – and only for the life of those contracts.⁵ Rate GTS-F incorporates the 1996 Contracts’ delivery rate of \$0.08 per Mcf and all other terms that have been applied now for twenty-five years.

None of the rates, terms and conditions of the 1996 Contracts were determined to reflect just, reasonable and non-discriminatory rates, terms and conditions pursuant to the Public Utility

¹ PGW St. 1R at 7–8.

² *See Id.* at 12.

³ 66 Pa. C.S. § 2212(b).

⁴ PGW Gas Service Tariff – Pa. P.U.C. No. 2 at Original Pages 118 to 123 (“Rate GTS-F”).

⁵ PGW Gas Service Tariff – Pa. P.U.C. No. 2 at Original Page 118.

Code. They were simply “grandfathered” into the tariff structure of PGW’s restructurings for the duration of the agreements with the intent of reforming them at the end of the contract term.⁶

The 1996 Contracts expire under their own negotiated terms at the end of this year on December 31, 2022.

B. GFCP/VEPI Rate Complaint

The rates, terms and conditions of service to be charged and applied by PGW prospectively, starting on January 1, 2023, are the subject of a heavily contested case pending before Your Honor in which PGW, OCA, and OSBA have actively participated.⁷ It is in the context of this case that GFCP/VEPI now seek interim emergency relief.

GFCP/VEPI’s complaint, commencing this case, requested that a new rate be established going forward under the standards of Chapter 13 of the Code:

1. Find that the rate demanded by PGW for service to Grays Ferry post 2022 is unjust and unreasonable;
2. Require PGW to continue to provide Grays Ferry with firm transportation service; [and]
3. *Require PGW to execute a new contract under Rate GTS-Firm for that service at a rate that is just and reasonable.*⁸

These are all remedies available under Chapters 13 and 15 of the Code. Absent from GFCP/VEPI’s Complaint was any request that the 1996 Contracts be modified or any invocation of Section 508 of the Code.

⁶ PGW St. 1R at 7–10; PGW Main Brief at 3–4.

⁷ In addition to OCA and OSBA, the Bureau of Investigation and Enforcement (“I&E”) and Philadelphia Industrial and Commercial Gas Users Group (“PICGUG”) are also parties to the proceeding.

⁸ *See* GFCP/VEPI Formal Complaint at 14 (Emphasis added). The last requested relief (“4. Require PGW to cease and desist from targeting VEPI’s customers within VEPI’s franchised service territory for rate discounts and financial incentives in order to entice them to switch from VEPI’s steam service to PGW’s natural gas service.”) was voluntarily discontinued by GFCP/VEPI in testimony and brief. *See, e.g.*, GFCP/VEPI Main Brief at 42 (noting that GFCP/VEPI offered no response to PGW’s Rebuttal Testimony on [PGW’s marketing activities] issues” and “conced[ing] that that presently there is insufficient evidence and resources available to it to meaningfully address them”).

GFCP/VEPI did not request that the 1996 Contracts be extended or raise Section 508 as an alternative form of relief until their Main Brief.⁹ Testimony filed on behalf of GFCP/VEPI is devoid of any such request. Instead, GFCP/VEPI's witness recommended, consistent with the complaint that "*PGW should be directed to develop and execute a contract to continue the service to [GFCP/VEPI] for the next 25-year period.*"¹⁰

The record developed before Your Honor is extensive and includes three cost-of-service studies and other materials relevant to the design of new rates, terms and conditions of service based upon current costs and the "just and reasonable" standards of the Public Utility Code.

Both PGW, OCA, and GFCP/VEPI agree that the current delivery rate of \$0.08 per Mcf, which has been applied now for twenty-five years, is well below the current cost of service.¹¹ This below cost rate creates a subsidy burden upon all other PGW ratepayers. Recommended cost-of-service based rates range from \$0.212/Dth (GFCP/VEPI)¹² to \$0.756/Dth (OCA).¹³ PGW's cost-of-service study determined the current cost of providing service to GFCP/VEPI at \$0.698/Dth.¹⁴

In addition to the appropriate delivery rate, the record and briefs have also addressed and made recommendations regarding all the other services that GFCP/VEPI have requested be provided post-contract termination, including: load balancing; the application of lost and unaccounted volumes; upstream pipeline capacity trades; capacity issues for moving gas on the

⁹ See PGW Main Brief at 30 ("GFCP/VEPI have asked that this issue be addressed in the Brief under the apparent belief that the Commission could somehow order PGW to 'extend' the existing 1996 Contracts."). See GFCP/VEPI Main Brief at 26. The Complaint has never been amended to request additional relief beyond that set forth when it was filed.

¹⁰ GFCP/VEPI Statement JC-1 at 34 (emphasis added).

¹¹ See PGW Main Brief at 43-45; see also GFCP/VEPI Statement JC-1SR at 17, Ex. JC-12 (explaining that GFCP/VEPI's cost of service study resulted in a rate of \$0.212/Dth).

¹² GFCP/VEPI Statement JC-1SR at 17.

¹³ OCA St. 1R at 3-4, 7.

¹⁴ PGW St. 4R at 7, Sch. C; PGW St. 4SR at 3.

Philadelphia Lateral; GFCP/VEPI's need to purchase a bundled sales service; and "Alternate Receipt Service." These services are described as "significant issues the Contract addresses" in the Verified Statement attached to the Petition.¹⁵

As explained in the Verified Statement of John C. Zuk, attached to this Answer, all of the services requested by GFCP/VEPI in its complaint and testimony, as well as in their Petition here, have been raised and debated in the record of this case and preserved for resolution by Your Honor and the Commission in the context of determining the rates, terms and conditions of service that should apply to GFCP/VEPI going forward. *No service has been ignored or remains unaddressed in the record now pending before Your Honor.*

C. Supplement No. 156

Anticipating the need to ensure the continuation of service to GFCP/VEPI during the Gap Period, PGW filed Supplement No. 156¹⁶ on November 1, 2022 to maintain the service status quo during the pendency of the Complaint litigation ("Extension Tariff").¹⁷ Specifically, the supplement extends the period of the current Rate GTS-F – and incorporates and *maintains all the rates, terms and conditions of service currently being provided to GFCP/VEPI – until the entry of a Commission decision in the Complaint case.* The Extension Tariff states as follows:

Existing terms and conditions are extended for all customers taking service as of December 31, 2022 on this rate until the earlier of April 30, 2023 or the Pennsylvania Public Utility Commission issues a final decision in Docket No. C-2021-3029259. All rates and charges incurred after January 1, 2023 are subject to being rebilled as directed by the Pennsylvania Public Utility Commission so as to effectuate the final decision in Docket No. C-2021-3029259 on January 1, 2023.

¹⁵ GFCP/VEPI Emergency Petition, Verified Statement of Robert L. Arendell dated November 23, 2022 at 2.

¹⁶ Supplement No. 156 to PGW's Gas Services Tariff Pa. P.U.C. No. 2, filed November 1, 2022, with an effective date of January 1, 2023.

¹⁷ Docketed at R-2022-3036472.

A copy of the Extension Tariff as filed at the Commission is attached in the Verified Statement of Mr. John C. Zuk as **Exhibit 1**.

PGW requested that the Extension Tariff supplement be approved by the Commission in order to provide a specific tariff basis on which to continue to provide GFCEP/VEPI with *all of the rates, terms and conditions of service that they are receiving today* – until the PUC issues a decision in this case and determines new rates, terms and conditions to be applied post-December 2022.

On November 11, 2022, GFCEP and VEPI filed formal complaints, not contesting the Extension Tariff itself, but rather seeking alternative relief in the form of a forced extension of the 1996 Contracts (“Second Complaints”).¹⁸ The Second Complaints ask that the Commission not permit the Extension Tariff to go into effect, but rather suspend and investigate it. PGW, in response, has filed an Answer and Preliminary Objections in the nature of a motion to dismiss. These pleadings are pending before the Commission.

D. Offer To Enter Into A Temporary Continuation Agreement

In light of GFCEP/VEPI’s opposition of to the Extension Tariff, PGW next offered to enter into a temporary agreement with Grays Ferry and Vicinity pursuant to PGW’s Tariff Rule 2.3.¹⁹

In this temporary agreement, PGW has offered terms and conditions that would:

1. Continue to apply *all the rates, terms and conditions of service under which PGW currently provides service* to Vicinity and Grays Ferry pursuant to Tariff GTS-F;
2. Until a Commission determination of the proper rates to be charged; and

¹⁸ Docketed at C-2022-3036774 and C-2022-3036783.

¹⁹ PGW’s Rule 2.3 states that “[c]ontracts stipulating the negotiated non-scheduled rates and/or terms of Gas Service may also be entered into between the Company and Customer when the Company, in its sole discretion, deems such offerings to be economically advantageous to the Company.” PGW Tariff No. 2 at 18.

3. At which time PGW will rebill the rates applied during the Rate Gap Period for all service received on and after January 1, 2023 to reflect the Commission's determination of new rates.

A copy of the correspondence between PGW and GFCP/VEPI is included in the attached Verified Statement of John C. Zuk as **Exhibit 2**. The proposed agreement would be between PGW and GFCP/VEPI, consistent with the relief sought in the Complaint – unlike the 1996 Contracts to which PGW was not a party.

GFCP/VEPI did not engage with PGW in finding a reasonable solution and declined to identify any provisions from the 1996 Contracts that they believed were necessary to address in an interim contract. GFCP/VEPI simply rejected the suggestion of a temporary continuation agreement with PGW, disengaged from PGW's initiative and, again, demanded that PGW extend the 1996 Contracts.

II. ARGUMENT

A. Applicable Standards

The purpose of interim emergency relief is to maintain the status quo.²⁰ To prevail in a petition for emergency relief the petitioner must allege the existence of an “emergency” and demonstrate that: (1) the right to relief is clear; (2) the need for relief is immediate; (3) the injury would be irreparable if relief is not granted; and (4) the relief is not injurious to the public interest.²¹

*Interim emergency relief may be granted only when all of the foregoing elements exist.*²²

²⁰ See, e.g., *Deborah L. Harris et al. v. UGI Utilities Inc. – Gas Division*, Docket No. C-20032233, 2004 WL 1151528 (Opinion and Order entered Feb. 12, 2004) (citing *Pa. PUC v. Israel*, 52 A.2d 317 (Pa. 1947)) (“The objective of interim emergency relief, which is in the nature of injunctive relief, is to maintain the status quo and attempt to place the Parties in the last, lawful, uncontested status.”).

²¹ 52 Pa. Code § 3.6(b).

²² *Glade Park East Home Owners Association v. Pa. Public Utility Commission*, 628 A.2d 468, 473 (Pa. Commw. Ct. 1993).

The party seeking relief – in this case, GFCP/VEPI – bears the burden of proving that the facts and circumstances meet all four of the requirements of 52 Pa. Code § 3.6(b).²³ This burden of proof must be carried by a preponderance of the evidence.²⁴ That is, the petitioner's evidence must be more convincing, by even the smallest amount, than that presented by the other party.

B. Lack of An Emergency

The Commission's regulations at 52 Pa. Code § 3.6 governing petitions for emergency relief require the petitioner to establish the existence of an emergency. “Emergency” is defined in the Commission's regulations as “[a] situation which presents a clear and present danger to life or property”²⁵ The Commission has also equated to need to show that an emergency exists with the similar need to show that, absent the requested relief, the Petitioners will be irreparably harmed.²⁶ There is no “clear and present danger to life or property” presented by the Petition.

The only legitimate potential “emergency” would be if, absent a PUC order extending the 1996 Contracts, GFCP/VEPI’s natural gas service were threatened. Not only is there no such

²³ 66 Pa. C.S. § 332(a).

²⁴ *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Commw. Ct. 1990), *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992).

²⁵ 52 Pa. Code § 3.1; see *Petition of Direct Energy Services, LLC for Emergency Order Approving a Retail Aggregation Bidding Program for Customers of Pike County Light & Power Company*, Docket No. P-00062205, 2006 Pa. PUC LEXIS 3 (Order entered Apr. 20, 2006) (while retail electric rates rose to an unexpectedly high level, there was no clear and present danger to life or property warranting emergency relief); *Petition of National Fuel Gas for Emergency Order Granting a Temporary Waiver of Certain Tariff Rules Related to Transportation Service*, Docket Nos. P-961022 and P-961021, 1996 Pa. PUC LEXIS 38 (Order entered Mar. 19, 1996) (the threat of depletion of natural gas in unusually cold conditions presented a clear and present danger to life or property warranting emergency relief in the form of a waiver of tariff charges for over-deliveries).

²⁶ *Petitions of West Penn Power Co. for Approval of Electric Energy Purchase Agreements and for Orders Granting Rate Recognition of Purchased Power Costs re: Milesburg Energy, Inc.; Monongahela Lock & Dam No. 8; Burgettstown Project; Shannopin Mine Project*, Docket No. P-870216, 1989 Pa. PUC LEXIS 25, at *13 (Opinion and Order entered Mar. 31, 1989) (“...[t]he ‘clear and present danger’ standard of Sections 3.2 through 3.6 is at least as stringent than the ‘irreparable injury’ standard of Section 3.7.”); *Petition of Norfolk Southern Railway Co. for rescission or amendment of the Pennsylvania Public Utility Commission’s Order entered on June 12, 1975 regarding the prevention of runouts in the 400 and 500 Classification Yards of Conway Yard in Beaver County, Pennsylvania; United Transportation Union, Pennsylvania State Legislative Board; v.; Norfolk Southern Railway Co.*, Docket Nos. C-00019560 and P-2011-2267892, Order Denying Interim Emergency Relief and Certifying Material Question, dated Nov. 2, 2011, 2011 Pa. PUC LEXIS 308, *34 (subsequently adopted by the Commission’s Opinion and Order entered Dec. 1, 2011).

cognizable threat, PGW has done everything possible to assure that GFCP/VEPI will continue to receive their existing rates, terms and conditions of service pending the outcome of this Complaint case.

PGW, by both the Extension Tariff and the offer to contractually stipulate the continuation of services during the Gap Period, has made it clear that there is *no threat to the services that PGW provides* to GFCP/VEPI. Further, and as confirmed in the attached Verified Statement, PGW warrants that it will not alter or change current rates, terms and conditions of service presently being provided to GFCP/VEPI²⁷ until so ordered by the Commission.

GFCP/VEPI are simply seeking to evade the occurrence of a previously agreed upon legal event – expiration of the 1996 Contracts – as a legal stratagem to advance its argument that that the Commission should permanently extend the \$0.08 per Mcf rate for another twenty-five years. Contract extension is simply a legal subterfuge designed to increase the likelihood that the highly subsidized rate will be extended despite all of the evidence of record. But trying to buttress a legal argument that is already preserved in the record of this case is not an emergency nor is it “irreparable harm to life or property.”

Moreover, the fact that the PUC will consider the Complaint case after the existing Contracts terminate, does not create an “emergency.” The existing procedural schedule was jointly developed between GFCP/VEPI and PGW and adopted by the other Parties and Your Honor at the Prehearing Conference in January 2022. For whatever tactical reasons, GFCP/VEPI elected for an extended schedule, which included the submission of reply briefs in October 2022, and now cry “emergency,” because, under that schedule, the Commission will not consider the case until after

²⁷ Verified Statement of John C. Zuk at 3-4 (attached).

the existing contractual arrangements will have terminated. This procedural fact could and should have been anticipated and not now raised on an “emergency” basis.

The two alternatives offered by PGW are: far better suited to the objective of ensuring no interruptions in service; capable of being effectuated; fairer and less prejudicial to the parties to this case; and are consistent with PGW’s existing Tariff provisions and the “just and reasonable” provisions of the Public Utility Code. They also enjoy the advantage of being legally capable of being implemented.

C. The Petition Fails To Maintain the Status Quo

The Emergency Petition ignores the purpose of emergency relief, which is to maintain the status quo pending resolution of the underlying proceeding.²⁸ This has long been recognized by both the Commission and the Courts. The Commission has previously denied petition for interim emergency order where “granting of the Petition would disturb the status quo.”²⁹

The status quo is that the 1996 Contracts will expire by their terms on December 31, 2022, as intended by the parties to the agreements twenty-five years ago and the Commission when it

²⁸ The Commission has repeatedly found that “[t]he objective of interim emergency relief, which is in the nature of injunctive relief, is to maintain the status quo and attempt to place the Parties in the last, lawful, uncontested status.” *Deborah L. Harris et al. v. UGI Utilities Inc. – Gas Division*, Docket No. C-20032233, 2004 WL 1151528 (Opinion and Order entered Feb. 12, 2004) (citing *Pa. PUC v. Israel*, 52 A.2d 317 (Pa. 1947)). Further, “the purpose of emergency relief is to preserve the status quo pending the disposition of the underlying proceeding.” *Petition of Norfolk Southern Railway Co. for rescission or amendment of the Pennsylvania Public Utility Commission’s Order entered June 12, 1975 regarding the prevention of run outs in the 400 and 500 Classification Yards of Conway Yard in Beaver County, Pennsylvania*, Docket No. C-00019560, 2011 WL 6122882, at *12 (Opinion and Order entered Dec. 1, 2011). In other words, “the purpose of granting injunctive relief is to maintain things as they are – *status quo* – until the rights of the parties can be considered and determined after a full hearing.” *Alfred Stempo – Sammy Jo’s Inc. v. Metropolitan Edison Co.*, Docket No. C-2016-2532581, 2016 WL 6139042, at *9 (Opinion and Order entered Oct. 18, 2016) (citing *Pa. PUC v. Israel*, 52 A.2d at 321).

²⁹ “Our law courts have held that the interest of the public would be detrimentally affected where the result of preliminary injunctive relief would be to change the status quo rather than to preserve it.” *Michael Vianello v. Commonwealth Tel. Co. and Palmerton Tel. Co.*, 70 Pa. P.U.C. 489 (Opinion and Order entered Sept. 5, 1989) (citing *Hichs v. American Natural Gas Co.*, 207 Pa. 570, 57 A. 55 (1904); *Pa. Canal Co. v. Lewisburgh M.& W. Pass. R. Co.*, 203 Pa. 282 (1902); *Fredericks v. Huber*, 180 Pa. 572 (1897); *Chester Traction Co. v. Phila., W.& B. R. Co.*, 174 Pa. 284, 35 A. 619 (1896); *Emerman v. Baldwin*, 186 Pa. Super. Ct. 561 (1958); *Lyndall v. High School Committee*, 19 Pa. Super. Ct. 232 (1902)).

grandfathered pre-jurisdictional contracts by the adoption of Rate GTS-F in 2003. It is the simple passage of time that will cause the termination of the 1996 Contracts. PGW's suggested solutions neither forestall nor accelerate this expiration. Contract extension would change the status quo.

PGW's alternative solutions best maintain the status quo by allowing the 1996 Contracts to expire as required by their terms, while maintaining the rates and service of those agreements, without contract extension, pending resolution of the underlying GFCEP/VEPI complaint proceedings.

D. The Petition Fails To Meet Any of the Standards For Interim Emergency Relief

1. GFCEP/VEPI Has No "Clear Right To [The] Relief" That It Requests

In determining whether a petitioner's "right to relief is clear" under 52 Pa. Code § 3.6(b)(1), the Commission does not require that the petitioner show that they will absolutely prevail in the underlying proceeding, but it does require that the petition raise "substantial legal questions."³⁰

GFCEP/VEPI have failed to raise "substantial" legal questions. In fact, careful consideration shows that GFCEP/VEPI's requested relief cannot be ordered. There are numerous reasons.

First, GFCEP/VEPI's characterization of Section 508 is flawed. The Commission has no greater powers under Section 508 than it does under the remainder of the Public Utility Code, particularly Chapters 13 and 15, to shape a fair and adequate remedy in this case.³¹ The Commission does not have "equitable" powers as GFCEP/VEPI appear to claim. As a creation of

³⁰ *Application of Fink Gas Co. for Approval of the Abandonment of Service by Fink Gas Co. to 22 Customers Located in Armstrong County, Pennsylvania, and the Abandonment by Fink Gas Co. of all Natural Gas Services and Natural Gas Distribution Services*, Docket No. A-2015-2466653, 2015 Pa. PUC LEXIS 408, at *8-9 (Opinion and Order entered Aug. 20, 2015) (citations omitted).

³¹ GFCEP/VEPI Emergency Petition at 5 ("The ratemaking sections of the Public Utility Code are at least facially limited to setting rates that are just and reasonable, 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 General Assembly, the Commission only has the power and authority granted to it by the General Assembly contained in the Public Utility Code.³²

The termination of these agreements is not prejudicial in any way to the establishment of just and reasonable rates and terms for PGW service to GFCEP/VEPI – either temporarily or permanently – pursuant to its tariff. Indeed, tariffed rates and terms of service are the only way in which a public utility can provide service. PGW cannot provide service merely via a “contract.” But there is no lack of remedy to GFCEP/VEPI, or any of the parties for that matter, under the service and rate setting provisions of the Code. The Commission’s powers are broad and inclusive.³³

Just as importantly, GFCEP/VEPI’s demands for an extension of the 1996 Contracts using Section 508 or by directing PGW to do so cannot be granted.

First and foremost, PGW was not and is not a party to any of the 1996 Contracts with GFCEP/VEPI. The 1996 Contracts that GFCEP/VEPI insist be “extended” are actually between GFCEP/VEPI and PAID, an industrial development authority.³⁴ PGW agreed to honor the service terms of those contracts by incorporating them by reference into its Tariff via Rate GTS-F. However, PGW, as a non-party, has no contractual capacity to extend the 1996 Contracts. Essentially, GFCEP/VEPI are seeking to force PGW into a new agreement at existing rates, terms and conditions. PGW has already offered to enter into such an agreement on a temporary basis pending the Commission’s order on new rates.

³² *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937, 2008 WL 8014593, at *3 (Opinion and Order entered May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 794 (Pa. 1977) (citations omitted).

³³ The Commission has broad authority under the Public Utility Code to ensure that rates are just and reasonable and not unduly discriminatory. 66 Pa. C.S. §§ 1301, 1304.

³⁴ See PGW St. 1R at 12; see also PGW Main Brief at 2.

Moreover, the Commission lacks *in personam* jurisdiction over GFCP/VEPI's counterparty, PAID, and PAID's counterparty, the City, to force an extension of the agreements beyond the agreed to termination date of the 1996 Contracts. Neither PAID nor the City are utilities or customers whose rights are justiciable under the Public Utility Code. PAID and the City are not parties to this Complaint case. Further, granting an extension of the 1996 Contracts in the absence of PAID and the City would deny them their due process rights to be heard on matters of substance. Therefore, PGW would not have the legal ability to comply with a PUC order to "extend" the existing 1996 Contracts.

Moreover, even if it were possible for PGW to extend these contracts, the Commission has found in the past that such an order will only be considered when a utility has abused its discretion and it is necessary to interfere with their managerial discretion in order to insure that customers receive adequate service.³⁵ Tellingly, GFCP/VEPI's Petition, as well as its Briefs in this proceeding, are devoid of a single citation to any PUC or appellate decision supporting the notion that the PUC can force PGW to enter into a contract against its will. To the contrary, as a general matter, the courts and the PUC have ruled that entering into a contract is a decision of utility management, that "utility management is in the hands of the utility and the Commission may not interfere with lawful management decisions . . . unless, on the basis of record evidence, it finds an abuse of the utility's managerial discretion."³⁶ GFCP/VEPI have not even argued that any of those conditions exist here.

³⁵ See PGW Reply Brief at 22-23.

³⁶ *Nat'l Fuel Gas Distrib. Corp. v. Pa. PUC*, 464 A.2d 546, 559 (Pa. Commw. Ct. 1983); see also *ALLTEL Pennsylvania, Inc. v. West Penn Power Company*, Docket No. C-00992532, 2000 Pa. PUC LEXIS 88 (Initial Decision dated Sept. 26, 2000), adopted as modified by 2001 Pa. PUC LEXIS 27 (Opinion and Order entered July 26, 2001).

Nor does the PUC have authority under Section 508 to “revise” the existing Contracts to unilaterally extend their terms. Most importantly, both the Commission and the courts have held that the Commission may only use its Section 508 power to revise or abrogate an *existing* contract. The contract that GFCP/VEPI want to have “extended” will not exist during the time of the extension.

Further, Section 508 limits the Commission’s use of this authority to circumstances where modification is in the public interest and the “general well-being.”³⁷ The Complainants have failed to explain how extending a twenty-five year old set of contracts at grossly subsidized rates would be in the public interest or benefit the “general well-being.” The only entities that would possibly benefit from this demand are GFCP and VEPI.

Again, GFCP/VEPI have failed to cite a single case in which the Commission has used its Section 508 powers to extend the term of a contract into a period in which it has terminated by its terms. In fact, there are numerous cases rejecting such similar claims.³⁸

Finally, and apparently overlooked by the Petitioners, an extension cannot take effect until *after* the 1996 Contracts expire and, thus, would be ineffective. Section 508 states: “Such contract, as modified by the order of the commission, *shall become effective 30 days after service of such*

³⁷ *Friends of the Atglen- Susquehanna Trail Inc. v. Pa. PUC*, 717 A.2d 581, 588 (Pa. Commw. Ct. 1998) (finding that, under 66 Pa. C.S. § 508, the Commission has the power “to reform and revise contracts of public utilities upon a fair, reasonable and equitable basis when the Commission determines after notice and hearing that terms of such obligations are adverse to the public interest and general well-being.”).

³⁸ *See, e.g., ALLTEL Pennsylvania, Inc.*, 2000 Pa. PUC LEXIS 88; *Petition of West Penn Power Co.*, Docket No. P-870216, 1989 Pa. PUC LEXIS 200, at *70–71 (Sept. 29, 1989), *affirmed in part and modified in part*, *Armco Advanced Materials Corp. v. Pa. PUC*, 579 A.2d 1337 (Pa. Commw. Ct. 1990) (“Armco/Allegheny’s Reply Exceptions state that Section 508 does not empower the Commission to modify a contract that has lapsed and that an increase to rates would violate the September 1, 1988 Consent Order. . . . We agree with the ALJ that Milesburg’s EEPA has lapsed and that modification to the EEPA under Section 508 is a moot point.”); *accord, Little Washington Wastewater Co. -- Northeast PA Consolidated Division*, Docket Nos. R-2008-2081738, *et al.*, 2009 Pa. PUC LEXIS 1666, at *35 (July 24, 2009) (finding that the Commission cannot use its Section 508 power to modify asset agreement because, “[s]imply put, Eagle Rock failed procedurally to maintain the Asset Agreement as a controlling and viable document before this Commission in this proceeding”).

order upon the parties to such contract.”³⁹ Thus, even if the Commission were to consider modifying the existing Contracts by extending their term, Section 508 requires that any such modification be effective only after thirty days of such an order. Accordingly, given the timing of GFCP/VEPI’s Petition, it is *legally impossible* for Your Honor or the Commission to issue an order under Section 508 that would modify the 1996 Contracts before they have terminated.⁴⁰ Thus, GFCP/VEPI’s entire Section 508 demand is moot.

Not only does GFCP/VEPI possess “no clear right” to demand that the soon-to-be expired contracts be extended, but they also have no right to the requested relief at all. Even under the lesser standard espoused by GFCP/VEPI, these are not even “substantial legal questions.”

The relief offered by PGW to continue to provide the same services under the same rates terms and conditions is more than sufficient to address the parties’ actions and expectations during the Gap Period.

2. There Is No Need For “Immediate Relief” By Emergency Order

The Petition presents contract expiration as the emergency creating the need for immediate relief. This legal event will have no impact on the outcome of this case, except by creating the need to design new rates under the Public Utility Code.

The notion that PGW, a non-party, should be forced to adopt the 1996 Contracts and that they be extended, was first raised by GFCP/VEPI at the September briefing stage. No witness testified to this result. It is untrue that “[GFCP/VEPI] filed the complaint seeking reformation of

³⁹ 66 Pa. C.S. § 508 (emphasis added).

⁴⁰ See *Petition of West Penn Power Co.*, 1989 Pa. PUC LEXIS 200, at *70–71 (The Commission finds that it does not have the power to apply its Section 508 powers to extend the deadline for obtaining financing in a cogeneration contract with a utility when the deadline to be extended fell less than thirty days from the date on which the Petitioners filed their Petition to modify the contract pursuant to Section 508).

the contract...”⁴¹ As noted above, *the Complaint* invoked the standards of Chapter 13, seeking just and reasonable rates, and *requested a new contract with PGW*.

In other words, GFCEP/VEPI seek to have an emergency declared over a legal position that was not part of any pleading or record evidence and only sought as an afterthought in brief. Now, apparently as a legal stratagem to support its otherwise already stated on-the-record position that service should continue for another the next twenty-five years under grossly subsidized rates under a contract with PGW, contract expiration with other parties has been elevated to emergency status.

Contract extension is unnecessary and irrelevant to designing new rates. The Commission will determine rates under the Public Utility Code, as requested in the complaint, and consider all of the parties’ arguments, including those of GFCEP/VEPI seeking a continuation of the \$0.08 per Mcf rate.

There is no “immediate need” for relief. “Relief” will occur when Your Honor and the PUC decide the issues presented by the parties and decide the proper rates for PGW to apply. The Parties agreed to the litigation schedule, and it was approved by Your Honor. To the extent that GFCEP/VEPI have now realized that it is unlikely that the Commission will rule on its latest contracts theory of the case before contract termination is a problem of their own making. GFCEP/VEPI could have asked for an expedited hearing or filed a request for that relief at the same time the Complaint was filed. They did neither.

Avoiding the future prospect of paying rates on a cost-of-service basis as may be directed by the Commission requires no relief either, let alone “immediate” relief. This is the equivalent of saying that the “just and reasonable” standard in Section 1301 is inherently harmful. PGW has

⁴¹ GFCEP/VEPI Emergency Petition at 4 (“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.”).

no doubt that Your Honor and the Commission will carefully weigh all of the evidence adduced in this docket and render a fair and lawful rate. By definition, there can be no “immediate” (or otherwise) need to avoid that result.

Certainly, PGW has demonstrated that there is no service emergency and that there are numerous alternatives to ensure that GFCP/VEPI continue to receive service and pay just and reasonable rates during the Gap Period. PGW has offered two solutions. Both would continue to apply “*all the rates, terms and conditions of service under which PGW currently provides service to Vicinity and Grays Ferry.*” GFCP/VEPI have rejected both of these solutions, but they remain open and available to them.

And even in the absence of these alternatives, there is no way that PGW will fail to meet its obligations under Section 1501 of the Code and interrupt existing services during the Gap Period.⁴² The attached Verified Statement expressly states that, under all circumstances, service will continue under the same rates, terms and conditions.

While PGW would prefer that its provision of current rates, terms and conditions be by new agreement or Commission approved tariff, it assures Your Honor that it will do nothing to destabilize services during the Gap Period. If this Petition is denied, as it must be, and no other action is taken, PGW will continue to provide service at existing rates, terms and conditions and the PUC can retroactively determine the just and reasonable rates that should be applied starting January 1, 2023.

⁴² GFCP/VEPI Emergency Petition, Verified Statement of Robert L. Arendell dated November 23, 2022 at 3 (“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.”).

If deemed necessary, Your Honor could also issue in interim order affirming PGW's maintenance of the status quo by continuing to provide the current rates, terms and conditions of service afforded to GFCP/VEPI.⁴³

In short, there is no immediate relief required.

3. GFCP/VEPI Will Not be Irreparably Harmed if Their Requested Relief is Not Granted; The Alternatives Offered By PGW Avoid Any Injury Whatsoever

The Commission has stated that the issuance of an interim emergency order is “a form of relief to be sparingly utilized in only the most extraordinary circumstances, where this is ‘a clear and present danger to life or property.’”⁴⁴ The Commission has equated the “clear and present danger” standard with the requirement that a party show “irreparable injury” to obtain interim emergency relief.⁴⁵ Further, “when evaluating if an injury is irreparable, we examine ‘whether the harm can be reversed if the request for emergency relief is not granted.’”⁴⁶

In this context, “irreparable injury” would only occur were there jeopardy to the services provided by PGW. PGW has made it clear that it has no intention of undertaking any adverse action and has offered under two different alternatives to maintain the “*all current rates terms and conditions of service.*”

⁴³ Such an order would be within the ALJ's general authority to take action in the public interest.

⁴⁴ *Petitions of West Penn Power Co. for Approval of Electric Energy Purchase Agreements and for Orders Granting Rate Recognition of Purchased Power Costs re: Milesburg Energy, Inc.; Monongahela Lock & Dam No. 8; Burgettstown Project; Shannopin Mine Project*, Docket No. P-870216, 1989 Pa. PUC LEXIS 25, at *13 (Opinion and Order entered Mar. 31, 1989) (“...[t]he ‘clear and present danger’ standard of Sections 3.2 through 3.6 is at least as stringent than the ‘irreparable injury’ standard of Section 3.7.”).

⁴⁵ *Id.* at *13-14.

⁴⁶ *Application of Fink Gas Co. for Approval of the Abandonment of Service by Fink Gas Co. to 22 Customers Located in Armstrong County, Pennsylvania, and the Abandonment by Fink Gas Co. of all Natural Gas Services and Natural Gas Distribution Services*, Docket No. A-2015-2466653, 2015 Pa. PUC LEXIS 4088, at *25 (Opinion and Order entered Aug. 20, 2015) (citations omitted).

The fact that the 1996 Contracts will lapse according to their express, agreed-upon-terms causes no injury, let alone irreparable injury. Frankly, GFCP/VEPI's claim that, without an extension, they "would then suffer under what could be unfair or inequitable terms and conditions, with no recourse"⁴⁷ is incomprehensible. The Contracts need not be extended in order for GFCP/VEPI to argue that it should continue to receive their existing rates, terms and conditions on a permanent basis as well.

As set forth in the attached Verified Statement of John C. Zuk):

All of the services that GFCP/VEPI have claimed are in the 1996 Contracts and that are important to their operations can and will be provided during the Gap Period. Moreover, all of these same services have been addressed in the Complaint case and the Commission has the power to order them without extending the terminating 1996 Contracts.⁴⁸

There are no currently received services that are not addressed in the record of this case. GFCP/VEPI's suggestion that the *only* way in which GFCP/VEPI could continue to receive their existing rate package is by extending the 1996 Contracts is false and unsupported.

PGW has tendered repeated requests that GFCP/VEPI identify what specific aspects of the 1996 Contracts are not already preserved in the record of this case. No specifics have been provided.⁴⁹ The GFCP/VEPI affiant, Mr. Arendell, only vaguely suggests that the Commission's review "*could* be limited."⁵⁰ Certainly, more than vague speculation is needed to demonstrate "irreparable injury."

⁴⁷ GFCP/VEPI Emergency Petition at 6; *see also Id.* at 5 ("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.").

⁴⁸ Verified Statement of John C. Zuk at 4.

⁴⁹ Verified Statement of John C. Zuk at Exhibit 2.

⁵⁰ Verified Affidavit of Robert L. Arendell at 3 ("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." (emphasis added)).

Even were there services not raised by GFCP/VEPI on the record of this case, this is not a valid basis for an emergency order either. At this late stage, well after hearings and briefs have been completed, GFCP/VEPI has sought to create the vague specter of some undefined term and condition contained in the 1996 Contracts that was not raised previously and which allegedly will be lost if the contracts are not extended. If any such terms exist (and PGW is aware of none), this Emergency Petition is the first time such claims have been made in this case, and the record is devoid of any discussion about these terms. At this late stage in the proceeding, the relief sought by GFCP/VEPI should not be a mystery.

4. Granting Relief Would Be Injurious To The Public Interest

Finally, GFCP/VEPI assert that extending the 1996 Contracts will not injure the public interest, characterizing its request as “a stop gap measure that is essentially procedural in nature.”⁵¹ This is untrue. The only interest advanced is that of GFCP/VEPI.

Granting the relief requested by the Petition would be prejudicial to the Parties to the case. By extending the agreements, Your Honor would be expressly rejecting PGW’s arguments in brief that the Commission has no power to do so before actually considering the legal merits. This would then create the precedent that the Commission may continue to do so. Rather than take the time to fully consider all arguments, GFCP/VEPI are attempting to force a hasty, last-minute decision on the disputed factual and legal issues under expedited circumstances.

PGW, as well as the parties to the contracts, PAID and the City, are prejudiced because they are denied their due process rights to be heard on matters of substance.

⁵¹ GFCP/VEPI Emergency Petition at 6.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, PGW respectfully requests that the Commission deny GFCP/VEPI's Petition for Interim Emergency Relief.

Of Counsel:

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

Dated: December 5, 2022

Respectfully submitted,

/s/ Norman J. Kennard
Daniel Clearfield, Esq. (I.D. No. 26183)
Norman J. Kennard (I.D. No. 29921)
Carl R. Shultz, Esq. (I.D. No. 70328)
Cody T. Murphey, Esq. (admitted *pro hac vice*)
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Fl.
Harrisburg, PA 17101
717.237.7173 (direct dial)
717.255.3742 (direct dial)
717-237-6019 (fax)
dclearfield@eckertseamans.com
nkennard@eckertseamans.com
cshultz@eckertseamans.com
cmurphey@eckertseamans.com

Counsel for Philadelphia Gas Works

VERIFICATION

I, John C. Zuk, hereby state that: (1) I am the Senior Vice President of Gas Management for Philadelphia Gas Works (“PGW”); (2) the facts set forth in PGW’s Answer are true and correct (or are true and correct to the best of my knowledge, information and belief); and, (3) I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

December 5, 2022

Dated

/s/ John C. Zuk

John C. Zuk

Senior Vice President Gas Management
Philadelphia Gas Works

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**VERIFIED STATEMENT OF
JOHN C. ZUK
REGARDING PETITION FOR INTERIM EMERGENCY RELIEF**

My name is John C. Zuk. I am the Senior Vice President of Gas Management for Philadelphia Gas Works (“PGW”). I previously testified in this proceeding on behalf of PGW, submitting testimony marked as PGW St. 1R.

I am presenting this Verified Statement in opposition to the request for emergency relief filed by Grays Ferry Cogeneration Partnership (“Grays Ferry”) and Vicinity Energy Philadelphia, Inc, (“VEPI”) (collectively GFCP/VEPI). I have reviewed both the Petition and the Verified Affidavit of VEPI’s General Counsel Robert L. Arendell. Much of what is set forth below is already on the record in the Complaint proceeding, which is awaiting decision by the Administrative Law Judge.

By way of background, in January 1996, prior to the regulation of PGW by the Commission, the predecessors in interest of GFCP and VEPI entered into a series of service agreements with the Philadelphia Authority for Industrial Development (“PAID”) (which were mirrored in agreements between PAID and the City of Philadelphia (“City’)) for the provision of natural gas service by PGW (“1996 Contracts”). The Contracts had a term of twenty-five years and will terminate at the end of 2022.

PGW was not and is not a party to any of the 1996 Contracts. PGW is operated and managed by a nonprofit corporation, the Philadelphia Facilities Management Corporation (“PFMC”), that has the sole authority to enter into agreements that bind PGW. PFMC was not a party to the 1996 Contracts either.

Beginning July 1, 2000, regulatory jurisdiction over PGW, including as to rates and service, was transferred from the local Philadelphia Gas Commission to this Commission. As part of PGW's 2003 restructuring plan, PGW proposed, and the Commission approved, the establishment of tariffs for PGW, which included incorporation of the terms of the 1996 Contracts into a specific rate schedule – Rate GTS-Firm Service (“Rate GTS-F”).¹ By incorporating the rates, terms and conditions in the Contracts into its Tariff PGW became bound to fulfil the obligations just as it is for any tariffed rate.

To reflect the fact that this rate schedule was only available to customers with legacy contracts, Rate GTS-F was closed to new customers and made available only to those customers who were being served under a contract existing at the time – September 1, 2003 – and only for the life of those contracts. Rate GTS-F incorporates the 1996 Contracts' delivery rate of \$0.08 per Mcf and other terms that have been applied now for twenty-five years.

None of the rates, terms and conditions of the 1996 Contracts were determined to reflect just, reasonable and non-discriminatory rates, terms and conditions pursuant to the Public Utility Code. They were simply “grandfathered” into the tariff structure of PGW's restructurings for the duration of the agreements with the intent of reforming them at the end of the contract term.

PGW and GFCP/VEPI entered into discussion in 2021 to address services and rates going forward. GFCP/VEPI peremptorily discontinued the discussions and filed this complaint with the Commission. PGW was (and is) open to continued discussions.

Given that the Complaint case will not be resolved before contract termination, PGW has offered two different proposals to GFCP/VEPI that would bridge the gap between January 1, 2023 and a Commission decision in the Complaint case (“Gap Period”).

In order to ensure the continuation of service to GFCP/VEPI and their customers during the Gap Period, PGW filed Supplement No. 156² on November 1, 2022 to maintain the status quo during the pendency of the Complaint litigation (“Extension Tariff”).³ Specifically, the supplement extends the period of the current Rate GTS-F – and incorporates and *maintains all the rates, terms and conditions of service currently being provided to GFCP/VEPI – until the entry of a Commission decision in the Complaint case* (“Extension Tariff”) as follows:

Existing terms and conditions are extended for all customers taking service as of December 31, 2022 on this rate until the earlier of April 30, 2023 or the Pennsylvania Public Utility Commission issues a final decision in Docket No. C-2021-3029259. All rates and charges incurred after January 1, 2023 are subject to being rebilled as directed by the Pennsylvania Public Utility Commission so as to effectuate the final decision in Docket No. C-2021-3029259 on January 1, 2023.

A copy of the tariff page is attached to my Statement at **Exhibit 1**.

¹ PGW Gas Service Tariff – Pa. P.U.C. No. 2 at Original Pages 118 to 123 (“Rate GTS-F”).

² Supplement No. 156 to PGW's Gas Services Tariff Pa. P.U.C. No. 2, filed November 1, 2022, with an effective date of January 1, 2023.

³ Docketed at R-2022-3036472.

PGW requested that the Extension Tariff supplement be approved by the Commission in order to provide a specific tariff basis on which to continue to provide GFCEP/VEPI with the rates, terms and conditions of service that they are receiving today – until the PUC rules on their Complaint case and determines new rates, terms and conditions to be applied going forward. PGW has also asked that the PUC permit PGW to rebill GFCEP/VEPI at the rates, terms and conditions adopted by the Commission starting January 1, 2023.

On November 11, 2022, GFCEP and VEPI filed formal complaints, not contesting the Extension Tariff, but rather seeking alternative relief in the form of a forced extension of the 1996 Contracts (“Second Complaints”).⁴ PGW has both answered those complaints and filed Preliminary Objections in the nature of a motion to dismiss. These pleadings are pending at the Commission.

In light of the opposition of GFCEP/VEPI to the Extension Tariff, PGW next offered to enter into a new, temporary agreement with Grays Ferry and Vicinity pursuant to PGW’s Tariff Rule 2.3⁵ that would:

1. Continue to apply *all the rates, terms and conditions of service under which PGW) currently provides service* to Vicinity and Grays Ferry pursuant to Rate GTS-F;
2. Until a Commission determination of the proper rates to be charged; and
3. At which time PGW will rebill the rates applied during the Rate Gap Period for all service received on and after January 1, 2023 to reflect the Commission’s determination of new rates.

GFCEP/VEPI also rejected this suggestion and, again, demanded that PGW instead extend the 1996 Contracts. A copy of the correspondence between PGW and GFCEP/VEPI is attached as **Exhibit 2**.

Either one of these solutions would ensure that GFCEP/VEPI would continue to receive all of the service under the same terms and conditions that they do today until a final PUC decision (at which time the rates, terms and conditions of service determined to be just and reasonable would be imposed). Both PGW and GFCEP/VEPI agree that it is appropriate to rebill the rates eventually determined by the Commission back to January 1, 2023.⁶

PGW assures the Commission that there is no way, even in the absence of any agreement or Commission ruling, that PGW will interrupt existing services during the Gap Period (unless circumstances not related to this case, such as a force majeure event or a system wide curtailment

⁴ Docketed at C-2022-3036774 and C-2022-3036783.

⁵ PGW’s Rule 2.3 states that “[c]ontracts stipulating the negotiated non-scheduled rates and/or terms of Gas Service may also be entered into between the Company and Customer when the Company, in its sole discretion, deems such offerings to be economically advantageous to the Company.” PGW Tariff No. 2, pg. 18. PGW believes that Rule 2.3 provides tariff authority to enter into a temporary continuation agreement with GFCEP/VEPI. As stated previously: “PGW has no shareholders or earnings to retain, the advantage to the Company is really the advantage of existing customers.”PGW ST. 3R, page 13.

⁶ Verified Affidavit of Robert L. Arendell, page 3 (“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.”)

occurred). It has never threatened to do so. PGW will continue to provide all of the services that GFCP/VEPI now receive, including Alternative Receipt Service, pending the PUC decision. While PGW would prefer that an extension of current rates, terms and conditions be by agreement or Commission action, it will do nothing to destabilize its services during the Gap Period. If no interim determination is put into place, the Commission can review and make a determination of the proper rates, terms and conditions of service for the Gap Period and apply those determinations as of January 1, 2023.

There is no adverse consequence to GFCP/VEPI caused by the previously agreed to expiration of the 1996 Contracts.⁷ All of the services that GFCP/VEPI have claimed are in the 1996 Contracts and that are important to their operations can and will be provided during the Gap Period. Moreover, all of these same services have been addressed in the Complaint case and the Commission has the power to order them without extending the terminating 1996 Contracts.

These services mentioned by Mr. Arendell as “critical” to their operation are:

1. High pressure delivery of gas
2. Vicinity was obligated to pay for the construction of the new line and repurposing the existing line;
3. That Vicinity would balance its deliveries with TETCO and would not be responsible for PGW’s system lost or unaccounted for gas;
4. Capacity issues for moving gas on the Philadelphia Lateral, and
5. Vicinity’s need in certain limited instances to purchase a bundled sales service.

Also directly mentioned is Alternate Receipt Service (“ARS”) -- which is “not typical public utility-type services but are necessary elements of the service PGW has provided under the Contract.” All of these services were discussed and debated in the testimony and hearing held in August 2022.

In the Complaint case, PGW’s service to GFCP/VEPI, specifically the “high pressure of gas,” and the costs of providing that service was the primary focus of the proceeding.⁸ The parties to that proceeding presented testimony and briefed the issues surrounding the gas transportation service provided by PGW to GFCP/VEPI, especially the delivery charge component of that service.⁹ GFCP/VEPI’s Complaint specifically requested, among other things, that the Commission find that the rate PGW offered to GFCP/VEPI during discussions “post 2022 is unjust and unreasonable; [r]equire PGW to continue to provide Grays Ferry with firm transportation service; [and] [r]equire PGW to execute a new contract under Rate GTS-Firm

⁷ Verified Affidavit of Robert L. Arendell, page 3 (“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.” (emphasis added)).

⁸ Item 2, the payment for the construction of a new line to serve GFCP/VEPI has already taken place and is no longer a “service” that PGW provides. PGW serves GFCP/VEPI from its own facilities, including a pipeline that was initially financed by GFCP/VEPI but which PGW now owns and operates.

⁹ See GFCP/VEPI Statement JC-1 at 11–13; PGW Main Brief at 44–48.

for that service at a rate that is just and reasonable.”¹⁰ As a result, all of the testimony on the record in the Complaint case discusses PGW’s provision of transportation service to GFCP/VEPI and the costs both under the 1996 Contracts and after their expiration on December 31, 2022.¹¹ Consequently, one of the issues that will be decided by the Commission in the Complaint case is the just and reasonable rate for “high pressure delivery of gas”.

Similarly, the issue included in the Verified Statement that “[GFCP/VEPI] was obligated to pay for the construction of the new line and repurposing the existing line” was fully addressed by all the parties in the original Complaint proceeding initiated by GFCP/VEPI. The direct and surrebuttal testimony filed on behalf of GFCP/VEPI specifically raised the cost of the pipeline paid by GFCP/VEPI to argue that the proposed \$0.75/Dth transportation delivery service rate resulting from PGW’s cost of service study was unsupported.¹² PGW responded in its rebuttal and surrebuttal testimonies and explained that, while GFCP/VEPI paid a negotiated developer/customer contribution for PGW’s construction of the Two Mile Line and Naphtha Line over a ten year period, PGW has continuously owned and operated both of the lines.¹³ In addition, OSBA and OCA presented testimony regarding the calculation of the cost of service.¹⁴ Thus the effect on going forward rates, if any, of GFCP/VEPI’s initial contribution in aid of construction will be an issue decided by the Commission in this proceeding.

The terms in the 1996 Contracts identified in the Verified Statement “that [GFCP/VEPI] would balance its deliveries with TETCO and would not be responsible for PGW’s system lost or unaccounted for gas” (LUFGE) was also fully addressed in the Complaint case. In his direct testimony, GFCP/VEPI witness Crist identified “imbalance charges” and “lost and unaccounted for gas” as items in PGW’s initial offer with which GFCP/VEPI took issue.¹⁵ PGW then addressed these allegations in its rebuttal testimony and explained why such provisions should be included in a new rate provided by PGW to GFCP/VEPI after the expiration of Rate GTS-F and the 1996 Contracts.¹⁶ The OCA likewise addressed these issues and concluded that GFCP/VEPI should be assessed balancing and lost and unaccounted for gas charges in any new rate after December 31, 2022.¹⁷ Therefore, any final determination in this proceeding will include a determination of the just and reasonable balancing rules and LUFGE charges for GFCP/VEPI.

Further, the “capacity issues” identified in the Verified Statement were fully developed in the record of the Complaint case. Under the 1996 Contracts, PGW provides capacity release to GFCP/VEPI in the summer months and Alternative Receipt Service (“ARS”) during the winter months. The provision of summer capacity release under the 1996 Contracts was fully addressed

¹⁰ GFCP/VEPI Formal Complaint at 13.

¹¹ GFCP/VEPI Statement JC-1 at 20–22; GFCP/VEPI Statement JC-1SR at ___; PGW St. 4R at 1–8, Ex. CEH-1; PGW St. 4SR at 1–4; OCA St. 1R at 5–7, Ex. JDM-2; OCA St. 1S at 1–2, Ex. JDM-3; OSBA Statement No. 1-R at 8–12.

¹² GFCP/VEPI Statement JC-1 at 12–13, 21, 26; GFCP/VEPI Statement JC-1SR at 2, 11–15, 18.

¹³ PGW St. 1R at 7–8, 16–17;

¹⁴ OCA St. 1R at 5–7, Ex. JDM-2; OCA St. 1S at 1–2, Ex. JDM-3; OSBA Statement No. 1-R at 8–12.

¹⁵ GFCP/VEPI Statement JC-1 at 17–19.

¹⁶ PGW St. 1R at 22–23.

¹⁷ OCA St. 1R at 8–9; OCA Main Brief at 13–14.

in the Complaint case.¹⁸ GFCP/VEPI contended in the Complaint case that they no longer required summer capacity release under the terms of the 1996 Contracts,¹⁹ which PGW took no issue with.²⁰ Issues related to ARS during the winter were addressed in depth by GFCP/VEPI, PGW, OCA, and OSBA in the Complaint case, especially with respect to treatment of ARS in determining the cost for PGW to serve GFCP/VEPI.²¹ Therefore, the appropriate structure of capacity release and/or the continued provision of an ARS type service will be resolved as part of the Complaint case.

The provisions in the 1996 Contracts regarding GFCP/VEPI's purchase of bundled sales service was likewise addressed in the Complaint case. Because GFCP/VEPI raised the bundled sales service term of the 1996 Contracts in their Complaint, all of the parties that filed testimony addressed this provision of the 1996 Contracts.²² GFCP/VEPI and PGW both addressed the charge for bundled sales service using the Weight Average Cost of Gas ("WACOG") plus a fee of \$.61/Dth per the terms of the 1996 Contracts.²³ Moreover, GFCP/VEPI testified that they have no objection to using PGW's Gas Cost Rate ("GCR") for any future rate for sales service gas.²⁴ Therefore, again, this issue will be determined in the Complaint case as part of the Commission's determination of going forward just and reasonable rates for GFCP/VEPI, and no extension of the existing contract is necessary or warranted.

PGW's testimony in the Complaint case made clear that one of the options that was available to the Commission was to order that, going forward, GFCP/VEPI could be served on a new special rate. That special rate could be structured to include all the rates, terms and conditions of service that are currently being provided to GFCP/VEPI, including ARS, special balancing or LUFG provisions, etc.

To be clear, in the Complaint case, PGW has argued that GFCP/VEPI has not justified a special rate. Further, even if the PUC disagrees and determines that GFCP/VEPI should be served on a new special rate, the rates for such service should reflect cost of service and be set in a just and reasonable manner.

But this survey of the issues to be decided in the Complaint case establishes that all of the rates, terms and conditions of service that GFCP/VEPI currently enjoy are teed up for resolution at the complaint docket. Therefore, even without the extension of the 1996 Contracts,

¹⁸ GFCP/VEPI Statement JC-1 at 14–16, 19, 23–24; PGW St. 2R at 12–13; OCA St. 1R at 7.

¹⁹ GFCP/VEPI Statement JC-1 at 19; GFCP/VEPI Main Brief at 21; PGW Main Brief at 49; PGW Reply Brief at 16–18.

²⁰ PGW St. 1R at 23; PGW Main Brief at 49; PGW Reply Brief at 16–18.

²¹ GFCP/VEPI Statement JC-1 at 16–17, 19, 23; GFCP/VEPI Statement JC-1SR at 5, 16–22; GFCP/VEPI Main Brief at 21–22, 33–42; GFCP/VEPI Reply Brief at 19–21, 24, 34–36; PGW St. 1R at 20; PGW St. 2R at 8–11, Ex. RER-2; PGW St. 3R at 6; PGW St. 4R at 6–8; PGW St. 2SR at 1–4; PGW St. 5SR at 2–3; PGW St. 2FSR at 1–4; PGW Main Brief at 6–7, 12, 24–26, 46–48, 59–60, 68–70; PGW Reply Brief at 11–15, 18–19, 45–46; OCA St. 1R at 4, 6, 8–9; OCA Main Brief at 9–13; OSBA Statement No. 1-R at 4–5, 9–10; OSBA Statement No. 1-S at 2–3; OSBA Main Brief at 10–11, 13–14, 18–19.

²² See GFCP/VEPI Statement JC-1 at 17; PGW St. 1R at 21–22; PGW St. 2R at 11–12, Ex. RER-2; OCA St. 1R at 5; OSBA Statement No. 1-R at 9–12; OSBA Statement No. 1-S at 4.

²³ GFCP/VEPI Statement JC-1 at 17; PGW St. 1R at 21–22; PGW St. 2R at 11–12; see also OCA St. 1R at 3, 5; OSBA Statement No. 1-R at 10; OSBA Statement No. 1-S at 4.

²⁴ GFCP/VEPI Statement JC-1 at 17.

GFCP/VEPI will not lose the right to argue that its going forward rates, terms and conditions of service should be maintained in their present configuration.

For this reason, PGW disagrees that there is any emergency or need for immediate action, and GFCP/VEPI will not suffer irreparable harm if the 1996 Contracts are allowed to expire on their own terms.

Dated: December 5, 2022

Signed: /s/ John C. Zuk

Exhibit 1



PHILADELPHIA GAS WORKS

800 West Montgomery Avenue • Philadelphia, PA 19122

Craig Berry, Senior Attorney
Legal Department
Direct Dial: 215-684-6049
FAX: 215-684-6798
E-mail: craig.berry@pgworks.com

November 8 2022

Via E-Filing Only

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

Re: Tariff Supplement No. 156 - Rate GTS-F Temporary Extension
Docket No. R-2022-3036472

Dear Secretary Chiavetta:

Enclosed please find an erratum to Philadelphia Gas Works (“PGW”) Gas Service Tariff, Pa. P.U.C. No. 2, Supplement No. 156, which were filed with the Commission on November 1, 2022. The erratum involves replacement of pages 2, 6, and 7 to Supplement No. 156 to reflect the appropriate revision number of these pages.

Respectfully,

/s/ Craig W. Berry
Craig W. Berry, Esquire

Enclosure

cc: Certificate of Service (email only)

**PHILADELPHIA GAS WORKS**

800 West Montgomery Avenue • Philadelphia, PA 19122

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PGW's Erratum to PGW's Tariff Supplement No. 156, upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email

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

Sharon Webb, Esq.
Office of Small Business Advocate
Forum Place Building
555 Walnut St., 1st Fl.
Harrisburg, PA 7101
swebb@pa.gov

Gina Miller, Esq.
Bureau of Investigation & Enforcement
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
ginmiller@pa.gov

Charis Mincavage, Esq.
McNees Wallace & Nurick
100 Pine Street
Harrisburg, PA 17101
cmincavage@mcneeslaw.com

Harrison W. Breitman, Esq.
Office of Consumer Advocate
5th Floor, Forum Place Bldg.
555 Walnut Street
Harrisburg, PA 17101-1921
hbreitman@paoca.org

Daniel Clearfield
Eckert Seamans Cherin & Mellott
213 Market Street, 8th Floor
Harrisburg, PA 17101
dclearfield@eckertseamans.com

Dated: November 8, 2022

/s/ Craig W. Berry
Craig W. Berry, Esq.

List of Changes Made by this Tariff Supplement

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Updated to reflect revised page numbers for each of the changes listed below on this page.

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Existing terms and conditions are extended for all customers taking service as of December 31, 2022 on this rate until the earlier of April 30, 2023 or the Pennsylvania Public Utility Commission issues a final decision in Docket No. C-2021-3029259. All rates and charges incurred after January 1, 2023 are subject to being rebilled as directed by the Pennsylvania Public Utility Commission so as to effectuate the final decision in Docket No. C-2021-3029259 on January 1, 2023.

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Exhibit 2

Subject: FW: PGW Letter To Grays Ferry and Vicinity Regarding Gap Rates
Attachments: PGW - Temporary Service Agreement - DRAFT (12.2.22)(108122246).docx

From: Todd Stewart <TSSStewart@hmslegal.com>
Sent: Sunday, December 4, 2022 11:55 AM
To: Norman J. Kennard <nkennard@eckertseamans.com>
Cc: Dennis A. Whitaker <dawhitaker@hmslegal.com>; Kevin McKeon <KJMckeon@hmslegal.com>; hbreitman@paoca.org; swebb@pa.gov; ginmiller@pa.gov; cmincavage@mcneeslaw.com; Berry, Craig W <craig.berry@pgworks.com>; Dan Clearfield <DClearfield@eckertseamans.com>; Cody Murphey <cmurphey@eckertseamans.com>; Carl R. Shultz <CShultz@eckertseamans.com>
Subject: [EXTERNAL] Re: PGW Letter To Grays Ferry and Vicinity Regarding Gap Rates

Dear Mr. Kennard,

Grays Ferry and VEPI desire to remain as PGW customers on the same basis. Moreover, we appreciate PGW's willingness to continue the existing contract rates, terms and conditions until the Commission renders a final decision in the matters before them. However, PGW's solution, which permits the existing contract to expire merely due to the passage of time while these matters have been litigated, is an unacceptable outcome for us and one to which we cannot agree. Although we disagree over the applicability and scope of Section 508 of the Public Utility Code to the facts of this case, PGW's solution would have Grays Ferry and VEPI forgo Section 508 as a possible solution for the PUC to consider, while these matters are being litigated. Grays Ferry and VEPI have not asked PGW to waive any of its possible options and seek nothing less for themselves. Accordingly, any agreement that allows the existing contract to expire prior to Commission consideration is unacceptable.

Todd S. Stewart
717.919.4560

From: Norman J. Kennard <nkennard@eckertseamans.com>
Sent: Saturday, December 3, 2022 7:58 AM
To: Todd Stewart <TSSStewart@hmslegal.com>
Cc: Dennis A. Whitaker <dawhitaker@hmslegal.com>; Kevin McKeon <KJMckeon@hmslegal.com>; hbreitman@paoca.org <hbreitman@paoca.org>; swebb@pa.gov <swebb@pa.gov>; ginmiller@pa.gov <ginmiller@pa.gov>; cmincavage@mcneeslaw.com <cmincavage@mcneeslaw.com>; Berry, Craig W <craig.berry@pgworks.com>; Dan Clearfield <DClearfield@eckertseamans.com>; Cody Murphey <cmurphey@eckertseamans.com>; Carl R. Shultz <CShultz@eckertseamans.com>
Subject: RE: PGW Letter To Grays Ferry and Vicinity Regarding Gap Rates

Todd:

Following up on the below message of Monday, although we've not heard back from GFCP/VEPI, PGW wants to keep the conversation going if possible. Attached is a discussion draft attempting to sketch out an agreement between GFCP/VEPI and PGW that would extend service during the Gap Period under the same rates, terms and conditions as are currently offered.

Exhibit 2

If there is some right or terms of service from the 1996 Contracts that GFCP/VEPI would like to specifically preserve that is not already raised in the litigated case, we would be willing to entertain inclusion in the draft agreement. Please advise.

Thank you.



Norman J. Kennard

Member

Eckert Seamans Cherin & Mellott, LLC

213 Market Street, 8th Floor | Harrisburg, PA 17101

☎ 717-237-6024 | 📠 717-237-6019 | 📱 717-602-6546

✉ nkennard@eckertseamans.com

👤 BIO: 📇 VCARD: | 📧 🌐 📄 📱

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From: Norman J. Kennard

Sent: Monday, November 28, 2022 11:17 AM

To: Todd Stewart <TSSStewart@hmslegal.com>

Cc: Dennis A. Whitaker <dawhitaker@hmslegal.com>; Kevin McKeon <KJMckeon@hmslegal.com>; hbreitman@paoca.org; swebb@pa.gov; ginmiller@pa.gov; cmincavage@mcneeslaw.com; Berry, Craig W <craig.berry@pgworks.com>; Dan Clearfield <DClearfield@eckertseamans.com>; Cody Murphey <cmurphey@eckertseamans.com>; Carl R. Shultz <CShultz@eckertseamans.com>

Subject: RE: PGW Letter To Grays Ferry and Vicinity Regarding Gap Rates

Todd:

Thank you for your quick response.

We seem to agree on the rules that should govern during the gap period and only disagree on the best means. We agree that PGW will continue to provide service to GFPI/VEPI under the same rates, terms and condition as of January 1, 2023 subject to rebilling consistent with the rates established by Commission ruling in the complaint case.

As you know, PGW was not a party to the 1996 agreements and has no contractual capacity to extend them. Therefore, PGW offered a new temporary agreement, to which PGW would be a party, that accomplishes the same result outlined in your message below.

Exhibit 2

Trying to move this conversation forward, would GFPI/VEPI please identify what rights or terms of service an extension of the 1996 Contracts would preserve that the parties to the case have not already addressed and will not be determined by the Commission and placed into a tariff. We certainly want to understand GFPI/VEPI's concerns. Please advise.

From: Todd Stewart <TSSStewart@hmslegal.com>
Sent: Friday, November 25, 2022 11:33 AM
To: Norman J. Kennard <nkennard@eckertseamans.com>
Cc: Dennis A. Whitaker <dawhitaker@hmslegal.com>; Kevin McKeon <KJMckeon@hmslegal.com>; hbreitman@paoca.org; swebb@pa.gov; ginmiller@pa.gov; cmincavage@mcneeslaw.com; Berry, Craig W <craig.berry@pgworks.com>; Dan Clearfield <DClearfield@eckertseamans.com>; Cody Murphey <cmurphey@eckertseamans.com>; Carl R. Shultz <CShultz@eckertseamans.com>
Subject: [EXTERNAL] Re: PGW Letter To Grays Ferry and Vicinity Regarding Gap Rates

Norm

Thank you for your letter. We appreciate your offer but must respectfully offer a counter proposal.

Under the terms of PGW's 11/23 letter, PGW has proposed s for Vicinity to forgo its right to have the Commission consider the application of Section 508 simply because the litigation in this matter will go beyond the December 31, 2022, end date of the contract. That is not something we are prepared to do. Instead, we propose that the parties agree to a voluntary contract extension that preserves all parties' (both PGW and Vicinity) options, and that would endure until the Commission has the opportunity to fully and fairly address both PGW's and Vicinity's arguments in this case. Specifically, we propose:

1. That PGW continue to apply *all the rates, terms and conditions of service under which PGW currently provides service BY TEMPORARILY EXTENDING THE EXISITING CONTRACT BETWEEN* Vicinity and Grays Ferry;
2. That said extension endure until a Commission determination of the proper rates to be charged; and
3. That PGW will rebill the rates applied during the contract extension for all service received on and after January 1, 2023, to reflect the Commission's determination of new rates.

Such an agreement would also make any application of new rates retroactive to January 1, 2023. We look forward to your response.

Todd S. Stewart
Hawke McKeon & Sniscak LLP
717.703.0806(o)
717.919.4560(m)

From: Norman J. Kennard <nkennard@eckertseamans.com>
Sent: Wednesday, November 23, 2022 1:21:43 PM
To: Todd Stewart <TSSStewart@hmslegal.com>
Cc: Dennis A. Whitaker <dawhitaker@hmslegal.com>; Kevin McKeon <KJMckeon@hmslegal.com>; hbreitman@paoca.org <hbreitman@paoca.org>; swebb@pa.gov <swebb@pa.gov>; ginmiller@pa.gov <ginmiller@pa.gov>; cmincavage@mcneeslaw.com <cmincavage@mcneeslaw.com>; Berry, Craig W

Exhibit 2

<craig.berry@pgworks.com>; Dan Clearfield <DClearfield@eckertseamans.com>; Cody Murphey <cmurphey@eckertseamans.com>; Carl R. Shultz <CShultz@eckertseamans.com>

Subject: PGW Letter To Grays Ferry and Vicinity Regarding Gap Rates

Todd:

In the enclosed letter PGW offers to enter into an agreement with Grays Ferry/Vicinity which would continue all of the status quo rates, terms and conditions of service during the rate gap period that commences on January 1, 2023 continuing until the Commission resolves the issues pending at the Grays Ferry/Vicinity complaint docket.

The other parties to the complaint case have been copied since we seek all parties' concurrence.

Thank you and we look forward to hearing from you.



Norman J. Kennard

Member

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

☎ 717-237-6024 | 📠 717-237-6019 | 📱 717-602-6546

✉ nkennard@eckertseamans.com



BIO: VCARD: |

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Norman J. Kennard
717.237.6024
nkennard@eckertseamans.com

November 23, 2022

Via E-Mail

Todd S. Stewart, Esquire
Hawke McKeon & Sniscak LLP
100 N 10th Street
Harrisburg, PA 17101
tsstewart@hmslegal.com

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

Dear Mr. Stewart:

It appears unlikely that the Commission will issue a decision prior to the end of 2022 in the Grays Ferry/Vicinity complaint action at Docket No. C-2021-3029259 and PGW's Rate GTS-F will lapse prior to a Commission decision ("Rate Gap Period"). Also, given the filing of complaints by Grays Ferry and Vicinity opposing PGW's Tariff Supplement No. 156, which would have extended Rate GTS-F temporarily until the issuance of a Commission decision, there is a potential that PGW's proposed Tariff Supplement will be suspended and also not receive Commission approval in time to give PGW a firm legal basis on which to charge Grays Ferry/Vicinity at the existing rates, terms and conditions of service that they are now receiving.

In light of this gap, PGW is willing to enter into a new, temporary agreement with Grays Ferry and Vicinity pursuant to PGW's Tariff Rule 2.3 that would:

1. Continue to apply *all the rates, terms and conditions of service under which PGW currently provides service* to Vicinity and Grays Ferry;
2. Until a Commission determination of the proper rates to be charged; and
3. At which time PGW will rebill the rates applied during the Rate Gap Period for all service received on and after January 1, 2023 to reflect the Commission's determination of new rates.

As you know, PGW continues to have numerous, serious concerns with using the Commission's Section 508 authority and does not believe it or the Commission has the legal ability to agree to extend the 1996 Contracts.

PGW believes that the above is a fair and reasonable way of maintaining the status quo rates, terms and conditions of service during the during the Rate Gap Period while assuring that PGW will be able to continue to provide the natural gas service needed by Grays Ferry/Vicinity to serve its customers, particularly during the upcoming winter season.

This solution preserves on all of the parties' various positions at Docket No. C-2021-3029259 for Commission resolution for the post December 31, 2022 period without prejudging any of the merits of the underlying disputes until the Commission has an opportunity to decide.

Please let me know at your earliest convenience whether this proposal is acceptable to Vicinity and Grays Ferry. PGW's willingness to pursue this interim solution is contingent upon no other party to the above-captioned Complaint case objecting to this suggested course of action. We are in the process of drafting such an agreement.

Thank you for your consideration.

Sincerely,

/s/ Norman J. Kennard

Norman J. Kennard

NJK/jls

TEMPORARY SERVICE AGREEMENT

THIS TEMPORARY SERVICE AGREEMENT (“Agreement”) made this ___ day of _____, 2022, by and between PHILADELPHIA GAS WORKS by PHILADELPHIA FACILITIES MANAGEMENT CORPORATION (“PFMC”), a non-profit Pennsylvania corporation, solely in its capacity as operator and manager of the municipally owned PHILADELPHIA GAS WORKS, as amended (collectively “PGW”) and GRAYS FERRY COGENERATION PARTNERSHIP (“GFCP”) and VICINITY ENERGY PHILADELPHIA, INC. (“VEPI”) (collectively “GFCP/VEPI”).

WITNESSETH

WHEREAS, it is unlikely that the Pennsylvania Public Utility Commission (the “PUC” or “Commission”) will issue a decision prior to the end of 2022 in the GFCP/VEPI complaint action pending at Docket No. C-2021-3029259 or other determination of the rates to be applied on and after January 1, 2023 (“PUC Approved Rates”); and

WHEREAS, GFCP/VEPI’s current Service Agreements with the Philadelphia Authority for Industrial Development (“PAID”), the rates, terms and conditions of which have been incorporated into PUC Tariff Rate GTS-F, will expire on December 31, 2022 (“Rate Gap Period”); and .

WHEREAS, PGW and GFCP/VEPI desire to maintain the status quo to ensure the continuation of service to GFCP/VEPI’s customers during the Rate Gap Period; and

WHEREAS, PGW and GFCP/VEPI desire to continue the services, terms, and conditions currently provided to GFCP/VEPI during the Rate Gap Period; and

WHEREAS, PGW has authority under its PUC approved tariff (Gas Service Tariff – Pa P.U.C. No. 2: “Tariff”), Tariff Rule 2.3 (Tariff Pg. 18), to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound hereby the parties hereto agree as follows:

1. Pursuant to its authority in Tariff Rule 2.3, PGW shall modify the rates, terms and conditions of service set forth in Rate GS (Pa. PUC Tariff No. 2, page 83) so as to continue to apply all the rates, terms and conditions of service under which GFCP/VEPI currently receives service during the Rate Gap Period. Those status quo rates, terms and conditions are specified at Appendix A hereto.

2. All rates and charges incurred by GFCP/VEPI on and after January 1, 2023 pursuant to paragraph 1 above shall be rebilled at the PUC Approved Rates.

3. GFCP/VEPI shall pay all invoices submitted by PGW pursuant to paragraphs 1 and 2 above pursuant to the payment terms specified in PGW’s Tariff.

Exhibit 2
DISCUSSION DRAFT – SUBJECT TO FURTHER NEGOTIATION

4. The provisions of PGW Tariff and Rate GS Schedule (General Service) shall govern the service under this Agreement except as noted herein. The PUC shall retain jurisdiction over the rates charged by PGW to GFCP/VEPI, including under this Agreement.

5. This Agreement shall terminate and be of no force and effect upon the effective date of rates, terms and conditions of service ordered by the PUC in the Complaint Proceeding docketed at C- 2021-3029259.

6. By entering into this Agreement, neither party is waiving any argument or right that they may have asserted or will assert in the GFCP/VEPI Complaint action pending at Docket No. C-2021-3029259 or in any other forum.

Exhibit 2
DISCUSSION DRAFT – SUBJECT TO FURTHER NEGOTIATION

IN WITNESS WHEREOF, intending to be legally bound, the parties hereto have duly executed this Amendment on the date first written above.

(CORPORATE SEAL)

PHILADELPHIA FACILITIES
MANAGEMENT CORPORATION, in its
capacity as operator and manager of
PHILADELPHIA GAS WORKS

Attest: _____
Secretary

By: _____

(CORPORATE SEAL)

GRAYS FERRY COGENERATION
PARTNERSHIP

Attest: _____
Secretary

By: _____

(CORPORATE SEAL)

VICINITY ENERGY PHILADELPHIA,
INC.

Attest: _____
Secretary

By: _____

APPENDIX A

1. **INITIAL APPLICABLE TEMPORARY RATES AND SERVICES.**

A. TRANSPORTATION SERVICE TO GFCP/VEPI

The Monthly Charge shall be the sum of the following:

1. CUSTOMER CHARGE: \$250.00 per month.
2. DELIVERY CHARGE: \$0.08 per Dth

B. ALTERNATIVE RECEIPT SERVICE / COORDINATION OF GAS DELIVERIES TO GFCP/VEPI

The Monthly Charge shall be \$4,500 per month for the months of October to April.

C. SALES SERVICE TO GFCP/VEPI

The Monthly Charge shall be the sum of the following:

1. COMMODITY CHARGE: The current Sales Service Charge rate applicable to Industrial Customers.
2. DELIVERY CHARGE: \$0.61 per Dth

D. All Other Rates, terms and conditions of service currently being provided under Rate GTS-F and the 1996 Contracts shall continue to be available.

2. **CHARACTER OF SERVICE**

Service is intended to be the same as the firm transportation and sale services provided - to GFCP/VEPI on and before December 31, 2022 under Rate GTS-F and the 1996 Contracts that expire on December 31, 2022.