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December 16, 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 No. C-2021-3029259

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' ("PGW") Brief In Support of Interim Order Denying the Petition of Grays Ferry Cogeneration Partnership ("GFCP") and Vicinity Energy Philadelphia, Inc. ("VEPI," collectively, "GFCP/VEPI") in the above matter.

PGW supports the Interim Order Denying GFCP/VEPI's Petition and encourages the Commission to affirm the ALJ's conclusions and, further, find that no "substantial legal issue" has been raised.

Additionally, a companion case is pending that also addresses the issue of service continuation during the period starting on January 1, 2023 until entry of a Commission order establishing new rates in this case ("Gap Period").¹ Commission approval of the Extension Tariff would formally affirm PGW's declaration that it will continue to provide service under existing rates, terms and conditions during the Gap Period. The OCA supports the Commission's adoption of the Extension Tariff in a letter filed at this docket (attached as Exhibit C).

As explained in this Brief, approval by the Commission would reinforce, by tariff, the Interim Order's finding that there is no irreparable harm caused by denying Interim Emergency Relief. **Therefore, PGW continues to urge the Commission to permit the Extension Tariff to go into effect, subject to subsequent hearing, as is permitted under 66 Pa.C.S. Section 1308.**

¹ On November 1, 2022, PGW filed Supplement No. 156 to Gas Services Tariff Pa. P.U.C. No. 2 with an effective date of January 1, 2023 ("Extension Tariff") (Docket No. R-2022-3036472) and, on November 11, 2023, GFCP/VEPI filed complaints advancing nearly identical arguments to those contained in the Petition for Interim Emergency Order.

Copies of this Brief 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.
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CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PGW's Brief in Support of Interim Order Denying the Petition of GFCP and VEPI, upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Dated: December 16, 2022

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**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' BRIEF IN SUPPORT OF INTERIM ORDER DENYING
THE PETITION OF GRAYS FERRY COGENERATION PARTNERSHIP AND VICINITY
ENERGY PHILADELPHIA, INC. FOR ISSUANCE OF AN INTERIM EMERGENCY ORDER
AND CERTIFYING MATERIAL QUESTION**

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Dated: December 16, 2022

Attorneys for Philadelphia Gas Works

I. INTRODUCTION

Philadelphia Gas Works (“PGW”) submits this Brief in Support of the Interim Order Denying the Petition of Grays Ferry Cogeneration Partnership (“GFCP”) and Vicinity Energy Philadelphia, Inc. (“VEPI”) (jointly, “GFCP/VEPI” or “Petitioners”) for Interim Emergency Relief and Certifying Material Question (“Interim Order”) issued December 12, 2022.

The material question certified to the Commission is “[w]hether the presiding Administrative Law Judge correctly denied the expedited petition for interim emergency relief requesting that Philadelphia Gas Works be directed to continue to provide service to Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. under the terms of the 1996 contracts after their expiration on December 31, 2022.”¹ For the reasons discussed herein, PGW respectfully requests that the Commission answer this question in the affirmative.

II. SUMMARY OF ARGUMENT

The ALJ correctly found that GFCP/VEPI’s desire to preserve a meritless legal argument does not constitute an “emergency” nor satisfy two of the four requirements necessary to obtain interim emergency relief. Specifically, the Interim Order found that there is no immediate right to relief and GFCP/VEPI will not suffer irreparable harm if the pre-regulation, about-to-expire 1996 Contracts are not extended. These findings are clearly correct.

There is no “emergency” or irreparable harm because GFCP/VEPI’s service will not be affected. The ALJ found PGW’s offer to continue service under current rate terms and condition of service pending PUC decision in this complaint case compelling. Tariff Supplement 156 currently pending before the Commission is one way to do exactly that. The OCA concurs that Tariff Supplement 156 is the appropriate path.²

¹ Interim Order, Ordering ¶ 2.

² See OCA Letter dated December 8, 2022 attached as Exhibit C (“PGW’s Supplement No. 156 provides a reasonable path forward while the Commission reaches a final determination in Docket No. C-2021-3029259” and that “expedited relief in the form of a contract extension, at terms negotiated twenty-five years ago, is not warranted.”)

Nor will the legal opportunity to obtain the relief sought – the continuation of service at existing levels of each and every existing rate, term, and condition – *be foreclosed* by denial of the Petition. A full record on this request has been developed and is pending before the ALJ. PGW has previously conceded that GFCP/VEPI are legally able to advance this position by new tariff or new contract pursuant to tariff, although it disagrees that this would be an appropriate outcome. Due to these alternatives, the ALJ found that: “The Petitioners will still have avenues available to it to grant relief that is required in the underlying matter.”³

Although not found by the ALJ, there is also absolutely no likelihood of success of GFCP/VEPI’s Section 508 arguments, not even remotely, as is addressed in detail in this brief. Section 508 has no application here and its use to try to circumvent the application of Chapter 13 of the Code is inconsistent with Section 1301 and interpretive case law. The Commission’s Bureau of Investigation and Enforcement (“I&E”) agreed, during argument before the ALJ, that the Contracts cannot be extended due to the lack of “privity of contract.” Moreover, GFCP/VEPI have filed their request so late that the contract will have already expired before a Commission order attempting to modify the existing Contracts could become effective.

The best and most reasonable outcome would be for the Commission to affirm the ALJ’s Interim Order and approve PGW’s Tariff Supplement 156, which would temporarily extend Rate GTS-F, the Tariff provision under which GFCP/VEPI currently receives service, pending a final decision on the merits in the Complaint case.

III. BACKGROUND OF THE CASE AND THE EVOLUTION OF GFCP/VEPI’S SECTION 508 ARGUMENT

The premise of the original complaint filed by GFCP/VEPI in October 2021 is that: “By its terms, the [1996] Contract expires on December 31, 2022.”⁴ As the remedy for this anticipated event, the

³ Interim Order at 15.

⁴ GFCP/VEPI Formal Complaint at ¶ 7.

Complainants requested that the Commission: “Require PGW to *execute a new contract under Rate GTS-Firm* for that service at a rate that is just and reasonable.”⁵ A copy of the request for relief section of the Complaint is attached as Exhibit A. Extension of the 1996 Contract was not raised.⁶

On the record, through multiple rounds of testimony and hearings in August 2022, the parties have debated what the “just and reasonable” rate requested by GFCP/VEPI’s complaint should be. Despite GFCP/VEPI’s demand that they continue to be billed at their current delivery rate of \$0.08 per Mcf, PGW, OCA, and even GFCP/VEPI all agree that the current cost-of-service based rates is much higher, ranging from \$0.212/Dth (GFCP/VEPI)⁷ to \$0.756/Dth (OCA).⁸ Briefs and reply briefs have been submitted.

In addition to the appropriate delivery rate, the record also addresses all of the other services requested by GFCP/VEPI,⁹ which have all been fully debated by the parties below and are ripe for decision as PGW witness Mr. Zuk testified at hearings on the Petition.¹⁰ The Commission could issue a determination that would continue to permit GFCP/VEPI to receive service at the same rates, terms and conditions of service that they now receive (although most of the other Parties oppose that outcome) without artificial resuscitation of the expiring 1996 Contracts.

⁵ *Id.* at Prayer for Relief, ¶ 3 (emphasis added).

⁶ GFCP/VEPI are factually incorrect in claiming “Vicinity filed a Complaint . . . seeking relief in the form of a continuation of just and reasonable terms and conditions of service, including through the Commission’s exercise of its powers under Section 508 of the Public Utility Code, 66 Pa. C.S. § 508, to modify the existing Contract by extending its term.” GFCP/VEPI Brief on Interlocutory Review from Denial of an Interim Emergency Order at 3 (“GFCP/VEPI Interlocutory Review Brief”); see also GFCP/VEPI Formal Complaint at 14 (Exhibit A hereto).

⁷ GFCP/VEPI Statement JC-1SR at 17. PGW’s cost-of-service study determined the current cost of providing service to GFCP/VEPI at \$0.698/Dth.

⁸ OCA St. 1R at 3–4, and 7.

⁹ Including: load balancing; the application of lost and unaccounted volumes; upstream pipeline capacity trades; capacity issues for moving gas on the Philadelphia Lateral; GFCP/VEPI’s need to purchase a bundled sales service; and “Alternate Receipt Service.” These services, described as “significant issues the Contract addresses” in the Verified Statement attached to GFCP/VEPI’s Emergency Petition, GFCP/VEPI Emergency Petition, Verified Statement of James Crist at 2.

¹⁰ “[A]ll 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, 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.” PGW Answer in Opposition to Petition (“PGW Answer to Emergency Petition”), Verified Statement of John C. Zuk at 6–7. Mr. Zuk’s sworn Statement as admitted into the record is attached hereto as Exhibit B.

Importantly for our purposes here, the record below also addressed the *best procedural vehicle* to effectuate and publish those to-be-determined rates. On the record, GFCP/VEPI have advocated two mechanisms in which these rates, terms and conditions would be written and memorialized:

1. A new GFCP/VEPI contract *with PGW* under authority of a tariff;¹¹ or
2. A special tariff rate designed solely for GFCP/VEPI.

PGW does not believe that either of these outcomes have been legally or factually justified; but PGW has conceded that these would be consistent with Chapter 13 of the Code and are available.¹² These are the alternatives to contract extension referred to by the ALJ when she states: “The Petitioners will still have avenues available to it to grant relief that is required in the underlying matter.”¹³

Extension of the 1996 Contracts is a new, third form of relief *first raised by GFCP/VEPI during the briefing stage of the underlying proceeding*.¹⁴ Now, GFCP/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. GFCP/VEPI belatedly cling to the Contracts in the mistaken belief that an extension of the existing Contracts might afford them an opportunity to circumvent the rate setting provisions of the Code. This case is not a “contract dispute.”¹⁵ This case is about post-expiration rates, terms and conditions. No witness addressed the terms of 1996 Contracts except to affirm that they will expire on December 31, 2022. *The 1996 Contracts are not even entered into the record of the case.*

¹¹ GFCP/VEPI incorrectly claim that the prefiled testimony of GFCP/VEPI witness Crist “raised the issue of the relief of a revised contract” when he testified that “*PGW should be directed to develop and execute a contract* to continue the service to Grays Ferry for the next 25-year period.” GFCP/VEPI Interlocutory Review Brief at 6 (quoting GFCP/VEPI Statement JC-1 at 34). Mr. Crist’s testimony, however, does not suggest that the 1996 Contracts, to which PGW was not a party, be extended. Clearly, the witness was addressing the development and execution of a *new contract with PGW*, relief consistent with the Complaint.

¹² PGW also argued that, in the absence of proof that a special rate is justified, GFCP/VEPI could be served under existing rates with special customizing provisions authorized by PGW’s Rule 2.3. *See* Exhibit B.

¹³ Interim Order at 15.

¹⁴ *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 also* PGW Answer to Emergency Petition at 6, 17–18.

¹⁵ GFCP/VEPI Interlocutory Review Brief at 4.

IV. LEGAL STANDARDS

The purpose of interim emergency relief is to maintain the status quo.¹⁶ 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.¹⁷ Interim emergency relief may be granted only when all of the foregoing elements exist.¹⁸

A. Status Quo

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.”¹⁹ The Commission has previously denied a petition for interim emergency order where “granting of the Petition would disturb the status quo.”²⁰

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

¹⁶ 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.”).

¹⁷ 52 Pa. Code § 3.6(b).

¹⁸ *Glade Park East Home Owners Ass’n v. Pa. PUC*, 628 A.2d 468, 473 (Pa. Commw. Ct. 1993).

¹⁹ *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)); see also *United Transp. Union v. Norfolk Southern Railway Co.*, Docket No. P-2011-2267892, 2011 WL 6122882, at *12 (Opinion and Order entered Dec. 1, 2011) (holding that “the purpose of emergency relief is to preserve the status quo pending the disposition of the underlying proceeding” and finding that the petitioner had “not established a clear right to emergency relief”); *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 *Israel*, 52 A.2d at 321).

²⁰ *Michael Vianello v. Commonwealth Tel. Co. and Palmerton Tel. Co.*, 70 Pa. P.U.C. 489 (Opinion and Order entered Sept. 5, 1989) (“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.” (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)).

The expiration of the 1996 Contracts has been fully anticipated by the parties to the complaint case. Indeed, contract expiration is the entire premise of the complaint case and the parties' participation has been focused on designing new, post-expiration rates, terms and conditions of service. PGW has agreed to maintain the current rates and terms until the Commission decides the case.²¹ All parties agree that upon that determination, the new rates will be applied back to January 1, 2023.²²

PGW's Tariff Supplement 156, as discussed herein, best maintains the status quo by allowing the 1996 Contracts to expire as required under their agreed to terms, while maintaining the rates and service of those agreements in PGW's Tariff, pending resolution of the underlying complaint proceedings. The contract extension requested by GFCP/VEPI, on the other hand, would change that status quo.

B. Prong 1 – There is no clear right to relief

In determining whether a petitioner's "right to relief is clear," the Commission does not require a showing that the petitioner will absolutely prevail in the underlying proceeding, but it does require that the petition raise "substantial legal questions."²³ The standard is not simply the observation that the legal point is contested.²⁴

The standard of "substantial," derived as it is from the "clear right" standard, creates an implicit threshold of legal plausibility that must be met by the Petitioners. The underlying merits of the argument are part of the standard and should be addressed as part of the review.

²¹ See PGW Answer to Emergency Petition, Verified Statement of John C. Zuk at 6–7.

²² Interim Order at 17-18.

²³ *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).

²⁴ The basis for the Interim Order's finding that a substantial legal question is that: "Both parties provided extensive legal arguments regarding this case and this included whether Section 508 of the Public Utility Code applies, how new rates should be determined in this matter, and whether PGW is providing adequate and reasonable service to the Petitioners." Interim Order at 12.

“Substantial” is defined as being “important or essential” and “not imaginary or illusory.”²⁵ GFCP/VEPI’s Section 508 arguments are exactly that – “imaginary and illusory” – and, in fact, at this point in time, the requested relief *cannot be granted*. For this reason, PGW respectfully disagrees that the Petitioners have met this prong of the interim emergency relief test.

First, relief is not available because PGW has no contract with GFCP/VEPI. As I&E noted at the oral argument in support of denial, because PGW is not a party to the 1996 Contracts, there is no “privity of contract” between GFCP/VEPI and PGW. Moreover, the actual counterparties to the contracts, an industrial development arm of the City of Philadelphia and the City itself, are not parties to this case and are not jurisdictional to the PUC. Due process would be denied by extending a contract in their absence.

Secondly, and perhaps most fatally, relief under Section 508 is impossible, because GFCP/VEPI waited so long before raising the issue. Even were the Commission to now render a decision to extend the 1996 Contracts, its decision can take effect only *after* the Contracts have expired. Section 508 states that: “Such contract, as modified by the order of the commission, shall become effective 30 days after service of such order upon the parties to such contract.” The Commission has previously recognized this that its Section 508 power does not apply to contracts that have terminated.²⁶

²⁵ Merriam-Webster Dictionary, definitions of “substantial” and “substance.” <https://www.merriam-webster.com/dictionary/substantial>.

²⁶ See *Petition of West Penn Power Co.*, Docket No. P-870216, 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), *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.”); see also *ALLTEL Pennsylvania, Inc.*, 2000 Pa. PUC LEXIS 88; *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”).

Thirdly, Section 508 has no application here. While vigorously arguing with great rhetorical flourish that a separate set of rate setting remedies is available under Section 508, GFCEP/VEPI do not identify what it is that Section 508 affords them that Chapter 13 does not. Their arguments contain many vague references to Commission “powers” and the ability to offer a “full range of remedial options” for “remedies that are available only under Section 508.”²⁷ This expansive oratory, however, is devoid of explanation as to what those powers are and what remedy could be obtained that is not already available under Chapter 13 of the Code.

PGW has tendered repeated requests that GFCEP/VEPI identify what *specific aspects* of the 1996 Contracts are not already preserved in the record of this case or PGW’s interim solutions. These requests were ignored.²⁸ The GFCEP/VEPI witness at the interim emergency hearing, Mr. Crist, only vaguely suggests that the Commission’s review “*could* be limited” were the Contracts to lapse.²⁹ As noted above, after an extensive review of the record pending before ALJ Guhl, PGW’s witness concluded that “all of the rates, terms and conditions of service that GFCEP/VEPI currently enjoy are tied up for resolution at the complaint docket.”³⁰ In other words, even without the extension of the 1996 Contracts, GFCEP/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. GFCEP/VEPI have not contested this assertion. Therefore, as the ALJ found, there is clearly no “emergency” that needs to be addressed.

GFCEP/VEPI’s true objective and the crux of their vigorous resistance to contract expiration is

²⁷ GFCEP/VEPI Interlocutory Review Brief at 2, 3, 4, 6 and *passim*; see also *Id.* at 7 (“That loss will be irreparable, foreclosing the Commission’s ability to act under Section 508, and thereby depriving Vicinity of any opportunity to receive the remedy it seeks.”).

²⁸ PGW Answer to Emergency Petition, Verified Statement of John C. Zuk at Exhibit 2.

²⁹ GFCEP/VEPI Interlocutory Review Brief, Verified Statement of James Crist 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)).

³⁰ PGW Answer to Emergency Petition, Verified Statement of John C. Zuk at 6–7.

revealed in their argument before ALJ Guhl that, without the 1996 Contracts: “Vicinity is subject to the uncertainty of being a ratepayer, served under a tariff rate that is to be developed and subject to changes and modifications every time PGW files a rate case.”³¹ GFCP/VEPI cite no authority to support their view of Section 508 and PGW has found no case law where Section 508 provides immunity from the just and reasonable standard or from future rate changes. Indeed, case law interpretations of Chapter 13 of the Code expressly outlaw such a guarantee.

While the 1996 Contracts did guarantee a twenty-five year fixed rate, that was only because the Contracts were entered into prior to PGW coming under PUC jurisdiction and the auspices of the Code. When PGW did come under PUC regulatory control in 2003, these pre-regulation contracts were “grandfathered” and incorporated into PGW’s Tariff Rate GTS-F, but only for the life of those Contracts.³² In essence, the PUC determined that such incorporation was appropriate under the very unique and limited circumstances presented by those Contracts.

On a going forward basis, post-termination, however, rates must conform to Sections 1302 and 1303 and be found “just and reasonable” pursuant to Section 1301.³³ GFCP/VEPI cannot evade the requirements of Chapter 13 by contract or otherwise. In essence, GFCP/VEPI are arguing that compliance with Chapter 13 of the Public Utility Code constitutes irreparable harm.

Thus, Petitioners’ underlying premise – that Section 508 can be employed to establish and publish rates – is profoundly untrue. Section 508 is not a provision that sets “just and reasonable” rates.³⁴ Moreover, such a proposition is contrary to well established statutory law.

Section 508 is designed to reform contracts entered into by utilities that, by reason of excessive

³¹ GFCP/VEPI Interlocutory Review Brief at 3. Echoed in the brief submitted to the Commission: “.... not the same as being served under a long term contract that provides rate certainty for Vicinity....” GFCP/VEPI Interlocutory Review Brief at 6.

³² PGW Gas Service Tariff – Pa. P.U.C. No. 2 at Original Page 118

³³ 66 Pa. C.S. §§ 1301–03.

³⁴ This argument is contrary to GFCP/VEPI’s concession elsewhere that the “just and reasonable” standards of Section 1301 and cost of service will decide this case. GFCP/VEPI Main Brief at 28.

cost, self-dealing or other contract terms are not in the public interest. 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 ensure that customers receive adequate service and pay reasonable rates.³⁵ It is a tool to be applied in circumstances where the Commission “finds an abuse of the utility's managerial discretion”³⁶ and only when it is in the public interest and furthers the public good to modify the term.³⁷ GFCP/VEPI have not argued that any of those conditions exist here. Nor have they cited any cases in support of their opposing proposition.

To the contrary, under the Public Utility Code, *tariffs are the exclusive means* to establish and publish “all rates.” As expressly set forth in Section 1302: “every public utility shall file with the commission . . . tariffs showing *all rates* established by it and collected or enforced, or to be collected or enforced. . . .”³⁸ In turn, Section 1303 then requires that the tariff be followed and not deviated from “*by any device whatsoever.*”³⁹

This statutory interpretation – that a tariff is the exclusive means by which a public utility may charge a customer for utility service – was confirmed by Commonwealth Court in *Philadelphia Suburban*.⁴⁰ Rejecting side agreements, which attempted to set rates outside of a tariff, the Court held that:

The object of the General Assembly in choosing language almost identical to Section 2 of the Act of 1887 is clear: it sought to prevent “secret departures” from a scheduled tariff. The language “indirectly, by any device, or in anywise” must be given effect. It is the very complexity of

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).

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 66 Pa. C.S. § 1302 (“Tariffs”) (emphasis added).

³⁹ *Id.* § 1303 (“Adherence to tariffs”) (emphasis added).

⁴⁰ *Phila. Sub. Water Co. v. Pa. PUC*, 808 A.2d 1044 (Pa. Commw. Ct. 2002) (“Philadelphia Suburban”).

the Amendment and the Stipulation that mark the arrangement as an unlawful “device.”⁴¹

Thus, a utility’s contract with a municipality for service that departed from tariff violated Section 1303 because a utility cannot set rates by a contract: “a rate in a scheduled tariff [is] the only lawful way to make rates.”⁴²

It is not a defense to a Section 1303 violation to argue that the charge meets the rate making standards of Section 1304^[43]. If a charge deviates from the scheduled tariff, that is the basis of its unlawfulness. There is no need to go further and determine whether the unlawful rate meets the standards for a lawful rate; it is a futile exercise.⁴⁴

Thus, entering into a contract or modifying an existing contract, pursuant to Section 508 or otherwise, cannot provide a “back door” means of setting rates outside the strictures of Chapter 13.

The *Philadelphia Suburban* Court also noted the Supreme Court’s *Leiper* decision,⁴⁵ which held that “a contract that fixes a utility’s rates for an ‘indeterminate period will not be sustained’ because it would excuse the customer from tariff revisions that may take place over that period of time.”⁴⁶

Accordingly, PGW is not legally capable of providing, nor may the Commission approve, a contract for rates *unless* those rates, terms and conditions of service are *reflected in or authorized by a scheduled tariff provision* that have been found by the Commission to be “just and reasonable.” GFCP/VEPI’s suggestion that an extension of the pre-regulation 1996 Contracts is required so that they can be served via a contract alone, rather than tariffed rates, is legally incorrect and provides no basis for claiming either that their right to relief is clear or that they will suffer “irreparable harm” if the existing contract is not extended.

⁴¹ *Id.* at 1055–56.

⁴² *Id.* at 1060.

⁴³ 66 Pa. C.S. § 1304 (prohibiting discrimination in rates).

⁴⁴ *Philadelphia Suburban*, 808 A.2d at 1061.

⁴⁵ *Leiper v. Baltimore & Philadelphia Railroad Co.*, 105 A. 551 (Pa. 1918) (“*Leiper*”).

⁴⁶ *Philadelphia Suburban*, 808 A.2d at 1055 (citing *Leiper*, 105 A. at 554).

In summary, there is no viable legal theory raised, let alone a “clear right to relief” or even the watered-down standard of “substantial question.” GFCP/VEPI have no right whatsoever to evade the statutory and case law of Chapter 13. Section 508 does not provide immunity from “ratepayer” status and the avoidance of all future rate increases. There is no “substantial legal question.” The legal arguments raised by GFCP/VEPI are not plausible. The relief sought is “imaginary and illusory.”

C. Prong 2 – The ALJ correctly found that there is no need for immediate relief

The 1996 Contracts do not need to be extended in order for GFCP/VEPI to win its ultimate arguments – to continue to receive service at existing rates, terms and, including the \$0.08/mcf rate. GFCP/VEPI have elsewhere conceded that the “just and reasonable” standards of Section 1301 and cost of service will decide this case.⁴⁷ The record in the complaint case is complete, reflects all of the parties’ positions, designed in anticipation of contract expiration, and the PUC retains full powers to act on these recommendations.

The ALJ, who presided over the underlying case, affirmed that: “The Petitioners will still have avenues available to it to grant relief that is required in the underlying matter.”⁴⁸ As noted above, rates, terms and condition can be set by creation of a new special rate or a new contract with PGW authorized under the sanction of a tariff provision.

“Relief” will occur when the Commission determines the proper rates to apply to these ratepayers. The Parties agreed to the litigation schedule, and it was approved by Your Honor. The merits are now pending on briefs. There is no need for “immediate” relief.

D. Prong 3 – The ALJ is correct that there is no irreparable harm

In the meantime, PGW will continue to provide the current service under existing rates, terms and conditions. As the ALJ observed:

⁴⁷ GFCP/VEPI Main Brief at 28 (“Ultimately, the Commission will also have authority under § 1308, to determine whether any rate that PGW might seek to impose on Vicinity is just and reasonable.”).

⁴⁸ Interim Order at 15.

I find PGW’s verified statement to be credible in that it has promised to provide ongoing service to the Petitioner under the same terms and conditions as are currently in effect until the Commission has the opportunity to rule on the merits of the case. The parties have agreed that any changes to the rate will be applied retroactively to January 1, 2023. There is nothing to indicate in the record that the Petitioners will suffer a specific irreparable harm if relief is not granted at this time.⁴⁹

The Commission also considers whether the facts forming the basis for the Petition “constitute an emergency, as defined by the rules governing emergency relief.”⁵⁰ Because “[e]mergency relief is governed by 52 Pa. Code §§ 3.1–3.12,”⁵¹ the Commission defines “emergency” 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.”⁵² GFCP/VEPI have failed to demonstrate that this is a “situation which presents a clear and present danger to life or property” because, as ALJ Guhl found, PGW has agreed to maintain the current rates and terms. Accordingly, GFCP/VEPI fail to establish a clear right to emergency relief.

At this late stage, well after hearings and briefs have been completed, GFCP/VEPI’s attempt to create the vague specter of some undefined term or condition contained in the 1996 Contacts that was not raised previously and which allegedly will be lost if the contracts are not extended must be rejected. GFCP/VEPI have declined to identify with any specificity such a term or condition so that it could be incorporated into PGW’s proposed tariff supplement or a new contract with PGW covering the interim period. This attempt to preserve a preferred legal argument is obviously not an emergency and GFCP/VEPI will not be irreparably harmed if they are not able to continue this argument, since they can obtain all the same relief by other means.

⁴⁹ Interim Order at 17–18; *see* PGW Answer to Emergency Petition, Verified Statement of John C. Zuk at 6–7.

⁵⁰ *United Transp. Union v. Norfolk Southern Railway Co.*, Docket No. P-2011-2267892, 2011 WL 6122882, at *10 (Opinion and Order entered Dec. 1, 2011) (affirming the ALJ’s finding that the petitioner failed to show a clear right to relief based upon the ALJ’s determination that the incidents did not constitute an emergency).

⁵¹ *Id.*

⁵² 52 Pa. Code § 3.1.

Currently pending, PGW filed Supplement No. 156⁵³ on November 1, 2022, to maintain the service status quo during the pendency of the Complaint litigation (“Extension Tariff”).⁵⁴ 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.* PGW requested that the Extension Tariff Supplement be approved by the Commission in order to affirm a specific tariff basis on which to continue to provide GFCP/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.*

The OCA also believes that Supplement No. 156 is the better path forward:

The OCA supports PGW’s Supplement No. 156 as filed on November 1, 2022 and opposes Vicinity’s Petition. . . . PGW’s Supplement No. 156 provides a reasonable path forward while the Commission reaches a final determination in Docket No. C-2021-3029259 . . . expedited relief in the form of a contract extension, at terms negotiated twenty-five years ago, is not warranted.⁵⁵

PGW continues to request that Supplement No. 156 be approved by the Commission.

E. Prong 4 – There is harm to the other parties.

Granting the relief requested by the Petition would be prejudicial to the Parties to the case. By extending the agreements, Your Honors would be expressly rejecting PGW’s arguments in brief that the Commission has no power to do so before actually considering the legal merits. PGW, as well as the parties to the contracts, the industrial development arm of the City and the City itself, are prejudiced because they are denied their due process rights to be heard on matters of substance. Certainly, the only members of the “public” that would benefit would be GFCP/VEPI.

⁵³ 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.

⁵⁴ Docketed at R-2022-3036472.

⁵⁵ Letter of Assistant Consumer Advocate Harrison Breitman to Secretary Chiavetta at Docket C-2021-3029259 dated December 8, 2022 (attached as Exhibit C).

V. **CONCLUSION**

WHEREFORE, for the foregoing reasons, PGW respectfully requests that the Commission answer the material question in the affirmative, thus, affirming the denial of GFCEP/VEPI's Petition for Issuance of an Interim Emergency Order.

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Dated: December 16, 2022

Respectfully submitted,

/s/ Norman J. Kennard

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Counsel for Philadelphia Gas Works

Exhibit A

1502. Moreover, the Commission has authority under 66 Pa. C.S. §§ 501(a) & (b) to ensure that reasonable service is provided.

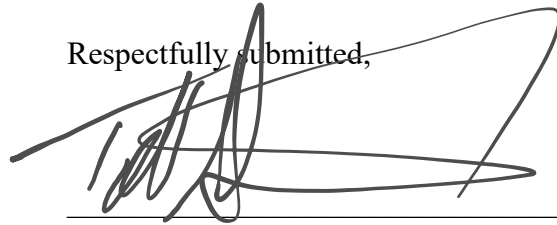
29. Grays Ferry believes and therefor avers that PGW's demand for a natural gas delivery rate in excess of what is factually supportable, and which proposes to force Grays Ferry from firm service to interruptible service, is an obvious effort by PGW to hobble VEPI as a competitor in the thermal energy business for which VEPI already has a certificate of public convenience. PGW's service is unreasonable and unreasonably discriminatory under the Code. *Pa. PUC et al v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2018-2647577, (Opinion and Order entered December 6, 2018) (Commission found that natural gas utility's provision of a billing service to two former affiliates while refusing to provide the same service for their competitors, was unreasonable discrimination under 66 Pa. C.S. § 1502).

30. There is no room for doubt that the rates, and contract terms that are being proposed by PGW for service to Grays Ferry after the contract expires at the end of 2022, are unjust and unreasonable. Likewise, PGW's conduct in seeking to interfere with VEPI's existing customer relationships in VEPI's certificated public utility service territory constitutes unreasonable and discriminatory service and unlawful and predatory competition. Vicinity provides valuable, desirable, and environmentally sound products to customers in the City of Philadelphia. PGW's rate demands, and anti-competitive conduct jeopardize continued provision of those services and pose an unjust threat to VEPI as a provider of reasonably priced, safe and reliable district steam public utility service.

WHEREFORE, Vicinity respectfully requests that the Pennsylvania Public Utility Commission sustain its Complaint and:

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;
3. Require PGW to execute a new contract under Rate GTS-Firm for that service at a rate that is just and reasonable; and
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.

Respectfully submitted,



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DATED: October 22, 2021

Exhibit B

**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 C

COMMONWEALTH OF PENNSYLVANIA



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December 8, 2022

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

Dear Secretary Chiavetta,

On November 9, 2022, Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. (Vicinity) filed a Formal Complaint against Philadelphia Gas Works' (PGW or Company) Tariff 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, 2022 (Supplement) at Docket No. R-2022-3036472. Currently, PGW serves Vicinity under a twenty-five year old, long-term contract set to expire on December 31, 2022. The future terms of service between PGW and Vicinity is the subject of pending litigation at Docket No. C-2021-3029259, in which the Office of Consumer Advocate is an active participant. Under PGW's Supplement No. 156, the Company proposes to continue serving Vicinity on and after January 1, 2023 under existing terms, subject to the possible recalculation of billed amounts.

On November 28, 2022, Vicinity filed a Petition for Interim Emergency Relief (Petition) seeking an interim order from the Commission, extending the twenty-five year contract until the Commission can rule on the merits of Vicinity's underlying pending complaint. The OCA supports PGW's Supplement No. 156 as filed on November 1, 2022 and opposes Vicinity's Petition. The OCA submits that the cost-basis of PGW's future provision of service is the subject of the underlying dispute that is currently pending before the PUC and it would be unreasonable for the Commission to grant the interim relief requested by Vicinity while that dispute remains pending. PGW's Supplement No. 156 provides a reasonable path forward while the Commission reaches a final determination in Docket No. C-2021-3029259. Given this viable alternative presented by PGW, the OCA submits that expedited relief in the form of a contract extension, at terms negotiated twenty-five years ago, is not warranted.

Rosemary Chiavetta, Secretary

December 8, 2022

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Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ Harrison W. Breitman

Harrison W. Breitman

Assistant Consumer Advocate

PA Attorney I.D. # 320580

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Enclosures:

cc: The Honorable Marta Guhl (**email only**)

Athena Delvillar, ALJ' s Legal Assistant (**email only:** sdelvillar@pa.gov)

Certificate of Service

*337915

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Letter In Support of PGW's Answer, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 8th day of December 2022.

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