

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Commissioners Present:

Gladys Brown Dutrieuille, Chairman  
Stephen M. DeFrank, Vice Chairman  
Ralph V. Yanora  
Kathryn L. Zerfuss  
John F. Coleman, Jr.

Grays Ferry Cogeneration Partnership and  
Vicinity Energy Philadelphia, Inc.

C-2021-3029259

v.

Philadelphia Gas Works

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the *Order Denying Petition for Issuance of an Interim Emergency Order on an Expedited Basis Filed Pursuant to Sections 3.6, 3.6a and 3.7 of the Commission's Regulations and Certifying Material Question* issued by Administrative Law Judge Marta Guhl (ALJ Guhl) on December 12, 2022 (*Interim Order*) in the above-captioned proceeding.

The Material Question before the Commission is as follows:

Whether 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 they expire on December 31, 2022.

*See Interim Order* at 20-21, Ordering para. 2.

The Parties were provided the opportunity to file Briefs in support of or opposition to the Material Question by December 19, 2022, as authorized by the Commission's Regulations, 52 Pa. Code §§ 3.10 and 5.305, and as directed by Secretarial Letter issued December 14, 2022. On December 13, 2022, Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. (jointly, Grays Ferry/Vicinity or Petitioners) filed their Brief opposing the ALJ's denial of interim relief, together with a request for expedited treatment of the matter. On December 16, 2022, Philadelphia Gas Works (PGW or Respondent) filed its Brief in support of ALJ's denial.

For the reasons stated herein, we determine that the Joint Petitioners, Grays Ferry/Vicinity, failed to demonstrate, by a preponderance of the evidence, that they are entitled to interim emergency relief pursuant to 52 Pa. Code § 3.6. Accordingly, as we approve the ALJ's denial of interim emergency relief, we shall answer the Material Question in the affirmative.

## I. Background

### A. The Present Proceeding at Docket No. C-2021-3029259

In the present case, Grays Ferry/Vicinity seeks emergency relief in the form of an extension of contracts governing the terms of PGW's gas service, including rates, provided to Grays Ferry/Vicinity. Grays Ferry/Vicinity seeks this emergency relief to preserve the status quo pending resolution of the underlying dispute, which pertains to the reformation and extension of that same contracts under Section 508 of the Public Utility Code (Code).

The Joint Petitioners receive gas service from PGW under the terms of PGW's Tariff which includes a provision that PGW shall honor the terms of the twenty-five-year-old, long-term contracts negotiated between the Philadelphia Authority for Industrial Development (PAID) and the City of Philadelphia (the City), which wholly owns and assigns all gas operational authority to PGW.<sup>1</sup> The contracts in question, between PAID and the City, are set to expire on December 31, 2022. The present Complaint proceeding was initiated by Grays Ferry/Vicinity in October of 2021, to resolve the applicable future terms of service by PGW when the current contracts between PAID and the City expires at the close of 2022.

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<sup>1</sup> PGW Gas Service Tariff- Pa. P.U.C. No. 2 at Original Page 118 (The 1996 contracts were entered into prior to PGW coming under Commission jurisdiction. When, in 2003, PGW was reorganized to fall under Commission jurisdiction, the pre-regulation contracts were "grandfathered" and incorporated into PGW's Tariff GTS-F, for the life of those contracts.).

## **B. Parallel PGW Tariff Proceeding at Docket No. R-2022-3036472**

In a parallel proceeding, initiated on November 1, 2022, PGW filed a proposed Tariff Supplement No. 156, to PGW's Gas Service tariff Pa. P.U.C. No. 2, with an effective date of January 1, 2023, (*Extension Tariff*) (Docket No. R-2022-3036472), to address the issue of service continuation during the period starting on January 1, 2023, until entry of a Commission order establishing new rates and terms of service by PGW to Grays Ferry/Vicinity. On November 11, 2022, Grays Ferry/Vicinity filed complaints predicated upon the same or similar arguments raised in the present Complaint, in opposition to PGW's proposed *Extension Tariff*.<sup>2</sup>

We note that, at Public Meeting held December 22, 2022, the Commission considered and temporarily approved PGW's *Extension Tariff* filed at Docket No. R-2022-3036472. See, *In re: R-2022-3036472*, Motion adopted at Public Meeting on December 22, 2022 (Motion of Stephen M. DeFrank, Vice Chairman, as adopted, moving that the Commission temporarily approve PGW's Supplement No. 156 to Gas Service Tariff Pa. P.U.C. No. 2, pending disposition of the Complaint at Docket No. C-2021-3029295).

## **II. History of the Proceeding**

On October 22, 2021, the Petitioner filed a Formal Complaint (Complaint) with the Commission against PGW, which was docketed at No. C-2022-3029259, disputing the future terms of service to be provided by PGW. Grays Ferry/Vicinity alleges that PGW is demanding unjust and unreasonable rates from it, that the demand to

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<sup>2</sup> See Formal Complaint of Grays Ferry Cogeneration Partnership filed November 14, 2022, at Docket No. R-2022-3036472); Formal Complaint of Vicinity Energy Philadelphia, Inc., filed November 14, 2022, at Docket No. R-2022-3036472).

provide service under a variable rate is unreasonable, and that PGW is providing unreasonable and discriminatory services.

On November 22, 2021, PGW filed an Answer with New Matter to Formal Complaint and Preliminary Objections to the Complaint.

On December 7, 2021, an Initial Call-In Prehearing Conference was scheduled for January 13, 2022.

Pursuant to a Prehearing Conference Order dated December 22, 2021, Administrative Law Judge Guhl was assigned. In accordance with the Prehearing Conference Order, PGW, Grays Ferry/Vicinity, the Commission's Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), and the Office of Small Business Advocate (OSBA) submitted prehearing memoranda to the presiding officer on January 10, 2022. A Prehearing Conference was held on January 13, 2022.

The Parties exchanged direct, rebuttal, and surrebuttal testimony. On April 22, 2022, Grays Ferry/Vicinity submitted the Direct Testimony of James L. Crist. On June 17, 2022, PGW submitted the rebuttal testimony and exhibits of John C. Zuk, Ryan E. Reeves, Florian Teme, Constance E. Heppenstall, Frank Lacey, and Ronald Carrier. Also on June 17, 2022, OCA submitted the Rebuttal Testimony and Exhibits of Jerome D. Mierzwa and OSBA submitted the Rebuttal Testimony and Exhibits of Robert D. Knecht.

On June 10, 2022, the Philadelphia Industrial and Commercial Gas Users Group (PICGUG) submitted a Late-Filed Petition to Intervene. Grays Ferry/Vicinity and PGW filed letters not objecting to PICGUG's intervention on June 14, 2022 and

June 15, 2022, respectively. The Petition to Intervene was granted at the evidentiary hearing on August 9, 2022.

On July 22, 2022, PGW submitted the Surrebuttal Testimony of Ryan E. Reeves, Florian Teme, Constance E. Heppenstall, and Frank Lacey. That same day, Grays Ferry/Vicinity submitted the Surrebuttal Testimony of James L. Crist, OCA submitted the Surrebuttal Testimony of Jerome D. Mierzwa, and OSBA submitted the Surrebuttal Testimony of Robert D. Knecht.

On July 29, 2022, PGW submitted the Further Surrebuttal Testimony of Ryan E. Reeves solely responding to a new issue raised for the first time in the Surrebuttal Testimony of OSBA witness Robert D. Knecht after obtaining consent from counsel for OSBA. Grays Ferry/Vicinity filed a Motion to Strike “Further Surrebuttal Testimony” of PGW on August 1, 2022 (Motion to Strike). PGW filed its Answer to Grays Ferry/Vicinity’s Motion to Strike on August 4, 2022. The ALJ denied the Motion to Strike at the evidentiary hearing but authorized Grays Ferry/Vicinity to submit rejoinder, which they did at the hearing through Mr. Crist.

On August 9, 2022, a full evidentiary hearing was held telephonically. During the hearing, Grays Ferry/Vicinity presented its testimony, including oral rejoinder to PGW’s Further Surrebuttal Testimony, and made its witnesses available for cross-examination by the other Parties. PGW presented its witnesses’ various testimonies, and also made its witnesses available for cross-examination by the other Parties. The testimony and accompanying exhibits (if any) of the witnesses for PGW, Grays Ferry/Vicinity, OCA, and OSBA were each entered into the record. Hearing Exhibits submitted by PGW were also admitted into the record.

A Briefing Order dated August 15, 2022, directed that Main Briefs were due on September 20, 2022, and Reply Briefs were due on October 4, 2022. Main Briefs

were filed by Grays Ferry/Vicinity, PGW, OCA, OSBA and PICGUG. Reply Briefs were filed by Grays Ferry/Vicinity, PGW, OCA and OSBA. I&E did not file any briefs in this matter and PICGUG did not file a Reply Brief.

On November 28, 2022, the Joint Petitioners filed the instant Petition. In their Joint Petition, Grays Ferry/Vicinity requests that the Commission extend the Contract at issue in the underlying case and preserve all its terms and conditions until the Commission can issue a final order on the merits. The Joint Petitioners indicate that the matter will not be able to be decided before the Commission can rule on the merits and no Party will be harmed by a brief extension of its current contract with PGW, which expires on December 31, 2022, to allow the Commission to consider the matter and the use of Section 508 of the Code. 66 Pa. C.S § 508.

On November 29, 2022, a Further Call-In Telephonic Hearing was scheduled for December 6, 2022, to address the Petition for Interim Emergency Relief.

On December 5, 2022, PGW filed an Answer to the Petition

The emergency evidentiary hearing convened as scheduled on December 6, 2022. Counsel for Grays Ferry/Vicinity, PGW, I&E, OCA, OSBA, and PICGUG were all present. Grays Ferry/Vicinity presented the verified statement of James Crist, which was entered into the record. PGW presented the verified statement of John Zuk, which was entered into the record. Both Grays Ferry/Vicinity and PGW presented arguments regarding the Petition.

Grays Ferry/Vicinity and PGW filed letter briefs on December 7, 2022. The expedited transcript was filed with the Secretary's Bureau on December 8, 2022.

On December 12, 2022, ALJ Guhl issued the above referenced *Interim Order*.

As previously noted, on December 13, 2022, Grays Ferry/Vicinity filed its Brief opposing the ALJ's denial of interim relief, together with their request for expedited treatment of the matter (Petitioners Brief). On December 16, 2022, PGW filed its Brief in support of ALJ's Interim Order denying emergency relief (Respondent Brief).

### **III. Discussion**

We note that any issue we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Additionally, we note that we will address the Parties' positions as they pertain to the four elements necessary for interim emergency relief, as discussed below. We will provide a summary of the Parties' positions for purposes of background and clarity. In reaching our determination herein, we have considered the testimony and evidence presented by the Parties during the hearing, as well as the Parties' other filings and briefs in this proceeding.

#### **A. Legal Standards Governing Emergency Relief**

The purpose of an interim emergency order is to grant or deny injunctive relief during the pendency of a proceeding. 52 Pa. Code § 3.1. "Emergency" is defined in the Commission's Regulations as "[a] situation which presents a clear and present



danger to life or property or which is uncontested and requires action prior to the next scheduled public meeting.” 52 Pa. Code § 3.1. *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 (Order entered April 20, 2006) (large rate increases did not constitute a clear and present danger to life or property); *Petition of National Fuel Gas Distribution Corp. for Emergency Order Granting a Temporary Waiver of Certain Tariff Rules Related to Transportation Service*, Docket Nos. P-961022 and P-961021 (Order entered March 19, 1996) (threat of depletion of gas stores in unusually cold conditions constituted a clear and present danger to life or property).

We note that Commission determinations under Section 3.6 of our Regulations focus on the four elements required for interim emergency relief and do not typically address or require the presence of a clear or present danger. *See West Goshen Township v. Sunoco Pipeline, L.P.*, Docket No. C-2017-2589346 (Order entered October 26, 2017) (*Sunoco Pipeline*), at 22 n.10; *Application of Fink Gas Company*, Docket No. A-2015-2466653 (Order entered August 20, 2015) (*Fink Gas*). Unlike Section 3.2 of our Regulations, Section 3.6 does not require a petitioner to establish the existence of an emergency. *Glade Park East Home Owners Association v. Pa. PUC*, 628 A.2d 468, 473 (Pa. Cmwlth. 1993) (*Glade Park*). *Birdsboro Kosher Farms Corp. v. Pennsylvania-American Water Co.*, P-2021-3026165 (Opinion and Order entered July 7, 2021) (*Birdsboro*) at 7.

The standards that govern the issuance of interim emergency orders are set forth at 52 Pa. Code § 3.6. Section 3.6 requires that a petition for interim emergency

relief be supported by a verified statement of facts that establishes the existence of the need for emergency relief, including facts to support the following:

- (1) The petitioner's right to relief is clear.
- (2) The need for relief is immediate.
- (3) The injury would be irreparable if relief is not granted.
- (4) The relief requested is not injurious to the public interest.

52 Pa. Code § 3.6(b). The Commission may grant interim emergency relief only when all of the foregoing elements exist. *Glade Park*, 628 A.2d at 473.

As to the first element, the Commission has determined that it is not necessary to determine the merits of a controversy in order to find that a petitioner's right to relief is clear; rather, the basis for determining whether this standard has been met is whether a petitioner has raised "substantial legal questions." *Core Communications, Inc. v. Verizon Pennsylvania, Inc. and Verizon North LLC*, Docket No. P-2011-2253650 (Order entered September 23, 2011) (*Core*); *Level 3 Communications, LLC v. Marianna & Scenery Hill Telephone Company*, Docket No. C-20028114 (Order entered August 8, 2002) (*Level 3*); *T.W. Phillips Gas and Oil Company v. The Peoples Natural Gas Company*, 492 A.2d 776 (Pa. Cmwlth. 1985) (*T.W. Phillips*),<sup>3</sup> *Birdsboro* at 8.

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<sup>3</sup> In reviewing the issuance of an injunction, the Commonwealth Court held that the moving party was not required to demonstrate its absolute right to relief on the underlying claim where the other elements for injunctive relief were satisfied. The Court held that ". . . if the other elements of a preliminary injunction are present, and the underlying claim raises important legal questions, the plaintiff's right to relief is clear." *T.W. Phillips* at 781 (emphasis supplied).

For example, in *Core*, the Commission held that the ALJ's conclusion that this prong requires a finding that a petitioner will prevail on the underlying complaint is an "unreasonably strict" interpretation of Section 3.6(b). The Commission stated:

The basis for determining whether a petitioner has met this standard [a clear right to emergency relief] is whether the petitioner has raised "substantial legal questions." *T.W. Phillips Gas and Oil v. Peoples Natural Gas, supra*. The inquiry into whether this standard has been met does not require a determination of the merits of the underlying controversy.

As stated above, the ALJ based her conclusion on a finding that it is "wholly uncertain" whether *Core* will prevail in the underlying Complaint. In our view, this interpretation of the "right to relief" standard is unreasonably strict. The outcome of litigation by its nature is nearly always uncertain. Requiring a petitioner seeking emergency relief to demonstrate, with certainty, that litigation will be resolved in its favor would be an impossible burden to meet.

*Birdsboro* at 9 (citing *Core* at 12 (record citation omitted)).

The party seeking relief bears the burden of proving that the facts and circumstances meet all four of the requirements of 52 Pa. Code § 3.6(b). 66 Pa. C.S. § 332(a). The burden of proof must be carried by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Petitioner's evidence must be more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6

(Pa. Cmwlth. 1993). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

An order granting or denying interim emergency relief is immediately effective upon issuance by the presiding officer. A presiding officer is required to certify the grant or denial of relief to the Commission as a Material Question. 52 Pa. Code § 3.10(b). No stay or an order granting or denying interim emergency relief is permitted while the matter is being reviewed by the Commission. 52 Pa. Code § 3.10(a).

52 Pa. Code § 5.305 sets forth the procedure to be followed when an ALJ certifies a material question to the Commission for interlocutory review. Within thirty days<sup>4</sup> of receipt of the certified question, the Commission is required to do one of the following:

- (1) Continue, revoke or grant a stay of proceedings.
- (2) Determine that the certification was improper and return the matter to the presiding officer for resolution.
- (3) Answer the certified question.

52 Pa. Code § 5.305(e).

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<sup>4</sup> 52 Pa. Code § 5.305(f) provides that, if the Commission fails to act upon a certified question within thirty days of its receipt, the Commission's inaction will be deemed an affirmation of the decision of the presiding officer.

## **B. Answer to the Material Question**

The Material Question certified before us is whether ALJ Guhl correctly determined that Grays Ferry/Vicinity's Petition does not justify issuance of an interim emergency order by the Commission directing that PGW continue to provide service to Grays Ferry/ Vicinity, under the terms of the 1996 contracts after they expire on December 31, 2022. For the reasons set forth below, we conclude that the ALJ correctly determined that Grays Ferry/Vicinity failed to meet the four necessary elements to justify the grant of emergency relief, and, therefore, properly denied Grays Ferry/Vicinity's request that the Commission exercise its authority under Section 508 of the Code to extend the contracts in question.

We shall address each of the four elements under *Glade Park, seriatim*.

### **1. Whether the Petitioner's Right to Relief is Clear**

#### **a. ALJ's Recommendation**

The first required element to receive interim emergency is that the petitioner demonstrates that its right to relief is clear. 52 Pa. Code § 3.6(b)(1). As noted above, the Commission has interpreted this provision as requiring only a determination that a petition raises "a substantial legal question," rather than a determination of the merits of a controversy, in order to find that a petitioner's right to relief is clear. *Interim Order* at 7 citing, *See Birdsboro; Petition of Twin Lakes Utils., Inc.* Docket No. P-2020-3020914 (Opinion and Order entered Sept. 22, 2020).

The ALJ found that several substantial legal questions were raised by both Parties, including how rates should be determined in this matter and whether Section 508 of the Code may be applied to reform/extend the contracts in question, pursuant to which

terms PGW provides service the Grays Ferry/Vicinity. On that basis, the ALJ concluded the Joint Petitioners satisfied the first element for emergency relief. *Interim Order* at 12.

**b. Positions of the Parties**

The Joint Petitioners assert that their right to relief is clear, as they have asserted substantial legal questions regarding the need to apply Section 508 of the Code in the present case. Petitioners Brief at 5. Grays Ferry/Vicinity requests that the Commission exercise its authority under Section 508 of the Code to extend the existing contracts which are set to expire at the close of 2022 and direct PGW to continue to provide service under the terms of the 1996 contracts. *Id.*

PGW counters that no substantial legal question has been asserted where; (1) the relief requested is not available to Grays Ferry/Vicinity because PGW has no contract with Grays Ferry/Vicinity, and (2) where relief under Section 508 is impossible, since the contracts in question will expire before any relief granted under Section 508 could effectively extend the contracts. Respondent Brief at 7-8.

**c. Disposition**

Based on our review of the record and the applicable law, we agree with the ALJ and find that the Joint Petitioners have raised substantial legal questions, consistent with the standard set forth in *Core* and *Birdsboro*. The substantial legal issues that the Joint Petitioners have raised include whether the application of Section 508 of the Code is appropriate in the present circumstances to extend the terms of the contracts in question. To the extent that PGW's position counters the Joint Petitioners' legal positions, PGW does so by raising additional substantial legal questions.

This case presents complex legal issues within our jurisdiction over the application and limits of Section 508 and interrelated matters, and these issues satisfy the first requirement for interim emergency relief. We emphasize that we are not required to reach a determination on the merits of the underlying controversy to find that the Joint Petitioners have raised substantial legal questions, *see Birdsboro* at 17, nor would it be appropriate to do so herein, as we would not want to prejudge the outcome in the Complaint proceeding. The issues raised in connection with the Grays Ferry/Vicinity Petition has been developed on the evidentiary record in the pending Complaint proceeding, and the Joint Petitioners will be required to satisfy their burden of proof under Section 332(a) of the Code, 66 Pa. C.S. § 332(a), to prevail on any of the claims in the Complaint.

**2. Whether the Need for Relief is Immediate**

**a. ALJ's Recommendation**

The second requirement to receive interim emergency relief requires the petitioner to demonstrate the need for relief is immediate. 52 Pa. Code § 3.6(b)(2).

The ALJ provided that the need for relief is not immediate where the complaint of events are not imminent, or likely to occur. *Application of Fink Gas Company for Approval of the Abandonment of Service by Fink Gas Company to 22 Customers Located in Armstrong County, Pennsylvania, and the Abandonment by Fink Gas Company of all Natural Gas Services and Natural Gas Distribution Services*, No. A-2015-2466653, 2015 Pa. PUC LEXIS 408, \*21-22 (Order entered Aug. 20, 2015) (*Fink*); *see also Zebra v. School Dist.*, 296 A.2d 748, 752 (Pa. 1972). *Interim Order* 12-15.

The ALJ concluded that there is no immediate need for relief where PGW has indicated in its Verified Statement that it will continue to provide service under the

existing terms and conditions. As a result, the ALJ concluded that the Joint Petitioners failed to establish the second element for emergency relief. *Interim Order at 15.*

**b. Positions of the Parties**

Grays Ferry/Vicinity avers that the ALJ erred by concluding that the need for relief is not immediate. The Joint Petitioners assert that the need for the specific relief, *i.e.*, extension of the existing contracts, is the only remedy sufficient to preserve both the Joint Petitioners' position that Section 508 should be applied and the Commission's authority to act under Section 508. The Joint Petitioners assert that, once the existing contracts expire they are deprived of the legal arguments and remedies available only under Section 508. Petitioners Brief at 5-6. The Joint Petitioners assert that:

a temporary contract or tariffed rate that is in effect until the Commission reaches a conclusion in this matter is not the same as being served under a long term contract that provides rate certainty....

Petitioners Brief at 6.

PGW avers that, contrary to the Joint Petitioners' assertions, the ALJ properly found that the need for relief is not immediate. PGW's position is that, not only is Section 508 *not* the available or proper means for the relief sought by the Joint Petitioners, but that Section 1301 provides the relief necessary to preserve the existing rates and terms of service which the Joint Petitioners seek, under the "just and reasonable rates" standard of Section 1301 of the Code. PGW notes that the ALJ correctly concluded that, even if Section 508 relief is precluded, the Joint Petitioners still have the opportunity for the same relief in desired rates and terms of service. Respondent Brief at 12.



**c. Disposition**

Based on our review of the record, we find that the preponderance of the evidence does not demonstrate an immediate need for relief. We agree with the ALJ, that where the continued service at existing rates and terms of service is assured, the Joint Petitioners retain avenues by which to seek the ultimate relief – just and reasonable rates and terms of service.<sup>5</sup> *See Interim Order* at 15.

Therefore, based on the record, we conclude that the Joint Petitioners have not satisfied the second element to obtain emergency relief.

**3. Whether the Injury Would be Irreparable if Relief is not Granted**

**a. ALJ's Recommendation**

The third requirement to receive interim emergency relief requires the petitioner to show that the injury would be irreparable if relief is not granted.

52 Pa. Code § 3.6(b)(3).

The ALJ concluded that the Joint Petitioners had failed to satisfy the third element to receive emergency relief. The ALJ reasoned that, PGW's promise via Verified Statement to continue to provide service at the contracts' rates and terms of service until the Commission's ultimate disposition on the merits of the case, was sufficient to establish that there could not be irreparable harm to Joint Petitioners. *Interim Order* at 16-18.

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<sup>5</sup> As previously noted, the Commission considered and temporarily approved PGW's Extension Tariff filed at Docket No. R-2022-3036472, by Motion adopted at Public Meeting on December 22, 2022. Consequently, the Joint Petitioners are assured that the existing rates and terms of service remain in effect pending the Commission's disposition of the present proceeding or until, April 23, 2023, whichever comes first.

**b. Positions of the Parties**

Grays Ferry/Vicinity reiterates its assertion that if the contracts in question were allowed to expire, the Commission would be foreclosed from exercising its inherent authority under Section 508 to “fashion an appropriate remedy” which would in turn deprive Petitioners of the remedy they seek. Petitioners Brief at 6-7.

PGW avers that without the requested relief, *i.e.*, extension of the contracts in question, the Joint Petitioners may be deprived of a legal argument under Section 508, however, they are not deprived of any legal right or remedy under the Code which pertains to just and reasonable rates and terms of service. Therefore, PGW asserts, the continuation of existing rates and terms of service is sufficient to establish that no irreparable harm will occur if the extension of the contracts in question is denied. Respondent Brief at 12-14.

**c. Disposition**

Based on a review of the record, we agree with and adopt the analysis of the ALJ. In determining whether an injury is irreparable, the Commission considers “whether the harm can be reversed if the request for emergency relief is not granted.” *Fink*, 2015 WL 5011629, at \*9 (Pa. P.U.C. Aug. 20, 2015). As noted above, the ALJ properly reasoned that where the current rates and terms of service under the existing contracts are preserved, there is no basis to conclude that any harm could not be reversed. Just and reasonable rates and terms of service are at the heart of this matter. We reject the argument that the contracts at issue, if expired, somehow extinguish or limit the Joint Petitioners’ existing and ongoing right to just and reasonable rates and terms of service under the Code. Consequently, we find that the Joint Petitioners have not carried the

burden of demonstrating, by a preponderance of the evidence, that the injury would be irreparable if relief is not granted.

**4. Whether the Relief Requested is not Injurious to the Public Interest**

**a. ALJ's Recommendation**

The final requirement to receive interim emergency relief requires the petitioner to demonstrate that the relief requested is not injurious to the public interest. 52 Pa. Code § 3.6(b)(4).

The ALJ concluded that the Joint Petitioners satisfied their burden to show that the relief requested would not harm the public interest. The ALJ reasoned that the relief requested, a brief extension of the contracts in question, would not harm the public interest since the rates and terms of service currently in effect would continue, and where the Parties agreed that any subsequent adjustment to rates and terms of service would be retroactive to January 1, 2023. On that basis, the ALJ concluded Grays Ferry/Vicinity has satisfied the burden of proof to establish that the public interest would not be harmed by the relief requested. *Interim Order* at 18-19.

**b. Positions of the Parties**

Grays Ferry/Vicinity aver that the ALJ properly concluded the public interest is not harmed by the requested relief, i.e., extension of the contracts in question. Petitioners Brief at 7-8. The Joint Petitioners allege that PGW's claim that the public interest is harmed if the relief requested is granted, by prejudging the application of Section 508, is without merit.

PGW avers that if the contracts are extended it would be prejudicial to the Parties to the case. PGW asserts that, should the Commission grant the relief of extending the existing contracts, the Commission would be prejudging the merits of the underlying dispute, and foreclosing PGW's argument that the Commission has no authority to extend the contracts under Section 508 or otherwise.

**c. Disposition**

Based on a review of the record, we agree with the ALJ that the Joint Petitioners have proven by a preponderance of the evidence that the relief requested is not injurious to the public interest. Our examination under the fourth prong focuses on the interest of the public, rather than that of the parties. Our paramount concern for the public interest extends to the consumers potentially impacted by any decision which might interfere with the ongoing receipt of service. In the present case, as a practical matter, the uninterrupted, continuance of service at the existing rates and terms of service could arguably be achieved by either a temporary extension of the contracts in question or the temporary approval of PGW's *Extension Tariff*. We conclude that the public interest would not be harmed by either of those alternatives. Consequently, we find that the Joint Petitioners have carried the burden of demonstrating, by a preponderance of the evidence, that the public interest would not be harmed if the requested relief were granted.

As previously noted, the Commission has acted to preserve the existing rates and terms of service by temporarily approving PGW's proposed *Extension Tariff*, therefore, the status quo as to rates and terms of service is effectively preserved, pending the ultimate disposition of the underlying proceeding.

#### IV. Conclusion

The ALJ concluded that where the Joint Petitioners failed to satisfy all four necessary elements, the Joint Petitioners failed to demonstrate, by a preponderance of the evidence, that they are entitled to interim emergency relief, pursuant to 52 Pa. Code § 3.6(b). Accordingly, the ALJ denied the request for interim emergency relief. *Interim Order* at 20-21. The question of the correctness of that ruling was then certified to the Commission as a material question.

For the above-outlined reasons, we agree with the ALJ's conclusion. Accordingly, the certified question should be answered as follows:

Yes. The presiding Administrative Law Judge correctly denied the expedited petition for 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.

Based upon the foregoing discussion, we conclude initially that the question certified by ALJ Guhl is properly before the Commission. We shall answer the material question in the affirmative and refer this matter back to the Office of Administrative Law Judge for further proceedings, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the following question certified to the Commission by Administrative Law Judge Marta Guhl, on December 12, 2022, is properly before the Commission:

Whether the presiding Administrative Law Judge correctly denied the expedited petition for 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.

2. That the Answer to the above material question is as follows:

Yes. The presiding Administrative Law Judge correctly denied the expedited petition for 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.

3. That this matter be returned to the presiding officer, Administrative Law Judge Marta Guhl, consistent with this Opinion and Order.

**BY THE COMMISSION,**

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: December 28, 2022

ORDER ENTERED: December 28, 2022