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January 27, 2023

**Via Electronic Filing**

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

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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Philadelphia Gas Works' ("PGW") Reply Exceptions with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely

*Norman J. Kennard*  
Norman J. Kennard, Esq.

NJK/lww

Enclosure

cc: Hon. Marta Guhl w/enc.  
Cert. of Service w/enc.  
[Ra-OSA@pa.gov](mailto:Ra-OSA@pa.gov) w/enc.

## CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PGW's Reply Exceptions, 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: January 27, 2023

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Norman J. Kennard, Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**REPLY EXCEPTIONS OF PHILADELPHIA GAS WORKS**

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Dated: January 27, 2023

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**TABLE OF CONTENTS**

**I. INTRODUCTION AND STATEMENT OF THE CASE..... 1**

**II. SUMMARY OF ARGUMENT ..... 4**

**III. GFCEP/VEPI’S USE OF PGW’S SYSTEM AND COST OF SERVICE..... 7**

**IV. REPLY EXCEPTIONS..... 12**

**A. GFCEP/VEPI Are Not Unique Customers Justifying A “Special Rate” ..... 12**

**B. PGW’s Cost of Service Study Is Appropriate ..... 18**

**C. PGW’s Cost of Service Study Correctly Produces a Transportation Rate of \$0.698/Dth..... 21**

**D. The Record Lacks Support That Either Tariff or Cost-Based Rates Would Jeopardize GFCEP/VEPI’s Financial Well-Being ..... 21**

**E. The ALJ Correctly Determined that GFCEP/VEPI Failed to Meet Their Burden of Proof..... 23**

**V. CONCLUSION ..... 25**

## I. INTRODUCTION AND STATEMENT OF THE CASE

### Summary of the Case

Philadelphia Gas Works (“PGW”) files these Reply Exceptions to respond to the issues raised by Grays Ferry Cogeneration Partnership (“Grays Ferry” or “GFCP”) and Vicinity Energy Philadelphia, Inc. (“Vicinity” or “VEPI”) (jointly “GFCP/VEPI”) in their Exceptions to the December 27, 2022 Initial Decision (“ID”) of Administrative Law Judge Marta Guhl (“ALJ”).<sup>1</sup>

Grays Ferry is an unregulated cogeneration facility which produces electricity for sale into the PJM market and the “waste” steam outputs are sold to Vicinity, who then resells the steam to customers in Philadelphia as a Commission regulated steam utility. Grays Ferry and Vicinity are affiliate companies and jointly owned by Vicinity Energy, Inc.<sup>2</sup> Both are customers of PGW and take gas jointly.

Currently, as the Commission will recall, PGW is serving GFCP/VEPI under a Commission approved temporary extension of Gas Transportation Service – Rate GTS-Firm Service (“Rate GTS-F”),<sup>3</sup> which rate schedule was only available to customers with a legacy contract predating Commission regulation of PGW and only for the life of that contract.<sup>4</sup> The underlying GFCP/VEPI contracts<sup>5</sup> were twenty-five years old when they expired, and none of the

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<sup>1</sup> GFCP/VEPI’s Exceptions fail to “number[] and identify the finding of fact or conclusion of law to which exception is taken” as required by the Commission’s rules. 52 Pa. Code § 5.533(b). Accordingly, these Reply Exceptions address each “issue” raised in GFCP/VEPI’s Exceptions.

<sup>2</sup> PGW St. 6R at 3.

<sup>3</sup> *See, PUC v. PGW*, Docket Nos. R-2022-3036472, C-2022-3036774 and C-2022-3036783, Order (December 27, 2022) approving Supplement 156 to Gas Service Tariff Pa. P.U.C. No. 2.

<sup>4</sup> PGW Gas Service Tariff – Pa. P.U.C. No. 2 at Original Page 118 (Rate GTS-F “is only available to those customers who utilized this service on or before September 1, 2003, pursuant to a currently valid agreement with the Company.”). In 2003, the Commission approved a restructuring plan and initial PUC Tariff for PGW which honored preexisting service contracts by incorporating them, along with contracts with other customers, into Rate GTS-F. *See* Docket No. M-00021612.

<sup>5</sup> In January 1996, the Philadelphia Authority for Industrial Development (“PAID”) entered into a total of four agreements: (a) two service contracts: one with GFCP (the “Partnership Service Contract”) and one with VEPI (then known as Trigen) (the “Trigen Service Contract”) (collectively, the “Service Contracts”); and (b) two service

rates, terms and conditions set forth in those antiquated contracts were ever determined to be just, reasonable and non-discriminatory rates, terms and conditions pursuant to the Public Utility Code.

Rate GTS-F and the original contracts expired on December 31, 2022. As the Commission recently made clear,<sup>6</sup> these contracts will not be renewed or extended. GFCP/VEPI will transition service to a yet to be determined PGW tariff provision on January 1, 2023.

The purpose of this proceeding, then, has been to determine the new, post expiration rate for the PGW services required by GFCP/VEPI – rates that, for the first time, will be set under the strictures of the Public Utility Code – will be just, reasonable, and non-discriminatory.

In testimony and brief, PGW’s principal position has been that GFCP/VEPI should be served from existing tariff provisions. During prior discussions, PGW offered interruptible transportation service, Rate IT, because it is the “lowest priced” transportation rate class in PGW’s tariff.<sup>7</sup> PGW made clear that additional provisions – such as Standby Service – could be included so that GFCP/VEPI would be able to receive the level of gas delivery “firmness” they require for winter service.<sup>8</sup>

GFCP/VEPI’s response to PGW’s offer was to file this Complaint; claiming that such an offer was unreasonable and extortive.<sup>9</sup> This is the very same rate now adopted by the ALJ.

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agreements with the City of Philadelphia on behalf of PGW: one regarding the Partnership Service Contract (“Partnership Service Agreement”) and one regarding the Trigen Service Contract (the “Trigen Service Agreement”) (collectively, the “Service Agreements”). The Service Contracts and the Service Agreements are collectively referred to herein as the “1996 Contracts.”

<sup>6</sup> See *GFCP/VEPI Petition for Interim Emergency Relief Certified Question*, Docket No. C-2021-3029259, Opinion and Order at 21 (Dec. 28, 2022).

<sup>7</sup> Further, under Rate IT, GFCP/VEPI would not bear any responsibility contributing to the cost of low-income assistance programs, such as PGW’s Universal Service and Energy Conservation Surcharge (“USEC”) that otherwise applies to all other PGW firm customers. See OSBA Statement No. 1-R, Ex. RDK-2 (OSBA-Complainants-I-2).

<sup>8</sup> PGW Main Brief (“MB”) at 4; PGW St. 1R at 11; see also PGW MB at 44, n.211 (noting that OCA examined the February 2021 rate proposal by PGW and found that it was reasonable); PGW Reply Brief (“RB”) at 9–10; see also OCA St. 1R at 3–4, 7.

<sup>9</sup> GFCP/VEPI has accused PGW of a “failure to negotiate with Vicinity in good faith” and attempting “to exploit its superior bargaining position.” GFCP/VEPI Exceptions at 6 and 18.

### **The Initial Decision**

PGW supports the ALJ's determination that GFCP/VEPI have not met their burden to demonstrate that GFCP/VEPI are sufficiently unique that PGW should be directed to serve them on their own special rate or that the terms of the terminated 1996 Contracts should be continued. Instead, the ALJ correctly found that GFCP/VEPI should be served from the menu of existing rates contained in PGW's tariff.<sup>10</sup>

The Initial Decision gives GFCP/VEPI the option of being served "under existing rate schedule Interruptible Transmission (Rate IT), either with or without a subscription to stand-by service thereunder" or, in the alternative, "under existing rate schedules general service (Rate GS) and Daily Balancing (Rate DB) for service rendered on and after January 1, 2023."<sup>11</sup> The ALJ finds no "substantial evidence that PGW will definitively charge them an unjust or unreasonable rate" under these current tariff provisions.<sup>12</sup>

### **The Need For A Timely Decision**

The temporary extension of Rate GST-F, as approved by the Commission in December 2022, expires on April 23, 2023. PGW encourages the Commission to determine, as expeditiously as possible, the rates that PGW should charge GFCP/VEPI, as GFCP/VEPI suggest in their "Option 1."<sup>13</sup>

The long, self-serving delay inherent in GFCP/VEPI's "Option 2" unnecessarily continues rates established 25 years ago under the now expired 1996 Contracts. Delaying the implementation

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<sup>10</sup> Initial Decision at 16 ("Based on the arguments presented by the parties in this matter, it is clear that the Complainants have not met their burden to establish that there is authority to force the parties into a new rate arrangement upon the expiration of the current contract at the end of the contract period. The Complainants have not demonstrated that they are entitled to a continuation of the current contract beyond the agreed to terms.").

<sup>11</sup> *Id.* at 23.

<sup>12</sup> *Id.* at 16.

<sup>13</sup> GFCP/VEPI Exceptions at 2.

of the new rate until the conclusion of PGW’s next general rate case would cause PGW’s base rate customers to continue subsidizing GFCP/VEPI for at least another year. This subsidy would amount to an interest free loan since services provided on and after January 1, 2023 are to be rebilled at the new rate with no provision for interest. Moreover, GFCP/VEPI would be given another chance to argue its case after already having lost, thereby violating the doctrines of *res judicata* and collateral estoppel.

Undoubtedly, a large arrearage would accrue, and the parties would be required to spend time and resources to re-litigate the new GFCP/VEPI rates when an extensive record has already been developed. The arguments and evidence presented would be substantially the same.

## II. SUMMARY OF ARGUMENT

GFCP/VEPI remit just \$1.1 million in base rate revenues annually, which is *more than \$8 million less than the base rate costs* they impose.<sup>14</sup> In addition, service to GFCP/VEPI foists an *additional \$3.6 million in gas costs* onto PGW’s Gas Cost Rate (“GCR”) (sales) customers, *resulting in a total subsidy of \$11.8 million.*<sup>15</sup>

Regardless of the outcome of this dispute, as a cash flow regulated utility, PGW itself will not make any more money or gain or lose some advantage; only PGW customers will be ultimately affected. As a municipal utility, PGW has no shareholders and does not earn a profit. PGW is a collection of real and personal assets owned by the City of Philadelphia (“City”) and is responsible for the acquisition, storage, processing, distribution, and sale of natural gas within the City.

PGW is obligated to provide natural gas transportation service to *all* customers at just, reasonable, and non-discriminatory rates. For over two decades, under the 1996 Contracts,

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<sup>14</sup> PGW MB at 45; PGW RB at 2; PGW St. 4R, Sch. C; OCA St. 1S, Ex. JDM-3.

<sup>15</sup> *Id.*



GFCP/VEPI have paid just a tiny fraction of the costs incurred to provide service to them, while earning millions of dollars in revenues on their electric operations alone (\$40 million in 2021 alone). Every cent of subsidy is paid by other PGW base rate and GCR customers. PGW gas customers subsidize the generation of electricity by GFCP and the sale of steam by VEPI—for the sole purpose of returning maximum profits to their private equity owner.<sup>16</sup>

PGW urges that the time has come to end these subsidies and require that GFCP/VEPI pay the just and reasonable rates reflected in PGW’s current tariff or, as a second option, to create a special rate that appropriately reflects the cost and value of the natural gas service they are demanding. GFCP/VEPI have presented absolutely no evidence to show that it would be inequitable or otherwise unfair to charge them cost based, nondiscriminatory rates, just like every other customer class on PGW’s system.

The ALJ correctly placed GFCP/VEPI into the existing PGW tariff without designing a rate especially for them. Under Commission precedent, the size of their load is not a unique and compelling circumstance so as to justify a “special rate.” The other factors cited by GFCP/VEPI are also either irrelevant or fail to justify special treatment. The financial effect of a rate increase on GFCP/VEPI is nowhere addressed on the record and was raised for the first time in exceptions.<sup>17</sup> The claims of the environmental (efficiency) superiority of retail steam service by VEPI fail to account for the 20% distribution losses on the steam loop and the greater efficiencies (“exceeding 85%”) of available natural gas technologies. Nor has the bypass case been made.

As to the bypass claim, all of the parties, except GFCP/VEPI, agree that bypass is undeveloped and unsubstantiated, a mere possibility, rather than an actual threat. If bypass is *ever*

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<sup>16</sup> GFCP and VEPI are for profit entities jointly owned by a foreign private equity firm. PGW RB at 3–4.

<sup>17</sup> *But see* discussion regarding Grays Ferry’s proceeds from electric generation sold into the wholesale PJM market.

demonstrated to be a viable alternative, PGW and GFCP/VEPI can renew discussions about an appropriate, responsive rate. Nor is bypass necessarily a bad outcome.<sup>18</sup> It is certainly not clear on this record that the costs of keeping GFCP/VEPI on the distribution system would outweigh the benefits.

Assuming *arguendo* that a special, cost-based rate is justified, there are several considerations. Principal among these is the fact that GFCP/VEPI lack sufficient capacity on the upstream pipeline, Texas Eastern Transmission, LP (“TETCO”), and, therefore, rely upon PGW’s low pressure distribution system to create a displacement transaction that allows them to meet the essential winter obligations of firm service that they promised to their electricity and steam customers.

This is a critical aspect of the discussion. GFCP/VEPI’s witness ignored the costs associated with Alternative Receipts Service (“ARS”) and refused to acknowledge any allocation of distribution costs. ARS is valued at a nominal amount and, therefore, a transportation rate of only \$0.21/Dth was proposed.<sup>19</sup> In contrast, an accurate cost-of-service includes proportionately allocated distribution system costs, resulting in a rate of \$0.69/Dth for all of the services that PGW provides to GFCP/VEPI.

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<sup>18</sup> The facilities that are now used to serve GFCP/VEPI can be used to serve other customers (in fact, PGW is already in talks in which such deployment is being considered). PGW RB at 6; *See* PGW St. 1R at 22; Tr. 149–50.

<sup>19</sup> GFCP/VEPI Exceptions at 5.

### III. GFCP/VEPI'S USE OF PGW'S SYSTEM AND COST OF SERVICE

#### Transportation and Alternative Receipts Service

Transportation service to GFCP/VEPI is principally accomplished via the *PGW-owned* “Four Mile Line.”<sup>20</sup> Contrary to GFCP/VEPI’s repeated assertions, these facilities are not “dedicated” to them; they are owned and operated by PGW and used for other purposes.<sup>21</sup> Currently, the line also moves gas to PGW’s Passyunk LNG facility.<sup>22</sup> Moreover, while it refrained from doing so while the 1996 Contracts were in effect, PGW can also serve additional customers from those facilities, while still maintaining service to GFCP/VEPI, and is currently in discussions to do so.

GFCP/VEPI’s use of the Four Mile Line is fairly straight forward. GFCP/VEPI arrange the supply of natural gas from upstream gas producers and then have contracted with TETCO for delivery of those volumes along TETCO’s Philadelphia Lateral to TETCO’s Gate Station 060, whereupon the volumes are handed off to PGW at the Four Mile Line for final delivery to GFCP and VEPI. This transportation path serves the majority of their natural gas needs.<sup>23</sup> GFCP then consumes the gas in its cogeneration facilities to produce electricity and steam as “waste” for sale to VEPI, and to VEPI’s auxiliary steam production peaking boilers.<sup>24</sup>

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<sup>20</sup> The component parts of the Four Mile Line are a 16-inch pipeline newly constructed by PGW in the 1990’s (the “Distribution Extension”) and a repurposed gas liquids (formerly naphtha) line (the “Naphtha Line”). PGW MB at 1–2, 18; Tr. 83–84; PGW St. 1R at 7–8, 16–17.

<sup>21</sup> PGW MB at 18–19; PGW St. 2R at 7; PGW St. 2SR at 2; PGW St. 2FSR at 1–4; Tr. 83–84.

<sup>22</sup> *Id.*; see also PGW MB, Att. A (Map of PGW’s Facilities Used to Provide GFCP/VEPI Services).

<sup>23</sup> This delivery service constitutes about 70% of GFCP/VEPI’s annual load. PGW MB at 20 (citing GFCP/VEPI Statement JC-1 at 21). There is also some limited sales service provided by PGW which is billed at a transportation rate of \$0.61 per Dth plus the weighted average cost of gas (“WACOG”) as determine in PGW’s gas cost rate. PGW MB at 21; PGW St. 2SR at 2. This pricing of sales service is not in controversy.

<sup>24</sup> Only during times of peak, when Gray Ferry waste steam is unavailable, does VEPI operate its own natural gas boilers to generate auxiliary steam. PGW St. 1R, Ex. JCZ-2.

This arrangement is sufficient during non-peak months but not in the winter. *GFCP/VEPI possess insufficient delivery rights (capacity) on TETCO's Philadelphia Lateral during the winter* – owning only 35,000 Dth per day of delivery capacity compared to a winter peak requirement of 56,000 Dth per day.<sup>25</sup> GFCP/VEPI's only capacity rights are on TETCO's Philadelphia Lateral to Gate Station 060.

As OSBA witness Mr. Knecht noted: “It is . . . unclear why GFCP [in 1995] would construct a large industrial facility without ensuring long-term access to firm gas transmission capacity.”<sup>26</sup> But it did so and, at this time, there is no new capacity left. Capacity rights on TETCO's Philadelphia Lateral are fully subscribed to by other TETCO customers, such that no new capacity is available.<sup>27</sup>

In other words, *independent and on its own, GFCP/VEPI would be net short of interstate transportation capacity at critical times*, unable to generate electricity and steam, and ultimately in breach of their obligation to provide firm electricity and steam.<sup>28</sup> GFCP/VEPI, quite obviously, require another means to fully meet the winter needs of their customers. The solution for the last twenty-five years, and the one requested by GFCP/VEPI on the record here, has been the use of PGW's other distribution facilities, besides the Four Mile Line, to produce the additional capacity necessary to their operations.

*ARS provided by PGW's assets fills that gap.*<sup>29</sup> Under ARS, GFCP/VEPI deliver gas, not via the Philadelphia Lateral to Gate Station 060, but to a different TETCO delivery point in

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<sup>25</sup> PGW MB at 24; GFCP/VEPI Statement JC-1 at 23.

<sup>26</sup> OSBA Statement No. 1-R at 4.

<sup>27</sup> PGW MB at 56; PGW RB at 35.

<sup>28</sup> PGW MB at 56.

<sup>29</sup> *Id.* at 24–26.

Northeast Philadelphia, Gate Station O-34 on the Skippack Lateral, which connects to PGW's low pressure distribution system. Then, using PGW's firm capacity rights on the Philadelphia Lateral, PGW delivers that same volume of gas to Gate Station 060 to GFCP/VEPI.<sup>30</sup>

This is basically a displacement transaction, where PGW, because of its broad customer demand and ability to use its distribution system to move gas delivered by GFCP/VEPI at Gate Station O-34, can accept alternative deliveries and allow gas to continue flowing that would otherwise be unavailable to GFCP/VEPI. GFCP/VEPI use approximately 3,781,000 Dth per year (October to April) by this means, or 28% of their total load.<sup>31</sup>

It is critical to recognize that two things are required for PGW to be able to provide ARS. First, PGW must use its own firm capacity rights on the Philadelphia Lateral to fill in GFCP/VEPI's shortfall so that there are sufficient volumes in the Four Mile Line to meet GFCP/VEPI's winter needs. Second, there must be an alternative delivery location with sufficient facilities and demand to allow PGW to use these supplemental volumes to serve the customers that would otherwise have been served using gas delivered via Gate Station 060.

In other words, GFCP/VEPI is only able to receive ARS service because PGW is willing to use its low-pressure distribution system to accept and balance the displacement volumes delivered to Gate Station O-34 by GFCP/VEPI. As the record shows, if not for these PGW facilities and the operation and maintenance of them, there would be no capability to provide ARS:

The reason PGW can enter into the ARS arrangement is because it has customers and load distributed on both sides of Philadelphia and can flow gas to them from alternative locations. The simple fact is if PGW's distribution was not connected to O-34 Gate Station then the ARS would not work.<sup>32</sup>

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<sup>30</sup> *Id.* at 24–25

<sup>31</sup> *Id.* at 24; GFCP/VEPI Statement JC-1 at 21, 23; PGW St. 2R, Ex. RER-2.

<sup>32</sup> PGW St. No. 2FSR at 3; *see also* PGW RB at 14–15.

Moreover, PGW and its other customers forgo revenue opportunities because of ARS. PGW witness Reeves calculated that PGW could potentially release or sell the capacity services that it uses for ARS to other shippers for a price between \$0.25 to \$0.60 per Dth more. Depending on the structure, the revenue would remain in base rates or flowed through the GCR, thus, benefitting PGW ratepayers.

*The only alternative to ARS is for GFCP/VEPI to secure additional TETCO capacity released at market rates by some other TETCO customer that holds rights to delivery at Gate Station 060 but is not using them. “GFCP/VEPI could participate in the open market and bid for this recallable capacity, since the capacity is available on a non-discriminatory basis.”<sup>33</sup> As the OSBA explained: “Obtaining upstream deliverability capacity is the responsibility of transportation service customers.”<sup>34</sup>*

Nowhere on the record has GFCP/VEPI explored the viability of this option, including during their threat of potential bypass, but given the fact that additional capacity at this TETCO delivery point “is very constrained and difficult,” it is very expensive, if it is even available, exceeding PGW’s calculation of the cost of providing ARS.<sup>35</sup>

### **Cost of Service Impacts of Service to GFCP/VEPI**

Until the 1996 Contracts expired on December 31, 2022, GFCP/VEPI paid \$0.08/Dth for transportation service. ARS was provided at a flat dollar amount of \$4,500 per month or \$0.0138per Dth.<sup>36</sup> Both of these rates are dramatically below any cost of service-based rate.

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<sup>33</sup> PGW MB at 48–51.

<sup>34</sup> OSBA MB at 14.

<sup>35</sup> This is also an issue were GFCP/VEPI to attempt to bypass PGW and the Four Mile Line. Mr. Crist agreed that “at this point Vicinity doesn’t know whether there’s sufficient capacity at the proposed interconnection with TETCO to permit the interconnection.” Tr. 108.

<sup>36</sup> PGW MB at 25; PGW St. 2R, Ex. RER-2; PGW St. 4R at 7; Tr. 58–59.

PGW's cost of service study accurately produced a rate of \$0.69/Dth for all services to GFCP/VEPI. The study, conducted by a respected, independent utility cost of service expert,<sup>37</sup> allocated GFCP/VEPI a fair, proportionate share of the distribution system costs<sup>38</sup> because: (1) GFCP/VEPI directly rely on PGW's distribution system to receive ARS, and (2) the Four Mile Line is a part of PGW's distribution system.<sup>39</sup> OCA's witness supported the PGW study methodology, testifying that the cost to serve GFCP/VEPI is \$0.756/Dth.<sup>40</sup>

Conversely, GFCP/VEPI's witness eliminated *any* allocation of distribution costs, arbitrarily valued ARS at a nominal amount, and proposed a transportation rate of \$0.21/Dth,<sup>41</sup> despite acknowledging reliance on PGW's low pressure distribution system.<sup>42</sup>

GFCP/VEPI seek to avoid the costs associated with their own capacity shortfall through semantics, describing the transaction is simply a "swap" because "none of the gas delivered to PGW [at the alternative Gate Station O-34] is used by Vicinity."<sup>43</sup> GFCP/VEPI's explanation of the term "swap" implies that there is an exchange of volumes and delivery points for the shared benefit of both parties. This is not an accurate portrayal of ARS.

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<sup>37</sup> See PGW St. 4R, Appx. A.

<sup>38</sup> Not included in PGW's cost of service study are the lost revenues associated with ARS. The record demonstrates that ARS creates a lost revenue opportunity for GCR customers of between \$690,000 and \$1.7 million annually. PGW MB at 25; PGW St. 2R, Ex. RER-2 ("Without this [ARS] obligation, PGW would be able to release this capacity to the market and obtain a market rate for the capacity the historic prices for which are much higher than the amount remitted by Complainants under the 1996 Contracts.").

<sup>39</sup> See PGW RB at 11–16; Tr. 184–85; PGW MB at 45–48; OCA MB at 10–11.

<sup>40</sup> See PGW MB at 45 (citing OCA St. 1S at 2; OCA St. 1R at 6; OCA Ex. JDM-2).

<sup>41</sup> GFCP/VEPI Exceptions at 5.

<sup>42</sup> *Id.* at 6. By explaining that GFCP/VEPI "deliver[] gas into PGW's low pressure distribution system in Northeast Philadelphia" so that GFCP/VEPI can receive an equivalent amount of gas at TETCO Gate Station 060. GFCP/VEPI also acknowledge that they currently "pay[] PGW a fee" for ARS.

<sup>43</sup> *Id.* ("This swap of interstate pipeline capacity and gas, for which Vicinity pays PGW a monthly fee, does not 'use' PGW's low pressure distribution system at all.").

ARS is strictly an accommodation requested by GFCP/VEPI to overcome the fact that it does not hold sufficient interstate pipeline capacity to meet their needs. PGW and GFCP/VEPI are not “swapping” gas in a mutually beneficial arrangement. PGW is a utility providing service to its customers, which includes GFCP/VEPI, via tariffed terms and conditions. PGW and its other customers do not need additional deliveries at a different gate. PGW’s capacity and supply arrangements are sufficient to meet the demand requirements of its system. There is no advantage gained by PGW or its customers.

ARS uses the PGW distribution system for GFCP/VEPI’s advantage, which carries with it the cost of that use. Through ARS, GFCP/VEPI have avoided the consequences of their capacity shortfall and the cost of securing the additional TETCO capacity that it needs, but has not secured, at Gate Station 060. The record demonstrates that GFCP/VEPI absolutely require a continuation of ARS service; yet GFCP/VEPI’s position is that they should not have to pay for it.

#### **IV. REPLY EXCEPTIONS**

##### **A. GFCP/VEPI Are Not Unique Customers Justifying A “Special Rate”**

GFCP/VEPI’s attack against the application of PGW’s currently tariffed terms and conditions, such as Rate IT, is grounded in the argument that they are unique customers deserving of a special rate.<sup>44</sup> While the Commission has the legal authority to approve special pricing for a particular customer, a special rate is justified only under circumstances where a compelling reason is found and “should be limited to cases [1] where there is a threatened loss of the customer’s load,

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<sup>44</sup> *Id.* at 8–11.



and [2] where the revenues from the customer would exceed the cost of serving that customer.”<sup>45</sup> Neither of these circumstances exists here.

By seeking a special rate, GFCP/VEPI, as “the challenging part[ies]” have a “heavy burden”<sup>46</sup> to demonstrate that their circumstances are so unique that application of PGW’s existing rates would not be just and reasonable. The ALJ correctly determined that GFCP/VEPI have “not provided substantial evidence that PGW will definitely charge them an unjust or unreasonable rate.”<sup>47</sup>

GFCP/VEPI have first insisted that they are unique based upon their relative size.<sup>48</sup> As PGW explained in briefs, simply having a large relative volume of usage does not entitle a customer to a special rate.<sup>49</sup> In the seminal case on this point, *U.S. Steel*,<sup>50</sup> the Commonwealth Court affirmed the Commission’s approval of “PECO’s proposed new rate structure that eliminated class TC, which only [U.S. Steel, its largest customer] previously occupied, and which placed [U.S. Steel] in class L where rates were higher.”<sup>51</sup> U.S. Steel made the same argument

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<sup>45</sup> See *Pa. PUC v. PPL Elec. Utils. Corp.*, Docket No. R-2010-2161694, 2012 Pa. PUC LEXIS 989, at \*18, 46 (Opinion and Order entered June 21, 2012). In their Exceptions, GFCP/VEPI misrepresent the first prong of the compelling reason standard to be the “ability of the customer to bypass the utility.” GFCP/VEPI Exceptions at 9. The Commission’s standard, however, places the burden on GFCP/VEPI to show that “there is a *threatened* loss of the customer’s load,” a much higher threshold to meet than demonstrating a mere “ability” to bypass and one that GFCP/VEPI failed to meet. See, e.g., PGW MB at 51–59; PGW RB at 33–38; PGW St. 3R at 4–5; OSBA Statement No. 1-S at 4. Also cited as precedent by the Complainants. GFCP/VEPI Exceptions at 9.

<sup>46</sup> *Id.* at \*28.

<sup>47</sup> Initial Decision at 16.

<sup>48</sup> GFCP/VEPI Exceptions at 8, 10

<sup>49</sup> PGW MB at 39–41; PGW Reply Brief at 29–33.

<sup>50</sup> *U.S. Steel Corp. v. Pa. PUC*, 390 A.2d 849 (Pa. Commw. Ct. 1978).

<sup>51</sup> *Id.* at 852.

about relative size as GFCP/VEPI do now.<sup>52</sup> The Court disagreed and held that a large volume of use “does not entitle a customer to a preferred rate.”<sup>53</sup>

In the next turn of their argument, GFCP/VEPI have raised the specter of bypass, but there has been no demonstration that a bypass line is physically possible, let alone economically feasible. At this stage, only a very preliminary analysis has been undertaken.<sup>54</sup> There are no documents in the record establishing – or even alluding to – the cost for GFCP/VEPI to bypass, including its additional capacity needs.<sup>55</sup> The OSBA, in its Main Brief, agreed that “it would not be possible to set a bypass rate based on the information available at present.”<sup>56</sup>

As Mr. Florian Teme, Vice President, Marketing, Sales and Energy Planning at PGW stated:

PGW does not offer [lower] rates . . . merely because the customer claims to have another cost-effective alternative – the entity needs to provide some level of proof to show that the claim is bona fide. Mr. Crist appears to rely entirely on the fact that bypass was proposed in or around 1994.<sup>57</sup>

Mr. Knecht concurred for the OSBA: “I agree [with PGW] that GFCP has not presented any evidence that it does have such an opportunity, even over the longer term.”<sup>58</sup> Even, Mr. Crist for GFCP/VEPI conceded that “[a]ny contract or Bypass Rate must be based on the actual cost

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<sup>52</sup> *Id.* at 857 n.3.

<sup>53</sup> *Id.*

<sup>54</sup> PGW MB at 51–59; PGW RB at 33–38.

<sup>55</sup> PGW MB at 51–59.

<sup>56</sup> OSBA Statement No. 1-S at 4. The OSBA even acknowledges that “no full cost estimate has been developed, nor has a credible time frame been offered.” OSBA MB at 17 (citing Tr. 116)

<sup>57</sup> PGW St. 3R at 8.

<sup>58</sup> OSBA Statement No. 1-S at 4.

causation of Grays Ferry. . . .”<sup>59</sup> In other words, the experts all agree that the mere threat of bypass is not something that can be relied upon in designing rates.

But a threat is all that GFCP/VEPI have offered. The fact that a “pipeline from TETCO to Grays Ferry was planned and permitted by the FERC” *in 1996* is a matter of only historic interest.<sup>60</sup> If a new application were pursued, GFCP/VEPI, would have to start all over.<sup>61</sup> The bald claim that “[n]othing has changed in 25 years to make Grays Ferry’s bypass option any less realistic”<sup>62</sup> is obviously contrived and false.

The Commission may take administrative notice of the current realities associated with the natural gas industry today. Any attempt to construct a new natural gas pipeline, especially in an urban environment, would face substantial challenges and opposition. Numerous state and local permits are required, public and private rights of way must be conveyed, a new point of interconnection negotiated with TETCO, *and additional firm capacity obtained to replace ARS provided by PGW*. The record is devoid of any even preliminary exploration of these important milestones and their impact on the cost of bypass or, indeed, the possibility of it.<sup>63</sup>

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<sup>59</sup> GFCP/VEPI Statement JC-1 at 25–26. Mr. Crist conceded elsewhere that “[d]evelopment of a special rate should be grounded in the cost of service.” GFCP/VEPI Statement JC-1SR at 9.

<sup>60</sup> GFCP/VEPI Statement JC-1SR at 23.

<sup>61</sup> In fact, those prior plans actually did not involve a “bypass” because GFCP/VEPI had never previously received natural gas service from PGW. In their numerous incorrect references to the FERC “approval” of its prior plans, GFCP/VEPI failed to acknowledge that: (1) FERC determined that construction and service to GFCP/VEPI would “not result in a bypass of [PGW];” and (2) that a key player in any “bypass” had specifically stated that it would not cooperate if it *were* a bypass triggering a contract demand reduction. *Texas Eastern Transmission Corporation*, Docket No. CP95-2-000, 71 F.E.R.C. ¶ 61,020 at 61,085, 61,088 (Apr. 5, 1995).

<sup>62</sup> GFCP/VEPI Statement JC-1SR at 7.

<sup>63</sup> PGW MB at 55–58.

As the ALJ correctly noted: “While the Complainants insist that they will bypass PGW service if forced into unfavorable terms, there is nothing to indicate that PGW’s proposals are unjust and unreasonable.”<sup>64</sup>

GFCP/VEPI also assert that a “uniqueness” exists because they are served by a dedicated facility, paid for the O&M of that facility (under the now-defunct 1996 Contracts), paid for its construction, and are the only customer served by that facility.<sup>65</sup> These are not “compelling reasons” that justify a special rate under the Commission’s precedent in *PPL Elec. Utils. Corp.*<sup>66</sup> In fact, in that case, the Commission rejected a demand for a special rate in similar circumstances.<sup>67</sup>

Moreover, the characterization is factually inaccurate. As noted above, the Four Mile Line is not “dedicated” to GFCP/VEPI as it serves other purposes<sup>68</sup> and there are no restrictions on PGW’s ability to connect other customers to the line.<sup>69</sup> Indeed, PGW is in the process of evaluating several opportunities that would employ the Four Mile Line to serve new industrial and commercial customers located in the area of a former petroleum refinery.<sup>70</sup> Finally, and as noted above, the Four Mile Line is not the sole path of service delivery to GFCP/VEPI, as ARS engages other portions of the system.

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<sup>64</sup> Initial Decision at 16.

<sup>65</sup> GFCP/VEPI Exceptions at 8.

<sup>66</sup> See PGW MB at 42–43; PGW RB at 29; see also *Pa. PUC v. PPL Elec. Utils. Corp.*, Docket No. R-2010-2161694, 2012 Pa. PUC LEXIS 989, at \*46 (Opinion and Order entered June 21, 2012) (holding that under the compelling reason standard, “special rates *generally* should be limited to cases where there is a threatened loss of the customer’s load, and where the revenues from the customer would exceed the cost of serving that customer”).

<sup>67</sup> See PGW RB at 31 (citing *PPL Elec. Utils. Corp.*, 2012 Pa. PUC LEXIS 989, at \*51–52).

<sup>68</sup> The first two miles of the line terminate in PGW’s Passyunk facility, gas delivered from that line flows to the entire PGW system. See PGW MB at 18–19; PGW St. 2R at 7; PGW St. 2SR at 2; PGW St. 2FSR at 1–4; Tr. 83–84.

<sup>69</sup> See Tr. 149–50 (Mr. Zuk affirms that PGW is currently aware of two customers that may potentially be served off of the former naphtha portion of the line).

<sup>70</sup> PGW St. 1R at 22; Tr. 149–50.

GFCP/VEPI's Exceptions also claim the right to a lower rate because Vicinity's steam loop provides "the most environmentally beneficial energy source in downtown Philadelphia. . . ." <sup>71</sup> Of course, cost of service ratemaking is not influenced by the end use of the utility service, only the costs imposed, and GFCP/VEPI cite no cases to support such a proposition, because there are none. The Commission lacks the jurisdiction to advance environmental goals in ratemaking, and certainly may not abandon established cost of service ratemaking principles for that reason.

Nor is there any record support for such a claim and the GFCP/VEPI Exceptions cite to none. While GFCP/VEPI witness Crist, in direct testimony, touted the environmental benefits of retail steam, <sup>72</sup> this assertion was based upon efficiencies calculated at the Grays Ferry plant, not the point of the steam loop customer consumption, where the comparison to natural gas efficiency would be appropriate. <sup>73</sup>

Mr. Crist's claims did not consider the steam losses between Vicinity's receipt of waste steam and delivery to the retail steam customer. PGW witness Carrier testified that the Grays Ferry station operates at an overall system efficiency of 72% and, in turn, after receipt by Vicinity, "almost 20% distribution system losses significantly erode the efficiency and environmental claims of Mr. Crist." <sup>74</sup>

In contrast, natural gas fired package boilers that are available commercially have efficiencies exceeding 85%. "Generating steam at a customer's facility using natural gas fueled

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<sup>71</sup> GFCP/VEPI Exceptions at 18, 11, and 14.

<sup>72</sup> GFCP/VEPI Statement JC-1 at 10 ("A commercial customer receiving steam from VEPI's process that uses the waste heat of the Grays Ferry cogeneration plant is purchasing highly efficient steam.")

<sup>73</sup> PGW St. 6R at 8 ("When evaluating if a customer is receiving the most efficient form of steam, the evaluation should be at the point where that steam is being delivered to the customer.")

<sup>74</sup> *Id.* at 8.

high efficiency boilers is more efficient than utilizing steam delivered by the VEPI steam distribution system.”<sup>75</sup> GFCP/VEPI have never responded to this correction of the record.

For all the reasons discussed above, the Commission should affirm the ALJ’s view that GFCP/VEPI failed to meet their burden of showing that “there is authority to force the parties into a new rate arrangement upon the expiration of the [1996 Contracts]” and failed to “provide[] substantial evidence that PGW will definitively charge them an unjust or unreasonable rate.”<sup>76</sup>

**B. PGW’s Cost of Service Study Is Appropriate**

As previously noted, PGW supports the ALJ’s conclusion that GFCP/VEPI has not supported service from a special rate and, therefore, should be placed on existing tariff schedules, either Rate IT with standby service or Rate GS schedules with Daily Balancing (Rate DB) – at their option.<sup>77</sup>

Beyond this commonsense outcome, if a special rate is designed specifically for the Complainants, *all of the parties*, PGW, OCA, OSBA and even GFCP/VEPI agree that a cost-of-service based rate is much higher than the decades old Rate GTS-F of \$0.08/Dth, ranging from \$0.212/Dth (GFCP/VEPI)<sup>78</sup> to \$0.756/Dth (OCA).<sup>79</sup> PGW’s cost-of-service study determined the current cost of providing service to GFCP/VEPI at \$0.698/Dth.<sup>80</sup>

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<sup>75</sup> *Id.* at 9.

<sup>76</sup> Initial Decision at 16.

<sup>77</sup> The rates under both Rate GS and Rate IT are higher than the calculated cost of service directly applicable to GFCP/VEPI as calculated by PGW witness Ms. Heppenstall. That is not an unusual result. Most customers’ individual rates will be higher or lower than their individual cost of service if an individual cost of service analysis for their service alone were conducted. PGW St. 1R at 18.

<sup>78</sup> GFCP/VEPI Statement JC-1SR at 17.

<sup>79</sup> OCA St. 1R at 3–4, and 7.

<sup>80</sup> GFCP/VEPI incorrectly state that the transportation rate resulting from PGW witness Heppenstall’s cost of service study is \$0.601/Dth, and sometimes stating that the rate is \$0.61/Dth. GFCP/VEPI Exceptions at 4, 11. The record reflects that PGW’s cost of service study supports a transportation rate of \$0.698/Dth. PGW MB at 45; PGW RB at 39; PGW St. 4R at 7; PGW St. 4R, Sch. C. In her Surrebuttal, Ms. Heppenstall updated the cost-of-service

GFCP/VEPI concede that cost causation is the “polestar” of utility ratemaking, “as the *Lloyd* case holds.”<sup>81</sup> PGW agrees with this sentiment. But the parties disagree over how cost of service should be implemented. The main point of the parties’ departure, as discussed and rebutted above, is the allocation of distribution system costs in order to recognize the importance of ARS.

GFCP/VEPI’s first line of attack in its Exceptions is to impugn the integrity and competence of PGW’s cost of service witness, Constance Heppenstall of Gannett Fleming, claiming that the alleged “errors” in Ms. Heppenstall’s cost of service study “may be attributable to the fact that Ms. Heppenstall has very little experience in natural gas distribution company COSS.”<sup>82</sup> This is nonsense. Ms. Heppenstall, a widely regarded expert on utility cost of service, has testified in forty-two rate cases on the matter of cost of service including PGW’s last rate case. The PGW cost of service study is highly credible, and its witness deserves no disparagement.

GFCP/VEPI also criticize PGW’s cost study on the grounds that the cost study methodology diverges from prior PGW cost of service studies, which did not allocate distribution costs to GFCP/VEPI.<sup>83</sup> This is only partially true. In those past base rate cases, GFCP/VEPI’s rates were frozen under the terms of the 1996 Contracts.<sup>84</sup> The cost-of-service studies performed had no relevance to the rates charged to Complainants and doing a full cost of service allocation

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results to reflect GFCP/VEPI’s actual peak demand of 56,000 Dth/Day. That update increased the cost of service to \$0.698/Dth. *See* PGW St. 4SR at 3.

<sup>81</sup> GFCP/VEPI Exceptions at 11 (citing *Lloyd v. Pa. PUC*, 904 A.2d 1010 (Pa. Commw. Ct. 2006), *appeal denied*, 591 Pa. 676, 916 A.2d 1104 (2007)).

<sup>82</sup> GFCP/VEPI Exceptions at 12, n.33 (citing GFCP/VEPI Statement JC-1 at 20). GFCP/VEPI erroneously cite to Mr. Crist’s Direct Testimony as support for this nefarious allegation, which contains no mention of Ms. Heppenstall or her experience—an error indicative of GFCP/VEPI’s own credibility. Moreover, GFCP/VEPI’s witness, James L. Crist, has no experience in actually authoring a cost-of-service study, as evidenced not only by his discovery response, but by the fact that he did not file his own cost of service study, but plagiarized the cost-of-service study created by Ms. Heppenstall, whom GFCP/VEPI now attack for her COSS.

<sup>83</sup> GFCP/VEPI Exceptions at 12.

<sup>84</sup> PGW St. 4SR at 3–4.

to them would have simply exposed the degree of subsidy provided to GFCEP/VEPI. For this reason, as Ms. Heppenstall explained, the cost studies in these prior cases only directly assigned costs to GFCEP/VEPI and did not address the effect of ARS on costs.<sup>85</sup>

Therefore, the cost-of-service study PGW entered into the record of this case “is the first cost study presented which will actually affect the rates that GFCEP/VEPI will be required to pay if the rate is to be established pursuant to cost of service principles.”<sup>86</sup>

GFCEP/VEPI also has insinuated, in continued disparagement without any proof whatsoever, that Ms. Heppenstall was instructed by PGW to present the cost of service results in a certain, predetermined way. During cross-examination, however, she emphatically rejected that notion and explained why the facts compelled an allocation of a portion of PGW’s distribution system costs to GFCEP/VEPI on the basis of ARS volumes:

My background is finance so I do rely on PGW experts to show me how this gas flows. But it is very evident to me that Grays Ferry is using this distribution system not for their own gas but so that they can get the gas they need, which they couldn't get without this system. . . . ARS gas is not available, would not be available to Grays Ferry, without the rest of the distribution system that PGW has. ARS -- Grays Ferry delivers this gas to a different lateral to the Skippack lateral from what I understand and then is able to take more gas as a result from the Philadelphia lateral. This delivery to the Skippack lateral, the swap as you may call it, is only available because PGW can then use that gas for customers that normally would have gotten off the Philadelphia lateral and without the rest of that system there would be no -- it wouldn't be available to Grays Ferry.<sup>87</sup>

Significantly, PGW’s cost allocation approach regarding ARS was fully endorsed by OCA witness Mierzwa, whose cost-of-service results actually produced a higher cost per Dth for

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<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 4.

<sup>87</sup> Tr. 184–85.



GFCP/VEPI.<sup>88</sup> GFCP/VEPI failed to address the reasons that OCA’s witness came to the same conclusion.

If a determination is made to set GFCP/VEPI’s rate using a cost-of-service study that does *not* allocate some portion of the distribution system to GFCP/VEPI (i.e., Mr. Crist’s COSS), then the Commission must either (a) determine that PGW has no further obligation to provide ARS, or (b) establish a separate rate for ARS that fully reflects the immense value of the Philadelphia Lateral capacity used to effectuate ARS.<sup>89</sup> Such a separate ARS rate should reflect the comparable cost that GFCP/VEPI would incur if they were to obtain essentially equivalent capacity via capacity release.<sup>90</sup> That rate would be between the range of \$0.25/Dth/Day to \$0.60/Dth/Day – \$0.425 on average.<sup>91</sup> GFCP/VEPI presently pay about a penny per Dth/Day today.<sup>92</sup>

**C. PGW’s Cost of Service Study Correctly Produces a Transportation Rate of \$0.698/Dth.**

The arguments made by GFCP/VEPI in this section of their Exceptions are duplicative and PGW relies upon its prior arguments regarding the appropriate cost of service methodology.

**D. The Record Lacks Support That Either Tariff or Cost-Based Rates Would Jeopardize GFCP/VEPI’s Financial Well-Being**

The record is devoid of any mention, let alone evidence, that GFCP/VEPI will be in “financial ruin” if required to pay Rate IT.<sup>93</sup> The same is true of PGW’s cost-based rate. This

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<sup>88</sup> See OCA St. 1S at 1; OCA St. 1R at 6; OCA Exhibit JDM-2.

<sup>89</sup> PGW MB at 59–60; PGW RB at 45. GFCP/VEPI agreed, as part of an alternative position, by stating that the cost for ARS do not apply if a special rate for transportation service is based on the cost of service. See GFCP/VEPI MB at 44.

<sup>90</sup> PGW MB at 59–60.

<sup>91</sup> PGW MB at 60; *see also* PGW RB at 45–46.

<sup>92</sup> Tr. 58–59; PGW RB at 46.

<sup>93</sup> Without record citation GFCP/VEPI assert that, if required to pay PGW’s Rate IT until at least the conclusion of PGW’s next base rate case, then “[b]y that time, [GFCP/VEPI] will either have bypassed PGW or been rendered financially unable to continue service to its utility customers.” GFCP/VEPI Exceptions at 2.

section of GFCP/VEPI's Exceptions contains not one single citation to the record, because there are none. GFCP/VEPI are now raising the issue for the first time in Exceptions.

First, insofar as PGW is aware, the Commission has never refused to apply otherwise applicable cost of service and rate making principles in response to completely unsupported claims that a large industrial customer like GFCP/VEPI would allegedly suffer economic harm from the rate increase. But the Commission should also reject this new claim because the evidence in the record shows that it is bogus.

Throughout this proceeding, Grays Ferry have refused to provide financial information and were never required to do so despite PGW's numerous motions to compel.<sup>94</sup> Accordingly, PGW witness Frank Lacey researched secondary sources to estimate the revenues received from GFCP's non-PUC rate regulated sale of electricity in the PJM market.<sup>95</sup> He testified that Grays Ferry annually makes millions of dollars in electric sales from the electricity it produces from its cogeneration plant, which also produces steam as a "waste" product for the steam loop. In 2021 alone Grays Ferry earned over \$40 million in revenue from electricity sales on PJM.<sup>96</sup>

But Grays Ferry does not flow through any of these massive sales revenues to its affiliated customer, Vicinity. Specifically, PGW witness Lacey stated that the rates charged by Grays Ferry to VEPI for the "waste steam" do not reflect any of the revenue that Grays Ferry earns from selling electricity. Yet VEPI recovers from its steam customers the cost of the natural gas Grays Ferry uses to generate steam for electric sales.<sup>97</sup>

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<sup>94</sup> See Tr. 42 at hearing by the ALJ: "I do have a number of motions to compel that are outstanding and those are denied."

<sup>95</sup> See PGW St. 5R at 6–14. Net income from Grays Ferry's revenues were not available due to GFCP/VEPI's repeated objections to PGW's discovery.

<sup>96</sup> PGW St. 5R at 10, Table FL-1; PGW RB at 3–4, n.12.

<sup>97</sup> PGW St. 5R at 11–12.

Mr. Lacey testified that any increase to PGW’s rate could be completely offset by Grays Ferry’s robust revenues from electricity sales. Or, knowing that they are making enormous sums because of electricity sales, they could simply decide not to pass on all or a portion of any increase.<sup>98</sup> Therefore, GFCP/VEPI’s new claims of economic hardship are not only inappropriate, but they are also factually unsupported and incorrect.

**E. The ALJ Correctly Determined that GFCP/VEPI Failed to Meet Their Burden of Proof**

Contrary to GFCP/VEPI’s assertions, the ALJ correctly ruled that: “The Public Utility Code, 66 Pa. C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, complainant has the burden of proof in this matter pursuant to 66 Pa. C.S. § 332(a).”<sup>99</sup> The cases cited in the Initial Decision requiring the proponent to present substantial and preponderant evidence are identical to those consistently quoted by the Commission and ALJs. The discussion of the shifting burden of going forward and that the burden of persuasion remains with the Complainant are all well-trod legal pathways and correctly stated.

GFCP/VEPI attempt to blaze a new trail in asserting that the utility has the burden of proving the reasonableness of any rate it proposes in response to a complaint. This is incorrect as PGW has previously explained in briefs, because 66 Pa. C.S. § 315(a), on its face, is inapplicable in customer-initiated complaint proceedings, such as this case.<sup>100</sup>

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<sup>98</sup> *See id.*

<sup>99</sup> Initial Decision at 8.

<sup>100</sup> PGW RB at 7–11; *Pa. PUC v. Duquesne Light Co.*, Docket No. R-2021-3024750, 2021 PA. PUC LEXIS 604, at \*70 (Opinion and Order entered Dec. 16, 2021); *see also Zucker v. Pa. PUC*, 401 A.2d 1377 (Pa. Commw. Ct. 1979) (which involved a customer challenge to an existing rate that had been approved by the Commission in a prior general rate increase case five years earlier and that was not proposed to change in the subsequent tariff filing).

GFCP/VEPI are the ones who are seeking a rate that departs from PGW's tariffed rates (i.e., a special rate). As in their briefs, GFCP/VEPI incorrectly cite to protocol involving a rate increase filed by the utility.<sup>101</sup>

GFCP/VEPI also incorrectly claim that the record contains undisputed evidence showing "that PGW forced this proceeding by stalling negotiations for years and then finally demanding a drastic change in contract terms that featured a near ten-fold rate increase, and then refused to engage in reasonable negotiations."<sup>102</sup> This, again, is obvious nonsense. The record shows that PGW at all times attempted to engage GFCP/VEPI in the process of determining fair, just and reasonable rates, terms and conditions after their antiquated, twenty-five-year-old contract expired.

At all times, PGW's only interest was to make sure that the rate determinations were fair both to GFCP/VEPI and PGW's remaining customers. For that reason, PGW initially offered that GFCP/VEPI could be served on Rate IT with standby service to make it sufficiently firm for their needs.<sup>103</sup> In fact, this is the same outcome found reasonable by the ALJ.<sup>104</sup> GFCP/VEPI's characterization is really a product of its cynical, repeated attempts to avoid being subject to rates that are cost based, consistent with Chapter 13 precedent, and just and reasonable for PGW's remaining customers as well.

The ALJ correctly placed the ultimate burden on GFCP/VEPI, as the complainant, to propose rates that are just and reasonable under the Public Utility Code. But it hardly matters.

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<sup>101</sup> GFCP/VEPI Exceptions at 16–17 (quoting *Lower Frederick Twp. Water Co. v. Pa PUC*, 409 A.2d 505, 507 (Pa. Commw. Ct. 1980)). In *Lower Frederick Twp. Water Co. v. Pa PUC*, the utility "filed a supplement with the PUC proposing an increase of \$26,029 or 82.9% in its annual operating revenue." *Lower Frederick Twp. Water Co.*, 409 A.2d at 506.

<sup>102</sup> GFCP/VEPI Exceptions at 17–18.

<sup>103</sup> PGW MB at 4, 63–65; PGW RB at 9–10; PGW St. 1R at 10–11; PGW St. 3R at 4.

<sup>104</sup> See Initial Decision at 22–23.

GFCP/VEPI's evidence is so weak and unpersuasive that the threshold of "a preponderance of substantial evidence" is never even remotely approached.

## V. CONCLUSION

For the reasons set forth in the record, its briefs, and these Reply Exceptions, PGW respectfully requests that the Commission deny GFCP/VEPI's Exceptions and affirm the ALJ's Initial Decision, or, in the alternative, affirm a special rate based on PGW's cost of service study.

Respectfully submitted

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