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September 20, 2022

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Main Brief in the above-referenced proceeding.

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

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

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

MAIN BRIEF
OF THE
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I. INTRODUCTION AND PROCEDURAL HISTORY

A. Introduction

The Office of Consumer Advocate (OCA) is the statutory representative of the interests of all consumers before the Pennsylvania Public Utility Commission and has an interest in ensuring that consumers, particularly residential customers, are not burdened by costs that should be collected from Vicinity.[1] Thus, the OCA submits this brief in support of the Philadelphia Gas Work's (PGW) position in this proceeding as PGW's proposal results in just and reasonable rates for all parties and ensures that other customers will not unreasonably subsidize the costs of serving Vicinity.

Philadelphia Gas Works (PGW) is a municipal utility owned by the City of Philadelphia. PGW St. 1R at 4. Grays Ferry Cogeneration Plant (GFCP) is a combined cycle plant that produces both electricity and steam, the plant was constructed in 1997. Vicinity St. 1 at 4. GFCP is owned by the Grays Ferry Cogeneration Partnership, which is owned by Vicinity Energy (collectively, Vicinity) [2]. Vicinity St. 1 at 4. Since GFCP's construction, it has had its natural gas delivery needs served by PGW. Vicinity St. 1 at 5. Natural gas has been provided by PGW pursuant to a contract, which is set to expire on 12/31/2022. Vicinity St. 1 at 5.

To serve Vicinity, PGW constructed/refurbished a four-mile pipeline. Vicinity St. 1 at 7. Vicinity currently pays $0.08 per dekatherm (Dth) of natural gas that is transported through the dedicated four-mile line, and according to Mr. Crist, a witness for Vicinity, Vicinity paid $10.1 million in installment payments to PGW to contribute to the capital cost of the four-mile pipeline. Vicinity St. 1 at 7-8. Vicinity also pays separate operations and maintenance costs to PGW.

[1] The OCA is filing this brief pursuant to the Common Outline agreed to by the parties. Where the OCA takes no position, it will state as such in that portion of the brief.
[2] The use of "Vicinity" here refers to GFCP as well as Vicinity and all of its predecessors, who were the interested/involved parties at the time the contract was created.

Vicinity St. 1 at 8. As the contractual agreement between Vicinity and PGW is concluding, a dispute has arisen as to what constitutes a just and reasonable rate for PGW's provision of natural gas service to Vicinity.

Attempts to negotiate a new contract have been unsuccessful, with PGW offering a rate of $0.75/Dth, and Mr. Crist claiming the new rate should be at or below the current rate of $0.08/Dth. Vicinity St. 1 at 13. Because of this impasse, Vicinity filed a complaint seeking a Commission order concerning a just and reasonable rate. Vicinity St. 1 at 5. The proceeding has resulted in testimony being produced from witnesses for PGW, Vicinity, and the OCA.

B. Procedural History

On October 22, 2021, Vicinity filed a formal complaint against PGW. The OCA filed a notice of intervention on November 18, 2021. PGW filed preliminary objections to the formal complaint on November 22, 2021. On December 6, 2021, the Office of Small Business Advocate filed a notice of intervention. On December 7, 2021, the Bureau of Investigation and Enforcement filed a notice of appearance. The OCA, OSBA, Vicinity, PGW, and I&E each filed a Prehearing Memorandum on January 10, 2022.

On January 13, 2022, a prehearing conference was held and on April 22, 2022, Vicinity filed Vicinity Statement No. 1, which was direct testimony of Mr. James Crist, along with related exhibits. On June 10, 2022, the Philadelphia Industrial and Commercial Gas Users Group late-filed a petition to intervene. PGW and the OCA filed rebuttal testimony on June 17, 2022. On July 22, 2022, PGW, Vicinity, and the OCA filed Surrebuttal Testimony. On August 9, 2022, an Evidentiary Hearing was held. Pursuant to the Briefing Order issued on August 15, 2022, the OCA now submits this Brief.

II. STATEMENT OF THE CASE

The OCA's interest in this proceeding is to ensure that the rate determined does not amount to a subsidy to Vicinity, as the costs of a subsidy would potentially be pushed onto other customers, including residential customers.

The original contract on which the current rate was based, was created nearly 25 years ago, in an environment which greatly differs from the current cost environment. Of particular significance, when the contract was entered, PGW was not subject to the Commission's jurisdiction. PGW St. 1R at 6-8. Furthermore, the original contract and the rates set forth therein, were a result of negotiation between the parties[3] involved at the time, not a cost of service based rate. PGW St. 1 at 8. The price set for the original contract was "to provide that service under the then-existing Rate General Transportation Service – Firm . . ." PGW St. 1R at 7. The original contract was the product of a settlement proceeding before FERC regarding GFCP's planned construction of a competing lateral pipeline to serve its needs. PGW St. 1R at 6.

Since 2003, PGW has been fully regulated by the PUC, and, as part of a restructuring plan approved by the PUC, the transportation service that GFCP is a part of, GTS-Firm, was eliminated. PGW St. 1R at 8-9. However, service contracts in existence before September 1, 2003, like GFCP's, were grandfathered into the new plan and allowed to continue until the expiration of the contract. PGW St. 1R at 8-9.

[3] Vicinity was not a party to this contract, rather the contract was formed between "the City and others" along with Grays Ferry and Vicinity's predecessor Trigen. PGW St. 1R at 6.

III. SUMMARY OF ARGUMENT

The OCA supports PGW's position in this proceeding as PGW's proposal results in just and reasonable rates. Based on the facts of the case, OCA witness Jerome Mierzwa[4] recommended the following:

1.) The $0.75 per Dth charge proposed by PGW for distribution service to Vicinity is reasonable and consistent with cost of service principles.

2.) PGW should not be required to release interstate pipeline capacity to Vicinity from October through April.

3.) Vicinity should be assessed balancing and lost and unaccounted for gas charges under the Alternative Receipt Service provided by PGW during the months of October through April.

OCA St. 1R at 3.

According to the record evidence in this proceeding, the rate proposed by Vicinity would effectively act as a subsidy for Vicinity at the expense of all other customers on PGW's system. The OCA is opposed to the potential that other customers, including residential ratepayers, would subsidize specific contractually negotiated company rates without sufficient justification.

In line with that concern, it is the position of the OCA that the recommendations of Mr. Mierzwa, as listed above, be adopted. If Mr. Mierzwa's recommendations are adopted, Vicinity

[4] Mr. Mierzwa is a Principal of Exeter Associates, Inc., with over 30 years of public utility regulatory experience. At Exeter, Mr. Mierzwa has been involved in purchased gas cost allocation analysis and rate design analysis, conducting management audits and similar investigations of the natural gas supply and procurement policies and practices of local distribution companies (LDCs), and has provided assistance in proceedings before the Federal Energy Regulatory Commission (FERC). Mr. Mierzwa has participated in the planning of natural gas procurements for major federal installations located in various regions of the country. Mr. Mierzwa has been involved in evaluating performance-based incentive regulation for LDC purchased gas costs and the unbundling of LDC services. Mr. Mierzwa has participated in developing utility class cost-of-service studies, has presented testimony sponsoring gas, water and wastewater utility cost-of-service studies, least cost gas procurement and incentive regulation, in addition to presenting testimony addressing utility rate base and revenues. OCA St. 1R at App. A.

would be charged a just and reasonable rate, and other customers would not have to face the burden of subsidizing the operations of Vicinity.

As discussed in further detail below, PGW's distribution service charge of $0.75/Dth is reasonable and consistent with cost of service principles. Moreover, PGW does not hold more capacity than needed and therefore should not be required to release capacity to Vicinity as they request, and Vicinity should be charged the lost and unaccounted for gas (LUF) and balancing charges under the Alternative Receipt Service (ARS) provided by PGW.

IV. LEGAL STANDARDS

A. Overall Burden of Proof

Pursuant to section 332(a) of the Public Utility Code, as the proponent of the complaint in this proceeding Vicinity has the burden of proof. 66 Pa. C.S. §332(a) ("Except as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof."). Here, Vicinity specifically requests that the Commission "[f]ind that the rate demanded by PGW for service to Grays Ferry post 2022 is unjust and unreasonable" and that the Commission "[r]equire PGW to execute a new contract under Rate GTS-Firm for that service at a rate that is just and reasonable". Vicinity Complaint at page 14. Vicinity requests this relief, despite the fact that service under Rate GTS-Firm was closed in 2003, and the contract they were served under "were grandfathered until the expiration of the service contracts in place on or before September 1, 2003". PGW St. 1R at 8-9. "[T]he statutory burden placed on a proponent of a rule or order under Section 332(a) does not shift to the utility simply because such rule or order is proposed within the context of the utility's 1308(d) general base rate proceeding." *Pa. PUC. V. Duquesne Light Company.*, 2021 Pa. PUC LEXIS 604, *11-14 (Dec. 16, 2021). As the proponent for a Commission order the burden of proof is on Vicinity.66 Pa C.S. §332(a). Based on the evidence presented, Vicinity has failed to meet its burden.

B. Rates Must be Just and Reasonable and Non-Discriminatory

Under 66 Pa C.S. § 1301, "Every rate made, demanded, or received by any public utility ... shall be just and reasonable, and in conformity with regulations or orders of the commission." 66 Pa. C.S. § 1301. However, "[a] public utility is entitled to a rate that allows it to recover those expenses that are reasonably necessary to provide service to its customers as well as a reasonable

rate of return on its investment." *City of Lancaster (Sewer Fund) v. Pa. PUC*, 793 A.2d 978, 982 (Pa. Cmwlth Ct. 2002) (citing *Western Pennsylvania Water Co. v. Pennsylvania Public Utility Commission*, 422 A.2d 906 (Pa. Cmwlth Ct. 1980)). Furthermore, "No public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation ... or subject any person, corporation ... to any unreasonable prejudice or disadvantage." 66 Pa. C.S. § 1304.

C. Legal Standard for Special Rate

The OCA takes no position on this issue, beyond the request that the reasonable rate of $0.75/Dth recommended by Mr. Mierzwa be adopted.

D. Legal Standard for Cost of Service Ratemaking

Rates should be established, when reasonable, with the cost of service as a guide. The cost of providing service is the "polestar" of ratemaking. *Lloyd v. Pa. PUC*, 904 A.2d 1010, 1020 (Pa. Cmwlth Ct. 2006). When undertaking its review of the cost to provide service to different classes of customers, the Commission has recognized that a cost of service study is "a useful tool for testing the reasonableness" of rates, but that cost of service studies are "far from being an exact science. … more accurately characterized as engineering art." *Pa. PUC v. Peoples Natural Gas Company LLC*, 2012 pa. PUC LEXIS 1474, *53 (Aug 29, 2012) (quoting *Pa. PUC v. Duquesne Light Co.*, 57 Pa. PUC 1, 61 (1983).

E. Adherence to Tariff

Under 66 Pa. C.S. § 1303, "No public utility shall, directly or indirectly by any device whatsoever, or in anywise, demand or receive … a greater or less rate for any service rendered or to be rendered by such public utility than that specified in the tariffs of such public utility applicable thereto." 66 Pa. C.S. § 1303. Additionally, "Any public utility, having more than one

rate applicable to service rendered to a patron, shall, after notice of service conditions, commute bills under the rate most advantageous to the patron." 66 Pa. C.S. § 1303.

F. Challenges to Existing Rates

In this circumstance, as the utility's existing tariff has been approved by the Commission as just and reasonable, and as Vicinity is advocating for a new rate before the Commission, the burden of proof is on the proponent of the order. 66 Pa. C.S. § 332(a); *Cf. Pa. PUC. V. Duquesne Light Company.*, 2021 Pa. PUC LEXIS 604, *11-14 (Dec. 16, 2021); *see generally Pa. PUC v. Philadelphia Gas Works*, 2020 Pa. PUC LEXIS 607 (Nov. 19, 2020).

V. VICINITY CURRENT USE OF THE PGW SYSTEM

A. Vicinity's Payment for Distribution Service: Cost of Delivery Service

For 25 years, Vicinity has paid a rate of $0.08 per Dth to PGW for distribution service to its facility pursuant to the terms of a long-term contract. The Commission allowed for the grandfathering of that contract even though the rate class serving Vicinity, GTS-Firm, was eliminated in 2003. Vicinity now wants, if effect, an extension of its 25-year contract by requiring service under special considerations, and not through tariffed rates subject to generally accepted ratemaking principles.

The main dispute regarding the appropriate volumetric distribution charge is whether Vicinity's cost of service should be calculated using the entire distribution system, or merely the four-mile line that serves Vicinity. Mr. Crist, a witness for Vicinity, believes that the cost of service study provided by PGW is flawed because it assigns the cost of the entire PGW system to Vicinity. OCA St. 1R. at 5. Mr. Crist believes that only costs associated with the four-mile line should be assigned to Vicinity. OCA St. 1R at 5.

For the actual gas that Vicinity receives from lines other than the four-mile line, which Mr. Crist acknowledges is approximately 150,000 Dth per year, he suggests that Vicinity continue to be charged the Weighted Average Cost of Gas (WACOG) plus $0.61, or as an alternative, the Gas Cost Rate (GCR). OCA St. 1R at 5.

However, as explained in Mr. Mierzwa's testimony, Mr. Crist's plan is flawed. If Vicinity is only assessed the GCR for the gas it receives from the integrated system, PGW will only receive compensation for the cost of gas, not the use of the integrated distribution system that delivered the gas to Vicinity. OCS St. 1R at 5-6. Additionally, Mr. Crist ignores the costs that the Alternative Receipt Service (ARS) has and its relation to the integrated PGW system and therefore is mistaken

in his belief that only the costs associated with the four-mile line should be assigned to the cost of service study. OCA St. 1R at 5-6.

ARS is the service in which Vicinity delivers gas to the Skippack lateral, and in return PGW provides gas to Vicinity on the Philadelphia Lateral, essentially creating a gas swap. Vicinity St. 1 at 16. Under ARS, PGW utilizes its distribution system to serve Vicinity by displacement. That is, Vicinity delivers gas to a portion of PGW's distribution system that cannot provide service to Vicinity, and PGW delivers gas supplies purchased for system supply (to serve GCR customers) to Vicinity. ARS ensures that Vicinity is provided reliable service. ARS accounts for approximately 30% of the total annual volume Vicinity receives from PGW, which is only possible because of the PGW distribution system and the ability to swap the gas used in ARS that it creates. OCA St. 1R at 6. Vicinity has a demand for this service and the only gas distribution system that is capable of providing this service to Vicinity currently is PGW.

While Vicinity utilizes the system in a unique way that may differ from other customers, this uniqueness is not dispositive as to its reliance on the whole of the PGW system. Vicinity is a customer of PGW. Like all PGW customers, Vicinity relies on the entirety of PGW's distribution assets to receive and utilize natural gas service. As a PGW customer, Vicinity's rates should be set in a manner that reflects its impact on PGW's operations.

The best way to determine what to charge Vicinity is through a cost of service study. While PGW presented a cost of service study that is generally reasonable, Mr. Mierzwa on behalf of the OCA prepared a modified cost of service study that presents an accurate and reasonable guide to determining rates. In both his rebuttal and his surrebuttal testimony Mr. Mierzwa presented a cost of service study which was a modified version of the cost of service study created by PGW. OCA St. 1R at 7 (referencing exhibit JDM-2), OCA St. 1SR at 2. Mr. Mierzwa found PGW's cost of

service study to be largely reasonable but found that the use of a peak and average method to allocate distribution main costs was a better approach than the average and excess method that PGW used. OCA St.1R at 6. As such, Mr. Mierzwa modified PGW's cost of service study. OCA St. 1SR at 2.

Under the revised cost of service study, Mr. Mierzwa found that the cost of serving Vicinity is $10,105,00 per year or $0.756 per Dth. OCA St. 1SR at 2. OCA witness Mierzwa's result justifies the $0.75/Dth distribution charge PGW proposes. Since Vicinity's proposals bear no relationship to the full cost of service the Vicinity imposes on the system, they have not met their burden of demonstrating that PGW's proposed rates are unreasonable and unjust. As such, their complaint should be rejected. The Commission should adopt $0.75/Dth as a just and reasonable rate.

B. Vicinity's Operation and Maintenance Expense

The OCA takes no position on this matter.

C. Vicinity's Payment for Capacity Release

Vicinity experiences a capacity deficiency from October through April, meaning that they are unable to receive the amount of gas they require from the dedicated four-mile line. OCA St. 1R at 7. It is because of this deficiency that ARS is utilized and the gas that PGW provides to Vicinity is replaced in the system by Vicinity. Mr. Crist recommends that PGW release the excess capacity that is used to provide ARS, and claims that doing so would benefit GCR customers. OCA St. 1R at 7. However, as Mr. Mierzwa stated "In the PGW 2022 GCR proceeding I filed testimony addressing several issues. That testimony did not find that PGW held more firm capacity that it needs to meet the design day requirements of its customers." OCA St. 1R at 7. Furthermore, in his surrebuttal Mr. Reeves stated "If PGW were to permanently release the level of capacity that

[Vicinity] has indicated it requires in the winter (21,000 Dth/day) PGW would experience system failures in 11 of the 18 scenarios that were examined." PGW St. 2Sr at 3.

During Cross examination, Mr. Crist acknowledges that of the 18 scenarios 11 resulted in failures. TR. 67-72. However, Mr. Crist also stated that there are no probabilities attached to those 11 failures, and that to prevent these failures he suggested a recallable release. TR. 72. Mr. Crist also acknowledged that if Vicinity experienced a design day on the same day as PGW, the recallable capacity that Mr. Crist wishes to be distributed to Vicinity would have to be recalled. Tr. 75-76.

Therefore, in line with the recommendation of Mr. Mierzwa, and the findings of Mr. Reeves, because PGW does not hold more firm capacity than it would need on its design day, PGW should not be required to release additional capacity to Vicinity.

D. Vicinity's Payment for Alternative Receipt Service

Currently, Vicinity pays $54,000 a year for Alternative Receipt Service (ARS). TR. 58. PGW provides approximately 9,200,000 Dth per year through the four-mile pipeline, this pipeline is owned and operated by PGW. OCA St. 1R at 3. From October through April, due to a lack of additional capacity available on the Philadelphia lateral, PGW provides gas to Vicinity by utilizing ARS. Under ARS, Vicinity delivers gas to a different lateral (the Skippack Lateral), and PGW then delivers gas to Vicinity. OCA St. 1R at 4. Approximately 3,800,000 Dth of gas per year is delivered to Vicinity using ARS. OCA St. 1R at 4. In addition to both of these services, during times of disruption when Vicinity is unable to receive gas from the TETCO pipeline, PGW provides gas to Vicinity through PGW's distribution system. OCA St. 1R at 4.

During cross examination, Mr. Crist acknowledged that the $54,000 paid for ARS breaks down to a "de minimis number per dekatherm" which he later calculates to be 1.38 cents/Dth

provided by ARS. Tr. 58-59. Furthermore, Mr. Crist acknowledged the following under cross-examination:

> Q. So Mr. Crist, if Grays Ferry instead of having ARS had to obtain capacity through the capacity release market and Mr. Reeves' prices are correct, Grays Ferry would be paying between 60 and 25 cents per dekatherm for that same amount of capacity or the equivalent capacity; isn't that right?
>
> A. Well, if Mr. Reeves' numbers are correct and nothing has significantly changed in the market for capacity, then, yes, then you are correct.

Tr. 65-66

As such, Vicinity greatly benefits from the use of ARS because as Mr. Crist acknowledged, absent ARS, if Vicinity was forced to obtain capacity in the market they would potentially have to pay as much as 60 cents per DTH compared to the 1.38 cents/Dth they currently pay. Therefore because Vicinity benefits from ARS, and ARS utilizes the entire PGW distribution system, Vicinity benefits from the use of the entire PGW distribution system. Because Vicinity receives gas and utilizes the entire PGW system, to Vicinity's benefit, through both ARS and during interruptions it is appropriate to include the entire PGW distribution system, not just the four-mile section, in the cost of service study.

E. Vicinity's Management of Balancing and Compliance with TETCO Tariff Requirements.

Due to the logistical process involved in ARS, the imbalance and lost and unaccounted for gas charges proposed by PGW are reasonable. Under the new contract, PGW proposes to assess imbalance charges as well as lost and unaccounted for gas charges (LUF) to Vicinity. OCA St. 1R at 8. Due to the logistics of ARS, these imbalance charges are reasonable and should be allowed.

Mr. Crist claims that because the gas that Vicinity receives on the four-mile line is measured at the TETCO meter, they have already purchased all of the gas that comes onto the

four-mile line, and therefore a LUF charge is unreasonable. OCA St. 1R at 8. However, as Mr. Mierzwa points out, Mr. Crist does not account for the gas provided pursuant to ARS, specifically the return gas that is supposed to go back to the system via the Skippack lateral. OCA St. 1R at 8-9. Therefore, Vicinity could potentially return less gas under ARS than they received, resulting in LUF. Because of this possibility, a LUF charge is reasonable.

The same logic applies to the imbalance charge. Mr. Crist claims that Vicinity has always balanced TETCO therefore imbalance charges should not be allowed. OCA St. 1R at 8-9. However, Mr. Crist ignores the possibility of an imbalance on the Skippack lateral through the use of ARS. OCA St. 1R at 8-9. In his testimony, Mr. Mierzwa points out that imbalances caused by ARS will not be addressed on the TETCO system, therefore Mr. Crist's rationale for his rejection of the imbalance charges (history of balancing TETCO, plans to continue to balance, TETCO penalties for not balancing) do not apply. OCA St. 1R at 8-9, Vicinity St. 1 at 17-18. Both LUF and imbalance charges are reasonable because, despite the meter location on the TETCO and the history of balancing, Vicinity may still lose gas and/or cause an imbalance through ARS and the gas they are supposed to place on the Skippack lateral.

VI. RATE SETTING FOR VICINITY

As addressed above (Section V) the OCA submits that Vicinity, as a customer of PGW, must pay rates that reflect cost of service principles as any customer taking service under PGW's Commission-approved tariffs must.

VII. PGW AND VICINITY MARKETING ACTIVITIES

The OCA takes no position on this matter.

VIII. CONCLUSION

For the reasons set forth in this Brief, the OCA respectfully submits that the Commission should adopt the OCA's position that $0.75/Dth is a just and reasonable rate, PGW should not be required to release excess capacity to Vicinity from October through April, and the imbalance and LUF charges proposed by PGW are reasonable. The position and recommendation of Vicinity has the possibility of resulting in an unwarranted subsidy to Vicinity, the cost of this subsidy would then have to be pushed onto other customers.

The testimony of Mr. Mierzwa, which includes a cost of service study justifying PGW's calculated rate of $0.75/Dth, as well as his explanations regarding the additional proposed charges and the capacity which PGW holds on the Philadelphia lateral provides a reasonable basis for the Commission to adopt the OCA's position and to prevent any potential of an unreasonable subsidy.

APPENDIX A **Proposed Findings of Facts**

1. Philadelphia Gas Works (PGW) is a municipal utility owned by the City of Philadelphia. PGW St. 1R at 4.

2. Grays Ferry Cogeneration Plant (GFCP) is a combined cycle plant that produces both electricity and steam, the plant was constructed in 1997. Vicinity St. 1 at 4.

3. GFCP is owned by the Grays Ferry Cogeneration Partnership, which is owned by Vicinity Energy (collectively, Vicinity). Vicinity St. 1 at 4.

4. Since GFCP's construction, it has had its natural gas delivery needs served by PGW. Vicinity St. 1 at 5.

5. Natural gas has been provided by PGW pursuant to a contract, which is set to expire on 12/31/2022. Vicinity St. 1 at 5.

6. To serve Vicinity, PGW constructed/refurbished a four-mile pipeline. Vicinity St. 1 at 7.

7. Vicinity currently pays $0.08 per dekatherm (Dth) of natural gas that is transported through the dedicated four-mile line. Vicinity St. 1 at 7-8.

8. Vicinity paid $10.1 million in installment payments to PGW to contribute to the capital cost of the four-mile pipeline. Vicinity St. 1 at 7-8.

9. Vicinity also pays separate operations and maintenance costs to PGW. Vicinity St. 1 at 8.

10. Attempts to negotiate a new contract have been unsuccessful, with PGW offering a rate of $0.75/Dth, and Mr. Crist claiming the new rate should be at or below the current rate of $0.08/Dth. Vicinity St. 1 at 13.

11. Vicinity filed a complaint seeking a Commission order concerning a just and reasonable rate. Vicinity St. 1 at 5.

12. When the contract was entered, PGW was not subject to the Commission's jurisdiction. PGW St. 1R at 6-8.

13. The original contract and the rates set forth therein, were a result of negotiation between the parties involved at the time, not a cost of service based rate. PGW St. 1 at 8.

14. The price set for the original contract was "to provide that service under the then-existing Rate General Transportation Service – Firm". PGW St. 1R at 7.

15. The original contract was the product of a settlement proceeding before FERC regarding GFCP's planned construction of a competing lateral pipeline to serve its needs. PGW St. 1R at 6.

16. Since 2003, PGW has been fully regulated by the PUC, and, as part of a restructuring plan approved by the PUC, the transportation service that GFCP is a part of, GTS-Firm, was eliminated. PGW St. 1R at 8-9.

17. Service contracts in existence before September 1, 2003, like GFCP's, were grandfathered into the new plan and allowed to continue until the expiration of the contract. PGW St. 1R at 8-9.

18. For the actual gas that Vicinity receives from lines other than the four-mile line, which Mr. Crist acknowledges is approximately 150,000 Dth per year, he suggests that Vicinity continue to be charged the Weighted Average Cost of Gas (WACOG) plus $0.61, or as an alternative, the Gas Cost Rate (GCR). OCA St. 1R at 5.

19. If Vicinity is only assessed the GCR for the gas it receives from the integrated system, PGW will only receive compensation for the cost of gas, not the use of the integrated distribution system that delivered the gas to Vicinity. OCS St. 1R at 5-6.

20. ARS is the service in which Vicinity delivers gas to the Skippack lateral, and in return PGW provides gas to Vicinity on the Philadelphia Lateral, essentially creating a gas swap. Vicinity St. 1 at 16.

21. ARS accounts for approximately 30% of the total annual volume Vicinity receives from PGW, which is only possible because of the PGW distribution system and the ability to swap the gas used in ARS that it creates. OCA St. 1R at 6.

22. Mr. Mierzwa presented a cost of service study which was a modified version of the cost of service study created by PGW. OCA St. 1R at 7 (referencing exhibit JDM-2), OCA St. 1SR at 2.

23. Mr. Mierzwa found PGW's cost of service study to be largely reasonable but found that the use of a peak and average method to allocate distribution main costs was a better approach than the average and excess method that PGW used. OCA St.1R at 6

24. Mr. Mierzwa modified PGW's cost of service study. OCA St. 1SR at 2.

25. Under the revised cost of service study, Mr. Mierzwa found that the cost of serving Vicinity is $10,105,00 per year or $0.756 per Dth. OCA St. 1SR at 2.

26. Vicinity experiences a capacity deficiency from October through April, meaning that they are unable to receive the amount of gas they require from the dedicated four-mile line. OCA St. 1R at 7.

27. Mr. Crist recommends that PGW release the excess capacity that is used to provide ARS, and claims that doing so would benefit GCR customers. OCA St. 1R at 7.

28. Mr. Mierzwa stated "In the PGW 2022 GCR proceeding I filed testimony addressing several issues. That testimony did not find that PGW held more firm capacity that it needs to meet the design day requirements of its customers." OCA St. 1R at 7.

29. In his surrebuttal Mr. Reeves stated "If PGW were to permanently release the level of capacity that [Vicinity] has indicated it requires in the winter (21,000 Dth/day) PGW would experience system failures in 11 of the 18 scenarios that were examined." PGW St. 2Sr at 3.

30. Mr. Crist acknowledged that of the 18 scenarios 11 resulted in failures. TR. 67-72.

31. Mr. Crist also stated that there are no probabilities attached to those 11 failures, and that to prevent these failures he suggested a recallable release. TR. 72.

32. Mr. Crist also acknowledged that if Vicinity experienced a design day on the same day as PGW, the recallable capacity that Mr. Crist wishes to be distributed to Vicinity would have to be recalled. Tr. 75-76.

33. Currently, Vicinity pays $54,000 a year for Alternative Receipt Service (ARS). TR. 58.

34. PGW provides approximately 9,200,000 Dth per year through the four-mile pipeline, this pipeline is owned and operated by PGW. OCA St. 1R at 3.

35. Under ARS, Vicinity delivers gas to a different lateral (the Skippack Lateral), and PGW then delivers gas to Vicinity. OCA St. 1R at 4.

36. Approximately 3,800,000 Dth of gas per year is delivered to Vicinity using ARS. OCA St. 1R at 4 .

37. During times of disruption when Vicinity is unable to receive gas from the TETCO pipeline, PGW provides gas to Vicinity through PGW's distribution system. OCA St. 1R at 4.

38. Mr. Crist acknowledged that the $54,000 paid for ARS breaks down to a "de minimis number per dekatherm" which he later calculates to be 1.38 cents/Dth provided by ARS. Tr. 58-59

39. Under the new contract, PGW proposes to assess imbalance charges as well as lost and unaccounted for gas charges (LUF) to Vicinity. OCA St. 1R at 8.

40. Mr. Crist claims that because the gas that Vicinity receives on the four-mile line is measured at the TETCO meter, they have already purchased all of the gas that comes onto the four-mile line, and therefore a LUF charge is unreasonable. OCA St. 1R at 8.

41. Mr. Crist does not account for the gas provided pursuant to ARS, specifically the return gas that is supposed to go back to the system via the Skippack lateral. OCA St. 1R at 8-9.

APPENDIX B Proposed Conclusions of Law

1. As the proponent of the complaint in this proceeding Vicinity has the burden of proof. 66 Pa. C.S. §332(a).

2. "[T]he statutory burden placed on a proponent of a rule or order under Section 332(a) does not shift to the utility simply because such rule or order is proposed within the context of the utility's 1308(d) general base rate proceeding.". *Pa. PUC. V. Duquesne Light Company.,* 2021 Pa. PUC LEXIS 604, *11-14 (Dec. 16, 2021).

3. As the proponent for a Commission order the burden of proof is on Vicinity.66 Pa C.S. §332(a).

4. "Every rate made, demanded, or received by any public utility ... shall be just and reasonable, and in conformity with regulations or orders of the commission." 66 Pa. C.S. § 1301.

5. "A public utility is entitled to a rate that allows it to recover those expenses that are reasonably necessary to provide service to its customers as well as a reasonable rate of return on its investment." City of Lancaster (Sewer Fund) v. Pa. PUC, 793 A.2d 978, 982 (Pa. Cmwlth Ct. 2002) (citing Western Pennsylvania Water Co. v. Pennsylvania Public Utility Commission, 422 A.2d 906 (Pa. Cmwlth Ct. 1980)).

6. "No public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation ... or subject any person, corporation ... to any unreasonable prejudice or disadvantage." 66 Pa. C.S. § 1304.

7. The cost of providing service is the "polestar" of ratemaking. *Lloyd v. Pa. PUC,* 904 A.2d 1010, 1020 (Pa. Cmwlth Ct. 2006).

8. When undertaking its review of the cost to provide service to different classes of customers, the Commission has recognized that a cost of service study is "a useful tool for testing the reasonableness" of rates, but that cost of service studies are "far from being an exact science. … more accurately characterized as engineering art." *Pa. PUC v. Peoples Natural Gas Company LLC,* 2012 pa. PUC LEXIS 1474, *53 (Aug 29, 2012) (quoting *Pa. PUC v. Duquesne Light Co.,* 57 Pa. PUC 1, 61 (1983).

9. "No public utility shall, directly or indirectly by any device whatsoever, or in anywise, demand or receive … a greater or less rate for any service rendered or to be rendered by such public utility than that specified in the tariffs of such public utility applicable thereto." 66 Pa. C.S. § 1303.

10. "Any public utility, having more than one rate applicable to service rendered to a patron, shall, after notice of service conditions, commute bills under the rate most advantageous to the patron." 66 Pa. C.S. § 1303.

11. As the utility's existing tariff has been approved by the Commission as just and reasonable, and as Vicinity is advocating for a new rate before the Commission, the

burden of proof is on the proponent of the order. 66 Pa. C.S. § 332(a); *Cf. Pa. PUC. V. Duquesne Light Company.*, 2021 Pa. PUC LEXIS 604, *11-14 (Dec. 16, 2021); *see generally Pa. PUC v. Philadelphia Gas Works*, 2020 Pa. PUC LEXIS 607 (Nov. 19, 2020).

APPENDIX C Proposed Ordering Paragraphs

1. It is Hereby Ordered that Vicinity's Complaint is denied.
2. It is Hereby Ordered that, the $0.75 per Dth charge proposed by PGW for distribution service to Vicinity is just and reasonable.
3. It is Hereby Ordered that, the Philadelphia Gas Works not be required to release interstate pipeline capacity to Vicinity from October through April.
4. It is Hereby Ordered that, the balancing and unaccounted for gas charges proposed by Philadelphia Gas Works are just and reasonable.

Respectfully Submitted,

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