

COMMONWEALTH OF PENNSYLVANIA



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January 27, 2023

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

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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Reply Exceptions 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

*340260

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 Reply Exceptions, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 27th day of January 2023.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY EXCEPTIONS
OF THE
OFFICE OF CONSUMER ADVOCATE

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I. INTRODUCTION

The Office of Consumer Advocate (OCA) submits these Replies to the Exceptions of Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. (collectively Vicinity). The Commission should deny Vicinity's Exceptions and adopt the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Marta Guhl.

II. REPLY EXCEPTIONS

Reply to Exception 1: Vicinity has not Demonstrated that it is a Unique Customer and that it Meets the Standard for a Special Rate. I.D. at 16, 21-22; OCA M.B. at 10-11; OCA R.B. at 9; Vicinity Exc. at 8-11.

In Exceptions, Vicinity argues that it is a unique customer that meets the standard for a special rate. Vicinity Exc. at 8-11. As discussed extensively in the OCA's Main Brief, 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. OCA M.B. at 10. Up until January 1, 2023, Vicinity was served under a twenty-five year contract that predates Commission jurisdiction over PGW. Vicinity is a customer of PGW. With the expiration of the long-term contract, Vicinity's rates should now be set in a manner that reflects its impact on PGW's operations.

Vicinity's demand for a special rate following the expiration of its contract with PGW is unsupported by the record. In her Initial Decision, ALJ Guhl properly stated that "[a] special rate should not be approved absent a compelling reason, and is limited to cases where there is a serious and credible threat of loss of load and where revenues from the customer exceed the cost of serving the customer. *Pa. Pub. Util. Comm'n v. PPL Elec. Utils. Corp.*, Docket No. R-2010-2161694 (Opinion and Order entered June 21, 2012)." I.D. at 22, Conclusion of Law 8. Additionally, ALJ Guhl concluded as follows: "Simply having a large volume of usage does not entitle a customer to

a preferred rate. *U.S. Steel Corp. v. Pa. Pub. Util. Comm'n*, 390 A.2d 849 (Pa. Cmwlth. 1978) (citing *Carpenter v. Pa. Pub. Util. Comm'n*, 15 A.2d 401 (Pa. Super. Ct. 1940)).” I.D. at 22, Conclusion of Law 9.

At the expiration of Vicinity’s contract with PGW, the subsidized rates previously agreed to by PGW and Vicinity ended and Vicinity became a customer of PGW as if it were any other utility customer operating under PGW’s currently existing tariff. As correctly stated by ALJ Guhl, “[a] utility cannot unreasonably discriminate for or against one of its customers by establishing a special rate for them. *Popowsky v. Pa. Pub. Util. Comm’n*, 683 A.2d 958 (Pa. Cmwlth. 1996).” I.D. at 21, Conclusion of Law 7. The OCA agrees with ALJ Guhl’s determination that Vicinity has not demonstrated in the record of this proceeding that they are entitled to continue the current contract-based rate with PGW beyond the agreed to terms. I.D. at 16. Vicinity’s claim that they are entitled to a special rate raises the possibility of an unwarranted subsidy to Vicinity and the cost of this subsidy would then have to be pushed onto other customers. *See* OCA M.B. at 17. The OCA agrees with ALJ Guhl that a special rate for Vicinity is unsupported.

Reply to Exceptions 2 and 3: The ALJ Properly Determined that the Record Evidence Supports Vicinity Being Charged PGW’s Current Rate. I.D. at 16, 21; OCA M.B. 9-14; OCA R.B. 1-4, Vicinity Exc. at 11-14.

Vicinity claims that the rate PGW demands from Vicinity is unreasonable and based on a flawed Cost of Service Study (COSS). Vicinity Exc. at 11-14. According to Vicinity, a corrected COSS produces a maximum rate of \$0.21/Dth. Vicinity Exc. at 13-14. OCA witness Mierzwa, however, found that the cost of serving Vicinity is \$10,105,000 per year or \$0.756 per Dth. OCA St 1S at 2; OCA St 1S Exhibit JDM-3; *see also* OCA R.B. at 3. OCA witness Mierzwa’s review justified the \$0.75/Dth distribution charge PGW proposed.

The OCA agrees with ALJ Guhl's determination that Vicinity has not provided substantial evidence that PGW will definitively charge Vicinity an unjust or unreasonable rate. I.D. at 16. Like all PGW customers, Vicinity relies on the entirety of PGW's distribution assets to receive and utilize natural gas service. OCA St. 1R at 5-6. As Mr. Mierzwa explained, only assigning Vicinity the costs associated with the four-mile pipeline in Vicinity's COSS only compensates PGW for the cost of gas sold to Vicinity, it does not provide compensation for the use of the integrated PGW distribution system that is utilized. *Id.* In addition, Vicinity ignores the costs associated with Alternative Receipt Service, which also utilizes the integrated PGW distribution system. *Id.* at 6. As a PGW customer, Vicinity's rates should be set in a manner that reflects its impact on PGW's operations. ALJ Guhl's determination that the Commission has no authority to allow a public utility to deviate from its tariff is proper and lawful. I.D. at 21, Conclusion of Law 4 (internal citations omitted). ALJ Guhl's determination that Vicinity will be receiving utility service based on PGW's current Commission-approved rate is reasonable. I.D. at 16.

According to Vicinity, it is inappropriate to charge Vicinity PGW's existing tariffed rates. Vicinity Exc. at 14. Vicinity claims that a "corrected COSS produces a Maximum rate of \$0.21/Dth" (Vicinity Exc. at 13). As a check on the reasonableness of the various parties' positions on the matter, OCA witness Mierzwa performed a modified COSS and found that the cost of serving Vicinity is \$10,105,00 per year or \$0.756 per Dth. OCA M.B. at 10-11. Moreover, 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 M.B. at 10-11. Mr. Mierzwa's analysis supports PGW's proposal under its existing tariff to provide service to Vicinity at \$0.75/Dth.

Given the failure of negotiations between PGW and Vicinity to extend their previous contractually agreed-upon rates, the OCA agrees with ALJ Guhl that Vicinity should be charged the rates contained in PGW's commission-approved tariff.

Reply to Exception 5: ALJ Guhl Properly Found that Vicinity Failed to Meet its Burden of Proof. I.D. at 16-17; OCA M.B. at 6, 8; Vicinity Exc. at 16-18.

Within their exceptions, Vicinity concedes that they as the complainants bore the burden of proof. Vicinity Exc. at 16 (citing *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990)). However, Vicinity alleges that they had carried the burden, and that ALJ Guhl incorrectly "reaches the bald conclusion Vicinity has failed to carry its burden of proof". Vicinity Exc. at 16. Vicinity further excepts that evidence is "undisputed" and that "any final decision based on the ID and lacking in analysis and justification will not stand up to judicial scrutiny." Vicinity Exc. at 17. The OCA disagrees with Vicinity's assertions.

In the Initial Decision, ALJ Guhl correctly determines that the burden of proof is on the party seeking affirmative relief from the Commission. I.D. at 21, Conclusion of Law 2 (Citing 66 Pa. C.S. § 332(a)). Furthermore, ALJ Guhl correctly determined that, contrary to what Vicinity proclaims in its exceptions, Vicinity had not met the burden of "establish[ing] 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." I.D. at 16. In the twenty-three-page initial decision, ALJ Guhl carefully walked through the position of each party to the case and the arguments they made. After explaining the position of each party, ALJ Guhl correctly determined that Vicinity had not shown there was authority to "force the parties into a new rate arrangement" and that they failed to demonstrate that "they are entitled to a continuation of the current contract beyond the agreed to terms." I.D. at 16. In other words, given that PGW was not a willing partner to agree to a new

contract rate with Vicinity, then Vicinity was left with taking terms under the tariff if it wants to continue to receive service from PGW. The Commission was not in a position to compel PGW to provide service to Vicinity at a discounted rate pursuant to a contract that PGW did not want to enter.

ALJ Guhl correctly found that Vicinity, having failed to meet its burden, should be served at Commission approved Tariffed rates, the same as any other customer. I.D. at 16-17, Ordering Paragraphs 1-3.

The OCA supports the decision of ALJ Guhl that Vicinity did not meet their burden. As stated in the OCA's Main Brief:

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).

OCA M.B. 8.

As the record reflects, and ALJ Guhl concluded, Vicinity failed to meet its burden.

III. CONCLUSION

The Office of Consumer Advocate respectfully requests that the Commission deny the Exceptions filed by Vicinity. The Initial Decision on these contested issues is soundly based on the record and the law and should be adopted by the Public Utility Commission.

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