

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2022-3036472
Grays Ferry Cogeneration Partnership	:	C-2022-3036783
Vicinity Energy Philadelphia Inc.	:	C-2022-3036774
	:	
v.	:	
	:	
Philadelphia Gas Works	:	

RECOMMENDED DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

In the 1308(b) proceeding for Philadelphia Gas Works (PGW), the Active Parties were able to reach a Settlement of their disputes. In the Settlement, PGW Supplement No. 156 proposes to modify the date by which PGW’s Rate GTS-F will terminate by temporarily extending the termination date until a decision is issued by the Commission in the matter of *Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia Inc. v. Philadelphia Gas Works* at Docket No. C-2021-3029259, or until April 30, 2023, whichever first occurs. Grays Ferry Cogeneration Partnership (Grays Ferry) and Vicinity Energy Philadelphia Inc. (Vicinity) also agree to withdraw their complaints at Docket Nos. C-2022-3036783 and C-2022-3036774, respectively, under the terms of the Settlement.

HISTORY OF THE PROCEEDING

In January 1996, the Philadelphia Authority for Industrial Development (“PAID”) entered into a total of four agreements: (a) two service contracts: one with Grays Ferry

(Partnership Service Contract) and one with Vicinity, then known as Trigen (Trigen Service Contract) (collectively, “Service Contracts”); and (b) two service agreements with the City of Philadelphia: one regarding the Partnership Service Contract (Partnership Service Agreement) and one regarding the Trigen Service Contract (Trigen Service Agreement) (collectively, “Service Agreements”). Together the Service Contracts and the Service Agreements are referred to as the “1996 Contracts.”

The duration (term) of the 1996 Contracts was twenty-five years. The rates, terms, and conditions in the 1996 Contracts expired on December 31, 2022.

In 2003, PGW came under the jurisdiction of the Commission. The rates terms and conditions that had been previously agreed to in the 1996 Contracts continued to be available under Rate GTS-F in PGW’s Commission-authorized Tariff. PGW’s 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.” PGW Gas Tariff – Pa. P.U.C. No. 2 at 118.

On October 22, 2021, Grays Ferry and Vicinity filed a Formal Complaint against PGW at Docket C-2021-3029259 (“Complaint Proceeding”). In the Complaint Proceeding, Grays Ferry/Vicinity allege, inter alia, that PGW is demanding unjust and unreasonable rates from them for service to be provided on and after January 1, 2023. PGW denied the allegations by Grays Ferry/Vicinity in the Complaint Proceeding. On December 27, 2022, I issued an Initial Decision in the Complaint Proceeding. The matter is currently pending before the Commission.

On December 5, 2022, Grays Ferry and Vicinity filed a Petition for Interim Emergency Relief requesting the Commission to extend the duration (term) of the 1996 Contracts until such time as the Commission is able to resolve the Complaint Proceeding.

On December 28, 2022, the Commission denied Grays Ferry and Vicinity’s Petition for Interim Emergency Relief, which had the effect of allowing the 1996 Contracts to expire on December 31, 2022.

On November 1, 2022, PGW filed Supplement No. 156 to Gas Service Tariff Pa. P.U.C. No. 2 (“Supplement No. 156”) with the Commission to become effective on January 1, 2023. Supplement No. 156 proposed to modify the date by which PGW’s Rate GTS-F will terminate by temporarily extending the termination date until a decision is issued by the Commission in the Complaint Proceeding, or until April 30, 2023, whichever first occurs.

On November 11, 2022, Formal Complaints to Supplement No. 156 were filed by Grays Ferry and Vicinity at Docket Numbers C-2022-3036783 and C-2022-3036774, respectively, opposing PGW’s Supplement No. 156.¹ The Complaints requested that the 1996 Contracts be extended.

By Order dated December 27, 2022, the Commission temporarily approved Supplement No. 156, and required that said tariff be scheduled for hearing before a presiding officer. Specifically, Supplement No. 156 was permitted to go into effect as filed and remain in effect until April 23, 2023, or until a Final Order is entered by the Commission in the Complaint Proceeding, subject to refund/rebilling, as appropriate. The Commission also indicated that the presiding officer had to issue a recommended decision no later than March 27, 2023.

Grays Ferry and Vicinity filed a Petition to Withdraw their Complaints regarding PGW’s tariff supplement on January 9, 2023.

Pursuant to the Prehearing Conference Order, the Parties filed Prehearing Memorandum on January 12, 2023, and a telephonic Prehearing Conference was held on January 13, 2023. Counsel for PGW, Grays Ferry/Vicinity, the Commission’s Bureau of Investigation & Enforcement (I&E), the Office of the Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), and the Philadelphia Industrial and Commercial Gas Users Group (PICGUG) participated. PICGUG’s Petition to Intervene was granted, and the parties

¹ The OCA filed a Notice of Intervention on December 29, 2022. I&E filed its Notice of Appearance on January 9, 2023. OSBA filed a Notice of Intervention on January 11, 2023. PICGUG filed a Petition To Intervene on January 12, 2023.

indicated that they wished to have additional time to try to resolve the matter and file settlement documents.

The Parties engaged in discussions to achieve a settlement of the issues in this case. As a result of those negotiations, PGW, Vicinity, Grays Ferry, and I&E (collectively, the “Joint Petitioners”) were able to reach the Settlement set forth herein, which resolves all of the issues among all of the Parties regarding Supplement No. 156. PGW, Vicinity, Grays Ferry and I&E filed a Joint Petition for Settlement on January 19, 2023, and Statements in Support. OSBA, OCA and PICGUG did not join or oppose the Settlement.

FINDINGS OF FACT

1. PGW is a municipally owned gas utility.
2. Grays Ferry and Vicinity provide steam services and are certified public utilities recognized by the Commission.
3. I&E is the prosecutory bureau of the Commission for purposes of representing the public interest in ratemaking and service matters before the Office of Administrative Law Judge and for enforcing compliance with the state and federal motor carrier safety and gas safety laws and regulations. Implementation of Act 129 of 2008 Organization of Bureau and Offices, Docket No. M-2008-2071852 (Order entered August 11, 2011).
4. OCA is authorized to represent the interests of consumers before the Commission. Act 161 of 1976, 71 P.S. § 309-2.
5. OSBA is authorized and directed to represent the interests of small business consumers of utility service in Pennsylvania under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50.

6. PICGUG is an ad hoc group of large volume customers receiving natural gas utility service from PGW under both sales and transportation rate schedules, including Rate Schedule IT – Interruptible Transportation.

7. On January 19, 2023, PGW, Grays Ferry/Vicinity, and I&E filed a Joint Petition for Settlement that resolves the issues among them.

8. The Joint Petitioners agree that the Settlement is in the public interest as a reasonable resolution of their respective interests and should be approved.

9. OSBA, OCA and PICGUG did not join or oppose the Settlement.

DESCRIPTION OF THE SETTLEMENT

PGW, Grays Ferry/Vicinity, and I&E filed a Joint Petition for Settlement on January 19, 2023. This Petition includes the terms of the Settlement. Additionally, statements in support of each party joining the Settlement are attached to the Joint Petition for Settlement.

TERMS AND CONDITIONS OF THE SETTLEMENT

The Joint Petitioners have agreed to a Partial Settlement covering all but those raised by the Environmental Stakeholders in this proceeding.

The terms and conditions of the Settlement are set forth fully below, beginning at numbered paragraph 13, 14 and 17 through and including paragraph 21 of the Joint Petition for Settlement filed on January 19, 2023. The Settlement also includes the usual “additional terms and conditions” that are typically included in settlements. These terms, among other things, protect the parties’ rights to file exceptions if any part of the Settlement is modified, condition the agreement upon approval by the Commission and provide that no party is bound in future rate cases by any particular position taken in this case. These additional terms and conditions will not be repeated here verbatim. The reader is directed to the petition itself.

The Joint Petitioners to the Settlement include PGW, Grays Ferry and Vicinity and I&E. OSBA, OCA and PICGUG did not join or oppose the Settlement.

The settlement terms among the Joint Petitioners and PGW consist of the following terms and conditions:

13. The Joint Petitioners hereby respectfully request that PGW's Supplement No. 156 be approved as filed and the proceeding at R-2022-3036472 be marked closed.²

14. The Joint Petitioners also respectfully request that the Petition to Withdraw the above-captioned Complaints filed by GFCP/VEPI and docketed at C-2022-3036774 and C-2022-3036783 be granted and the proceedings marked closed.

LEGAL STANDARD

The purpose of this investigation is to establish rates for PGW's customers that are just and reasonable pursuant to Section 1301 of the Public Utility Code.³

A public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service.⁴ In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in *Bluefield Water Works & Improvement Co. v. Public Service Commission of West Virginia*,⁵ and *Federal Power Commission v. Hope Natural Gas Co.*⁶ In *Bluefield*, the United States Supreme Court stated:

² Grays Ferry and Vicinity note that they do not oppose this result. (Footnote original).

³ 66 Pa.C.S. § 1301.

⁴ *Pa. Gas & Water Co. v. Pa. Pub. Util. Comm'n*, 341 A.2d 239 (Pa. Cmwlth. 1975).

⁵ *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679 (1923).

⁶ *Fed. Power Comm'n v. Hope Nat. Gas Co.* 320 U.S. 591 (1944).

[a] public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.^[7]

The Commission encourages parties in contested on-the-record proceedings to settle cases.⁸ Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission’s decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

By definition, a “settlement” reflects a compromise of the positions that the parties of interest have held, which arguably fosters and promotes the public interest. When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest.⁹ In their supporting statements, the Joint Petitioners conclude, after extensive discovery and discussion, that this Settlement resolves most of the contested issues in this case, fairly balances the interests of the company and its ratepayers, is in the public interest, and is consistent with the requirements of the Public Utility Code.

⁷ 262 U.S. at 692-93.

⁸ See 52 Pa. Code § 5.231.

⁹ *Pa. Pub. Util. Comm’n v. CS Water and Sewer Assocs.*, 74 Pa.P.U.C. 767, 771 (1991). See also *Pa. Pub. Util. Comm’n v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm’n v. Phila. Elec. Co.*, 60 Pa. PUC 1 (1985).

DISCUSSION OF THE SETTLEMENT

A. General Position of the Parties

Generally, the Joint Petitioners submit that the Settlement is in the public interest for the following reasons: substantial litigation and associated costs will be avoided; the Settlement amicably and expeditiously resolves a number of important and potentially contentious issues; the Settlement is consistent with Commission policies promoting negotiated settlements; and the Settlement is a reasonable resolution.¹⁰

B. Party Positions

1. PGW's Position

PGW asserts that an extension of Rate GTS-F under tariff Supplement No. 156 until a decision is issued by the Commission in the Complaint Proceeding, or until April 30, 2023, whichever first occurs, is in the public interest and no further litigation is necessary. PGW argues that Supplement No. 156 maintains the status quo pending Commission disposition of the First Complaint and is a commonsensical way to bridge the gap between tariff termination and the design of a new rate by the Commission. PGW states that it is simply a holding action and raises no issues regarding “just and reasonable rates” under the Public Utility Code.¹¹

Moreover, in view of the Commission's action denying the companion Petition for Interim Emergency Relief, PGW contends that the issues raised in the Grays Ferry and Vicinity complaints have been overcome by these subsequent events and are now moot.¹²

¹⁰ Joint Petition for Settlement ¶ 16 (a-c).

¹¹ PGW Statement in Support at 5.

¹² PGW Statement in Support at 5.

PGW notes that Grays Ferry and Vicinity require its natural gas delivery service to generate electricity and provide district steam service. PGW states that the winter season service is particularly critical, and without an extension, Rate GTS-F would have expired under its own terms.¹³

Further, PGW argues that utilities may only provide service via an approved tariff¹⁴ and, with Rate GTS-F expired, it would have had no express authority to continue service. The extension of Rate GTS-F provides that legal authority. PGW indicates that the maintenance of the *status quo* pending Commission disposition of the First Complaint by the filing of Supplement No. 156 is a reasonable way to bridge the gap between tariff termination and the design of a new rate by the Commission.¹⁵

Lastly, PGW asserts that the tariff supplement does not prejudge any position taken by Grays Ferry/Vicinity or any other party. Supplement No. 156 is an effective, self-contained means to accomplish this simple objective without addressing any of the merits of the underlying dispute and preserving them for Commission resolution. PGW maintains that the issues raised by Grays Ferry/Vicinity in opposition to Supplement No. 156, namely whether the 1996 Contracts should be extended beyond December 31, 2022, have been addressed by the Commission and resolved in the negative.¹⁶ PGW states that the 1996 Contracts are now expired of their own terms and are no longer effective. Thus, the relief requested by Grays Ferry/Vicinity in their complaints here is no longer available. PGW also contends that the expiration of the 1996 Contracts is without prejudice to Grays Ferry/Vicinity's ability to argue that the going forward rates, terms and conditions of service should be maintained in their

¹³ PGW Statement in Support at 5-6.

¹⁴ 66 Pa.C.S. §§ 1301 *et seq.*

¹⁵ PGW Statement in Support at 6.

¹⁶ The presiding officer and, subsequently, the Commission denied Grays Ferry and Vicinity's emergency request to use authority under Section 508 of the Code to extend the term of the 1996 Contracts in the Complaint Proceeding at C-2021-3029259. Order Denying Petition For Issuance Of An Interim Emergency Order dated December 12, 2022 and Opinion And Order Entered December 28, 2022 ("Yes. The presiding Administrative Law Judge correctly denied the expedited petition for emergency relief requesting that Philadelphia Gas Works be directed to continue to provide service to Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc., under the terms of the 1996 contracts after their expiration on December 31, 2022.").

present configuration. “[A]ll of the rates, terms and conditions of service that GFCEP/VEPI [Grays Ferry/Vicinity] currently enjoy are tied up for resolution at the complaint docket.”¹⁷¹⁸

2. Grays Ferry/Vicinity’s Position

Grays Ferry/Vicinity argues that the Settlement is the best means of resolving the outstanding tariff matter. Grays Ferry/Vicinity notes that the Settlement recognizes that the Commission authorized Supplement No. 156 to go into effect temporarily and rejected their request to include a contract extension, which because of the contract’s subsequent expiration rendered the issue of the tariff’s lack of provision for contract extension a moot issue. Grays Ferry/Vicinity states that the underlying Complaint at Docket No. C-2021-3029259 is pending before the Commission and the Settlement preserves all the Parties’ rights in that proceeding. Grays Ferry/Vicinity also acknowledges that the primary issue raised in the Complaints against the tariff supplement is moot, it would be a waste of the time and resources of the Parties to litigate a case that none want to pursue.¹⁹

Grays Ferry/Vicinity also maintains that the Commission’s policy favors settlement, and the Commission has stated that settlement outcomes are often preferable to those achieved at the conclusion of a fully litigated proceeding.²⁰ Grays Ferry/Vicinity states that a full settlement of all the issues in a proceeding eliminates the time, effort, and expense that otherwise would have been used in litigating the proceeding, effort, and expense of litigating a case, and thus, may yield potential savings for customers. Grays Ferry/Vicinity argues that the settlement, whether full or partial, may directly benefit the named parties as well as indirectly benefit the customers of the public utility involved in the case.²¹

¹⁷ C-2021-3029259, PGW Answer to Emergency Petition, Verified Statement of John C. Zuk at 6–7.

¹⁸ PGW Statement in Support at 6-7.

¹⁹ Grays Ferry/Vicinity Statement in Support at 2-3.

²⁰ 52 Pa. Code §§ 5.231, 69.401.

²¹ Grays Ferry/Vicinity Statement in Support at 3.

Lastly, Grays Ferry/Vicinity asserts that no party is prejudiced by the Settlement as it preserves the rights of all parties in the underlying docket and preserves the services and rates under the contract until such time as the Commission determines otherwise. In short, Grays Ferry/Vicinity argues that the public interest is served by terminating the instant tariff Complaint and R-docket proceedings.²²

3. I&E's Position

I&E submits that it is in the public interest to avoid requiring parties and the Commission to incur unnecessary litigation costs and the waste of resources that would result here where Vicinity has petitioned to withdraw its Complaints and no party has identified any independent issues for investigation at this docket. I&E acknowledges that PGW is a cashflow company and that there are no shareholder funds available to pay litigation costs; accordingly, the money PGW may be required to spend here will be recouped from ratepayers. Requiring PGW's ratepayers to fund unnecessary litigation is antithetical to the public interest; however, approval of the Settlement would prevent that outcome from materializing. To be sure, the Joint Petitioners have reached a settlement which resolves all issues among all of the Parties.²³ Therefore, I&E avers that it is also in the public interest to grant Vicinity's Petition to Withdraw because Vicinity has moved for the withdrawal,²⁴ and no party has contested that relief. As continuing litigation without an identified need is not in the public interest, I&E submits that granting Vicinity's Petition to Withdraw is also an outcome that protects the public interest.²⁵

C. Recommendation

The proposed Settlement is reasonable and in the public interest. I therefore recommend approval without modification. The Settlement represents a just and fair

²² Grays Ferry/Vicinity Statement in Support at 3.

²³ Joint Petition for Settlement, ¶12.

²⁴ Vicinity's Prehearing Conference Memo, R-2022-3036472, p. 3, ¶10 (filed on January 9, 2023).

²⁵ I&E Statement in Support at 4.

compromise of the serious issues raised in this proceeding. After considering the background of this case, the parties have achieved a reasoned accord on the issues resulting in a just and reasonable outcome for all parties involved.

It is the Commission's duty to ensure that the public interest is protected. Therefore, there must be sufficient information provided in a settlement in order for the Commission to determine whether the proposed supplement to PGW's tariff is in the public interest and properly balance the interests of ratepayers and the company.²⁶

In reviewing the settlement terms and the accompanying statements in support, the Settlement provides sufficient information to support the conclusion that the settlement terms are in the public interest. It should be noted that the parties in the matter have already engaged in lengthy litigation, in regard to the same issues involved in this case, that is currently pending before the Commission at Docket No. C-2021-3029259. Since this matter is already pending before the Commission for a Final Order, it would be redundant to force the parties to litigate the issues again in this current rate proceeding. As Grays Ferry/Vicinity have indicated that they wish to withdraw their complaints, the matters pending before me are now moot and the underlying issues are better addressed by the Commission in the pending matter at Docket No. C-2021-3029259. The reduction in litigation costs and time will clearly benefit all the parties involved, especially, PGW, who would likely have to pass those costs onto its ratepayers.

Resolution of this proceeding by negotiated settlement removes the uncertainties of litigation. In addition, all parties obviously benefit by the reduction in rate case expense and the conservation of resources made possible by adoption of the proposed Settlement in lieu of litigation. The acceptance of the Settlement will negate the need for the filing of additional testimony by all parties, participation at in-person hearings, the filing of main and reply briefs on the issues contained in the Settlement, exceptions and reply exceptions, and potential appeals. These savings in rate case expense serve the interests of PGW and its ratepayers, as well as the parties themselves.

²⁶ See *Pa. Pub. Util. Comm'n v. Pa. Power Co.*, 55 Pa.P.U.C. 552 (1982); *Pa. Pub.Util. Comm'n v. National Fuel Gas Dist. Corp.*, 73 Pa.P.U.C. (1990).

For all the foregoing reasons, I find the terms embodied in the Joint Petition for Settlement are both just and reasonable and its approval is in the public interest. I recommend the Commission approve the Settlement without modification.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties in this case. 66 Pa.C.S. § 1308(b).

2. To determine whether a settlement should be approved, the Commission must decide whether the settlement promotes the public interest. *Pa. Pub. Util. Comm'n v. CS Water & Sewer Assoc.*, 74 Pa.P.U.C. 767 (1991); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa.P.U.C. 1 (1985).

3. The Joint Petition for Settlement is in the public interest and is consistent with the requirements contained in *Lloyd v. Pa. Pub. Util. Comm'n*, 904 A.2d 1010 (Pa. Cmwlth. 2006).

4. The rates, terms and conditions contained in Philadelphia Gas Works' Supplement No. 156 to Gas Service Tariff Pa. P.U.C. No. 2 filing of November 1, 2022, are just, reasonable and in the public interest and are in accord with the rules and Regulations of the Commission and the provisions of the Public Utility Code. See 66 Pa.C.S. § 315(a); 52 Pa. Code §§ 69.2703(a), (b).

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the rates, rules and regulations contained in Philadelphia Gas Works' Supplement No. 156 to Gas Service Tariff Pa. P.U.C. No. 2 be allowed to go into effect.

2. That Philadelphia Gas Works shall be permitted to modify the date by which Philadelphia Gas Works' Rate GTS-F will terminate by temporarily extending the termination date until a decision is issued by the Commission in the matter Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia Inc. v. Philadelphia Gas Works at Docket No. C-2021-3029259, or until April 30, 2023, whichever first occurs.

3. That upon entry of the Commission's Order approving the Joint Petition for Settlement, Philadelphia Gas Works shall be permitted to file a tariff supplement to become effective upon at least one day's notice.

4. That the Formal Complaint of Grays Ferry Cogeneration Partnership at Docket No. C-2022-3036783 be deemed withdrawn and marked closed.

5. That the Formal Complaint of Vicinity Energy Philadelphia Inc. at Docket No. C-2022-3036774 be deemed withdrawn and marked closed.

6. That upon acceptance and approval by the Commission of the tariff supplement consistent with this Order, this proceeding be marked closed.

Date: March 21, 2023

/s/
Marta Guhl
Administrative Law Judge