



COMMONWEALTH OF PENNSYLVANIA

May 4, 2023

**E-FILED**

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

**Re: Pennsylvania Public Utility Commission v. Philadelphia Gas Works 1307(f)  
Proceeding / Docket No. R-2023-3038069**

Dear Secretary Chiavetta:

Enclosed please find the Main Brief, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

*/s/ Sharon E. Webb*

Sharon E. Webb  
Assistant Small Business Advocate  
Attorney ID No. 73995

*Enclosures*

cc: Robert D. Knecht  
Mark Ewen  
Parties of Record

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY  
COMMISSION**

v.

**PHILADELPHIA GAS WORKS  
1307(f)**

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**DOCKET NO. R-2023-3038069**

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**MAIN BRIEF  
ON BEHALF OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

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**Dated: May 4, 2023**

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## **I. Introduction and Statement of the Case**

The Small Business Advocate is authorized and directed to represent the interests of small business consumers in proceedings before the Pennsylvania Public Utility Commission (“Commission”) under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50. In order to discharge this statutory duty, the Office of Small Business Advocate (“OSBA”) is participating as a party to this proceeding to ensure that the interests of small business customers of Philadelphia Gas Works (“PGW” or the “Company”) are adequately represented and protected.

While the OSBA has reviewed PGW’s filing and testimony, the OSBA didn’t identify any issues of concern that warranted the filing of testimony and modification to PGW’s March 1<sup>st</sup> filing. However, in response to the Direct Testimony of Mr. James L. Crist on behalf of Grays Ferry Cogeneration Partnership (“Grays Ferry”) and its affiliate Vicinity Energy Philadelphia Inc. (“VEPI”) (collectively “Vicinity”), the OSBA submitted the Rebuttal Testimony of Mr. Robert D. Knecht. The subject of Mr. Knecht’s Rebuttal Testimony, and those issues raised in this Main Brief, are limited to the issues of gas supply and gas cost rate (“GCR”) costs.

## **II. Procedural History**

On February 1, 2023, Philadelphia Gas Works (“PGW” or the “Company”) submitted the pre-filing for its annual Purchased Gas Cost (“PGC”) Rate filing. On March 1, 2023 PGW made its definitive filing including Supplement No. 160 to PGW’s Gas Service Tariff- Pa. P.U.C. No 2 (“Supplement No. 160”), Supplement No. 106 to Gas Supplier Tariff Pa. P.U.C. No. 1 (“Supplement No. 106”), and supporting information regarding the computation of annual purchased gas costs for the twelve months ending August 31, 2024.

On February 14, 2023, the Office of Small Business Advocate (“OSBA”) filed a Complaint against PGW’s filing.

The Commission’s Bureau of Investigation and Enforcement (“I&E”) filed a Petition to Intervene on February 14, 2023.

On February 15, 2023, the Philadelphia Industrial and Commercial Gas Users Group (“PICGUG”), filed a Petition to Intervene.

The Office of Consumer Advocate (“OCA”) filed a complaint on February 21, 2023.

On March 9, 2023, a prehearing conference was held before Administrative Law Judge (“ALJ”) Arlene Ashton.

On March 16, 2023, ALJ Ashton issued her Scheduling Order.

On April 13, 2023, the OSBA submitted the rebuttal testimony of Robert D. Knecht.

No party filed testimony opposing PGW’s March 1<sup>st</sup> filing.

Evidentiary hearings were held April 25, 2023. All parties waived cross examination of witnesses, with the exception of PGW Witness Reeves, and Vicinity Witness Crist. The verified testimony and exhibits of all other witnesses were entered into the record via stipulation.

The OSBA submits this main brief pursuant to the procedural schedule set forth in ALJ Ashton’s April 26, 2023, Briefing Order.

### **III. Burden of Proof and Applicable Legal Standards**

Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that “[a] litigant’s burden of proof before administrative

tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

The term “preponderance of the evidence” means that one party has presented evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party. *Se-ling Hosiery v. Margulies*, 364 Pa. 45. 70 A.2d 857 (1950). In this instance, PGW has the burden of proof with the respect to the its March 1, 2023 filing, and Vicinity has the burden of proof with respect to its proposal regarding recallable release of capacity assets held by PGW.

Further, Section 1318 of the Public Utility Code mandates that purchased gas costs cannot be determined to be just and reasonable unless such rates result from a least cost fuel procurement policy. 66 Pa. C.S. §1318(a).

**IV. Statement of the Issues**

A. Is Proposed GCR Rate Just and Reasonable?

Suggested Answer: Yes

B. Should Any Adjustment Be Made to PGW’s Capacity Portfolio Due To Issues Raised by Vicinity?

Suggested Answer: Yes

**V. Summary of Argument**

A. The OSBA did not file testimony in opposition to PGW’s March 1, 2023 GCR filing.

B. On October 21, 2021, Vicinity filed a complaint against PGW pursuant to 66 Pa. C.S. §701, and 52 Pa. Code §5.21 *et seq.*<sup>1</sup> (hereinafter “Complaint Case”). The OSBA intervened in the Complaint Case and filed the Rebuttal and Surrebuttal testimony of Mr. Knecht.<sup>2</sup> Among other issues, the Complaint Case involved the upstream gas supply arrangements between PGW and Vicinity.

On April 20, 2023, the Commission entered an Opinion and Order in the Complaint Case which sustained the Vicinity Complaint, in part, and, among other things, referred the issues relative to the provision of gas transportation service by PGW to Vicinity to the base rate proceeding at Pa. PUC v. PGW, Docket No. R-2023-3037933. The Opinion and Order was generally silent on issues relating to contractual gas supply arrangements between PGW and Vicinity, although those matters were raised in the Complaint proceeding.

The issues raised in witness Knecht’s rebuttal testimony and this Main Brief only relate to gas supply and gas cost rate (“GCR”) costs.

## **VI. Argument**

### **A. Proposed GCR Rate**

The OSBA has no objection to PGW’s March 1, 2023 GCR filing.

### **B. Vicinity Issues**

#### **1. Vicinity’s Need For Capacity**

Until very recently, Vicinity and its predecessors have taken transportation service under a 25-year year contract with PGW and predecessor organizations through

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<sup>1</sup> See Complaint of Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia Inc. vs. Philadelphia Gas Works, Docket No. C-2021-3029259 (“Complaint Case”).

<sup>2</sup> See OSBA Statement No. 1-R, Docket No. R-2023-3038069, Exhibits RDK-2 and RDK-3 respectively for copies of Mr. Knecht’s Rebuttal and Surrebuttal testimonies in the Complaint Case.

Rate GTS-F. That contract expired on December 31, 2022.<sup>3</sup> PGW filed a Temporary Tariff Extension to preserve the status quo relative to PGW’s provision of service to Vicinity as the Complaint Case was not going to be resolved prior to the expiration of the contract. The Temporary Tariff, initially approved by the Commission in an Opinion and Order entered December 27, 2022, at Docket No. R-2022-3036472, was ultimately cancelled by the Commission Order entered April 20, 2023. Further, in the April 20, 2023 Order, the Commission deemed that the approved PGW Tariff Rate GTS-F, published at PGW Gas Service Tariff- Pa. P.U.C. No. 2 at 118, effective September 1, 2003, remains in effect.<sup>4</sup>

The contract, in addition to covering the transportation service, includes provisions regarding Vicinity’s use of upstream transmission capacity held by PGW on the Tetco Philadelphia Lateral and the winter season displacement arrangement denoted Alternate Receipt Service (“ARS”). As Mr. Knecht noted, Vicinity asserts that it requires deliverability capacity of 56,000 Dth per day in the winter, and 36,000 Dth per day in the non-winter period.<sup>5</sup>

In the Complaint case, Mr. Crist and Vicinity took the position that the ARS cost the Company little or nothing, and that the contractual arrangement should simply remain in place.<sup>6</sup>

In Rebuttal, OSBA witness Robert D. Knecht noted the modification of Vicinity’s proposal from the Complaint Case, as follows:

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<sup>3</sup> OSBA Statement No. 1-R, Docket No. R-2023-3038069.

<sup>4</sup> Opinion and Order, Docket No. C-2021-3029259, Order at 16.

<sup>5</sup> OSBA Statement No. 1-R at 3, *citing* Exhibit RDK-2, at 4.

<sup>6</sup> OSBA Statement No. 1-R at 4.

Mr. Crist modifies his proposal to recommend that PGW release 21,000 Dth per day of its capacity on the Philadelphia Lateral to Grays Ferry on a year-round basis for an unspecified period of time. Mr. Crist proposes that PGW charge Grays Ferry for that capacity at the “full tariff cost” of \$0.80 per Dth or \$6.1 million per year.<sup>7</sup>

Further, as Mr. Crist failed to indicate whether he is proposing that the capacity be released on a recallable or non-recallable basis, but he suggested that Vicinity pay the full tariff rate for the capacity, it was assumed that he proposed a non-recallable release.<sup>8</sup>

In surrebuttal, Mr. Crist modified his direct testimony to propose that the capacity should be released on a recallable basis.<sup>9</sup>

## **2. Availability of Capacity For Mandated Release**

As Mr. Knecht testified, it is unclear whether the excess capacity situation will continue and Vicinity’s witness Mr. Crist offers no analysis to that effect. Similarly, Mr. Crist fails to specify the period for which he proposes the release of capacity.

Absent a more careful evaluation of PGW’s design day requirements over the period for which capacity would be released, it would be imprudent for the Commission to require PGW to make such a release.<sup>10</sup>

## **3. Effect On Other Customers**

Winter deliveries to Vicinity on the Philadelphia Lateral, are addressed in the contract displacement or “swap” arrangement, called Alternative Receipt Service (“ARS”)

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<sup>7</sup> OSBA Statement No 1-R at 5.

<sup>8</sup> OSBA Statement No. 1-R at 5, *Fn.* 6.

<sup>9</sup> Vicinity Statement No. 1-S at 7 and 8.

<sup>10</sup> OSBA Statement No. 1-R at 6.

under which Vicinity is permitted to physically deliver gas to an alternate receipt point on PGW's distribution system.<sup>11</sup> The ARS arrangement has technically been a non-firm arrangement, meaning PGW can interrupt supplies flowing to Vicinity in order to redirect the supplies into its distribution system. However, as Mr. Knecht noted, both Vicinity and PGW have historically treated ARS as a firm service requirement.

The gas supply contractual agreements, including the ARS, are not covered by PGW's Commission-approved tariff for Rate GTS. PGW Gas Service Tariff – Pa PU.C No. 2, pages 118-123. As such, the OSBA respectfully submits that these arrangements expired with the contract and have not been renewed.

Further, as Mr. Knecht testified, Vicinity only pays a nominal fee to PGW for what is effectively firm service pursuant to the ARS arrangement. As such, PGW's ratepayers have been providing large subsidies to Vicinity with respect to gas supply costs for many years...and the gas supply subsidies to Vicinity have been borne by PGW's GCR ratepayers.<sup>12</sup>

Mr. Knecht noted the modification of Vicinity's proposal from the Complaint Case, as follows:

Mr. Crist proposes that PGW charge Grays Ferry for that capacity at the "full tariff cost" of \$0.80 per Dth or \$6.1 million per year. As I understand Mr. Crist's arithmetic, when current revenues from the ARS (\$54,000) and current revenues from summer releases (estimated at either \$1.27 million or \$1.4 million by Mr. Crist) are deducted from the \$6.1 million, the annual net benefit to PGW ratepayers would be about \$5 million.<sup>13</sup>

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<sup>11</sup> OSBA Statement No 1-R at 3.

<sup>12</sup> *Id.* at 4

<sup>13</sup> OSBA Statement No 1-R at 5, *citing* Vicinity Statement No. 1 at 12.

In support of this proposal, Mr. Crist generally asserts:

- PGW has more than sufficient design day capacity to meet its requirements without the 21,000 Dth per day used for Grays Ferry (Vicinity Statement No. 1 page 7)
- Releasing the capacity to Vicinity would be better for ratepayers because the revenues would not be shared 75/25 between GCR ratepayers and “PGW” (Vicinity Statement No 1, pages 9-11)
- Releasing the capacity to Grays Ferry should take precedence over releasing the capacity to other non-GCR customers because Grays Ferry has 81 employees, and it provides steam service to over 250 residential and commercial buildings in Philadelphia (Vicinity Statement No. 1 page 9).

OSBA Statement No 1-R at 5.

Section 1318(a) of the Public Utility Code mandates that purchased gas costs cannot be determined to be just and reasonable unless such rates result from a least cost fuel procurement policy, consistent with the utility’s obligation to provide safe, adequate and reliable service to its customers.<sup>14</sup> Any release of capacity on the Philadelphia Lateral that is released at a below-market rate, should be rejected as inconsistent with the Public Utility Code.

#### 4. PGW Counterproposal

In rebuttal and rejoinder testimony, PGW takes the position that it does not have excess capacity, that the ARS is not equivalent to capacity release because it is displacement service, and that PGW could release the Philadelphia

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<sup>14</sup> 66 Pa. C.S. §1318(a)

Lateral capacity to third parties for greater value than the compensation for the capacity release proposed by Mr. Crist.<sup>15</sup> The OSBA finds this part of PGW's response to be generally reasonable, although the claim that it could release the Philadelphia Lateral for greater value is debatable.<sup>16</sup>

Beyond that, however, PGW's position is unknown. PGW appears to take the position that the ARS arrangement has worked well and should be continued in some form.<sup>17</sup> Unfortunately, PGW has not made any specific proposal regarding changes to the terms, conditions or compensation associated with continuing the ARS service in some modified form in this proceeding. Mr. Crist is similarly unaware of any such specific proposal.<sup>18</sup> In rebuttal, PGW appeared to believe that this issue would be resolved by the Commission in the Complaint proceeding.<sup>19</sup> However, it was not. Moreover, PGW made no alternative proposal in its rejoinder testimony.<sup>20</sup> In effect, PGW has not made a counterproposal in this proceeding, other than to vaguely assert that the former ARS arrangement has worked well. The OSBA considers PGW's lack of a specific position on this matter in this proceeding to be puzzling if not irresponsible.

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<sup>15</sup> PGW Statement No. 2R at 2; PGW Statement No. 2RJ at 3-6.

<sup>16</sup> Vicinity Statement No. 1-SR at 4-5.

<sup>17</sup> PGW Statement No. 2R at 16; PGW counsel assertions at Hearing Transcript 99.

<sup>18</sup> Transcript at 100.

<sup>19</sup> PGW Statement No. 2R at 16.

<sup>20</sup> PGW Statement No. 2RJ.

As Mr. Knecht indicated, the current ARS arrangement has provided substantial subsidies to Vicinity for many years, all paid by GCR customers. OSBA Statement No. 1-R at 4. Continuing the service as is would obviously be far worse for GCR ratepayers than Mr. Crist's proposal, because GCR customers would continue to receive essentially nothing for Vicinity's use of valuable Philadelphia Lateral capacity in the winter.

The OSBA respectfully submits that PGW has an obligation to maximize the value of its capacity on the Philadelphia Lateral to the benefit of the GCR customers who pay for that capacity. To the extent that capacity is not needed to meet the design day demands of GCR ratepayers, or the capacity can effectively be released on a recallable basis, PGW should obtain market value for that capacity. OSBA is agnostic as to whether PGW achieves that market value by entering into a modified arrangement with Vicinity that is priced at market (including a modified ARS arrangement) or by releasing the capacity to third parties. From a ratepayer perspective, the large subsidies to Vicinity must end, and the value of the capacity should be maximized.

## **VII. Conclusion**

Wherefore, the OSBA requests that the ALJ and the Commission:

- Reject Vicinity's proposal, as inconsistent with Section 1318 of the Public Utility Code which mandates that purchased gas costs cannot be determined to be just and reasonable unless such rates result from a least cost fuel procurement obligation;

- Determine that the gas supply arrangements between Vicinity and PGW, including but not limited to the ARS, are no longer in effect;
- Determine that PGW has an obligation to maximize the value of its upstream capacity on the Philadelphia Lateral to the benefit of ratepayers; and,
- Require PGW to maximize the value of its capacity on the Philadelphia Lateral by (a) evaluating whether excess capacity exists on the Philadelphia Lateral in excess of that needed to supply PGW's GCR customers on an annual basis, and (b) maximizing the value of that capacity to the GCR customers who pay for it through a competitive bidding process in which Vicinity can participate.

Respectfully submitted,

*/s/ Sharon E. Webb*

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Dated: May 4, 2023

## **Appendix A**

### **Findings of Fact**

- 1) On February 1, 2023, Philadelphia Gas Works (“PGW” or the “Company”) submitted the pre-filing for its annual Purchased Gas Cost (“PGC”) Rate filing.
- 2) On March 1, 2023, PGW made its definitive filing including Supplement No. 160 to PGW’s Gas Service Tariff- Pa. P.U.C. No 2 (“Supplement No. 160”), Supplement No. 106 to Gas Supplier Tariff Pa. P.U.C. No. 1 (“Supplement No. 106”), and supporting information regarding the computation of annual purchased gas costs for the twelve months ending August 31, 2024.
- 3) On February 14, 2023, the Office of Small Business Advocate (“OSBA”) filed a formal Complaint.
- 4) After further review of the filing, including discovery responses, the OSBA determined that it had no objection to PGW’s March 1, 2023 GCR filing and did not submit direct testimony.
- 5) OSBA Witness Knecht filed rebuttal testimony in response to the issues raised in Vicinity’s direct testimony relating to gas supply and gas cost rate (“GCR”) costs. OSBA Statement No. 1-R.

## Appendix B

### Conclusions of Law

- 1) Section 1318 of the Public Utility Code mandates that purchased gas costs cannot be determined to be just and reasonable unless such rates result from a least cost fuel procurement policy. 66 Pa. C.S. §1318(a).
- 2) Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).
- 3) The burden of proof to establish the justness and reasonableness of every element of the utility’s rate increase rests solely upon the public utility. 66 Pa. C.S. § 315(a). “It is well-established that the evidence adduced by a utility to meet this burden must be substantial.” *Lower Frederick Township. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980).
- 4) Although the burden of proof remains with the public utility throughout the rate proceeding, when a party proposes an adjustment to a ratemaking claim of a utility, the proposing party bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment. *Pa. PUC v. Aqua Pennsylvania, Inc.*, Docket No. R-00072711 (Order entered July 17, 2008). “Section 315(a) of the Code, 66 Pa. C.S. § 315(a), applies since this is a proceeding on Commission Motion. However, after the utility establishes a prima facie case, the burden of going forward or the burden of persuasion shifts to the other parties to rebut the prima facie case.” *Pa. PUC v. Philadelphia Gas Works*, Docket No. R-00061931 (Order entered September 28, 2007), at 12.

## Appendix C

### Proposed Ordering Paragraphs

- 1) Vicinity's proposal, is inconsistent with Section 1318 of the Public Utility Code which mandates that purchased gas costs cannot be determined to be just and reasonable unless such rates result from a least cost fuel procurement obligation and is therefore rejected.
- 2) The gas supply arrangements between Vicinity and PGW, including but not limited to ARS, are no longer in effect.
- 3) PGW has an obligation to maximize the value of its upstream capacity on the Philadelphia Lateral to the benefit of ratepayers.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Pennsylvania Public Utility Commission** :  
: **Docket No. R-2023-3038069**  
v. :  
: **Philadelphia Gas Works 1307(f)** :  
:

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing have been served via email (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

The Honorable Arlene Ashton  
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DATE: May 4, 2023

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