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May 4, 2023

VIA ELECTRONIC FILING

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

RE: Pennsylvania Public Utility Commission, et al. v. Philadelphia Gas Works 1307(f);
Docket Nos. R-2023-3038069 and C-2023-3038722; **MAIN BRIEF**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the Main Brief of Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. ("Vicinity") in the above-captioned dockets. Copies of the Brief have been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. If you have any questions related to this filing, please do not hesitate to contact me.

Very truly yours,

Todd S. Stewart
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Kevin J. McKeon
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TSS/jld

Enclosure

cc: Administrative Law Judge Arlene Ashton (via electronic mail – aashton@pa.gov)
Pamela McNeal, Legal Assistant (via electronic mail – pmcneal@pa.gov)
Per Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party)

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DATED: May 4, 2023

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Grays Ferry Cogeneration Partnership and	:	
Vicinity Energy Philadelphia, Inc.	:	
Complainants,	:	Docket Nos. R-2023-3038069
	:	C-2023-3038722
v.	:	
	:	
Philadelphia Gas Works	:	
Respondent.	:	

**MAIN BRIEF
OF GRAYS FERRY COGENERATION PARTNERSHIP
AND VICINITY ENERGY PHILADELPHIA, INC.**

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I. INTRODUCTION AND STATEMENT OF THE CASE

Grays Ferry Cogeneration Partnership (“Grays Ferry”) and Vicinity Energy Philadelphia, Inc. (“VEPI”) (collectively “Vicinity”) are the largest customers by far on the Philadelphia Gas Works (“PGW”) system. Since 2003, when the Pennsylvania Public Utility Commission (“Commission”) approved PGW’s restructuring plan, Vicinity has been served under Tariff GTS-F, even though the relationship between PGW and Vicinity began with a series of contracts executed in 1996. According to the holding in the Commission’s recent Opinion and Order at Docket No. C-2021-3029259 (“Complaint Case”), the tariff rate, terms and conditions remain in effect and will stay in effect until the Commission requires a new rate as part of the ongoing Base Rate Case at Docket No. R-2023-3037933, *et seq.*

The rates under consideration in the Base Rate Case should include Alternative Receipt Service (“ARS”), but there is no assurance that it will continue or be provided under the same terms and conditions or price that existed under the 25-year agreement with Vicinity – that is a matter that can be addressed in this 1307(f) Case because ARS is simply a gas swap service that uses some of PGW’s Philadelphia Lateral capacity.¹ Vicinity has taken the prudent step of addressing capacity availability and its highest and best use in this case, because the use of, and proceeds from capacity release are at issue in this case. Vicinity’s recommendation benefits PGW’s GCR customers.

In this 1307(f) Case, Vicinity has identified that PGW has Philadelphia Lateral capacity that is used to serve Vicinity and seeks assurance that PGW will continue to provide ARS under the same terms and conditions that currently exist or alternatively to have that capacity released to

¹ Admittedly, PGW has stated that it intends to preserve ARS. However, PGW has not yet proffered a mechanism to ensure it continues to do so, nor has it proposed any pricing mechanism to ensure PGW does not continue its recent efforts to dramatically increase the rates charged to Vicinity.

Vicinity. Because of the Commission's order in the Complaint Case, and PGW's position as presented in pre-filed testimony and during the hearing, Vicinity has adopted a modified and prophylactic approach to this matter and accepts that the continuation of ARS which has been proposed by PGW will address Vicinity's concerns and provide positive benefits to PGW's GCR customers.

In support of this position, Vicinity contends that if PGW were to cease providing ARS, PGW would have excess capacity. Second, Vicinity contends that any long-term contract for capacity release of PGW's long haul capacity to Vicinity at a rate above PGW's current average return on Philadelphia Lateral releases, which is \$0.35 Dth/Day (not considering payments to the Asset Manager who gets 40%),² would provide a benefit to PGW's ratepayers in two ways: it would provide greater return which would lower the GCR price and reduce risk by engaging in a multi-year contract. Finally, Vicinity posits that PGW's concerns about future system reliability as a result of any such long-term release are addressed fully by Vicinity's concession that any such release be recallable.

PGW has voiced opposition to such a capacity release arrangement but has not rebutted the basic premise of Vicinity's argument, that in the absence of reasonably provided ARS, that a release of the capacity to Vicinity will benefit all customers. Rather, PGW has attacked Vicinity's motives for simply taking steps to ensure that it can continue in its vital role as a provider of public utility steam service and much needed, environmentally friendly, electricity generation through highly efficient cogeneration. In support of this misdirection, PGW has presented evidence intended to mislead the Commission into believing that the potential to earn capacity release

² Tr. 63:22-25.

revenue from the Philadelphia Lateral is far greater than the facts support.³ This misdirection was exposed in the cross examination of Mr. Reeves:

Q. Capacity releases on the Philadelphia lateral are substantially less, lower in cost than capacity releases that you've been talking about, particularly the \$3.25 release you talked about earlier. Is that correct?

A. The \$3.25 was the highest bid we've seen released since my tenure of being director. This release did not include Philadelphia lateral.

PGW also has suggested that its distribution system reliability will be compromised if it were to release capacity to Vicinity it now uses to provide ARS, even though Vicinity has agreed that it could accept recallability as a condition if it were able to purchase the capacity. PGW's own witness conceded that if the capacity were recallable, his reliability concerns would be fully addressed, yet PGW paradoxically continues to resist.⁴

The record developed in this case shows that PGW currently earns, on average, far less than the pipeline maximum rate for releases of capacity that end on the Philadelphia Lateral.⁵ The record also shows that such releases of capacity enable deliveries to points on the Philadelphia Lateral. The record also shows that such releases of Philadelphia Lateral capacity are not subject to the same level of demand as releases on the main line. Vicinity submitted evidence proving that a release under a long-term contract with Vicinity would provide a benefit to PGW, its customers and Vicinity. In this case, an important issue to be determined is whether PGW would have too much capacity on the Philadelphia Lateral if it were to stop providing ARS to Vicinity.

II. HISTORY OF THE PROCEEDING

On February 1, 2023, PGW filed its pre-filing information required for its 2023-2024 Gas Cost Rate (GCR) Filing. PGW indicated that it would submit its annual GCR filing on or before

³ Tr. 71:7-22, 78:21-23.

⁴ Exhibit RER-1R, page 1.

⁵ Exhibit JC-9.

March 1, 2023. On February 13, 2023, Gina L. Miller, Esq. entered a Notice of Appearance on behalf of the Commission's Bureau of Investigation and Enforcement (I&E), and on February 14, 2023, the Philadelphia Industrial and Commercial Users Group (PICGUG) filed a Petition to Intervene, and the Office of Small Business Advocate (OSBA) filed a Complaint, Public Statement, and Verification with the Commission. The OSBA Complaint was docketed at C-2023-3038286. At the same time, Sharon E. Webb, Esq. entered a Notice of Appearance on behalf of OSBA.

On February 21, 2023, the Office of Consumer Advocate (OCA) filed a Formal Complaint, Public Statement and Verification with the Commission and Christopher M. Andreoli, Esq. and Aron J. Beatty, Esq. entered a Notice of Appearance on behalf of OCA. The Complaint was docketed at C-2023-3038375. On the same day Deanne M. O'Dell, Esq. entered a Notice of Appearance on behalf of PGW.

On March 1, 2023, PGW filed its 2023-2024 GCR Filing with the Commission. The filing included the testimony of Florian Teme, and the testimony of Ryan E. Reeves. PGW's GCR Filing was assigned to the Office of Administrative Law Judge for resolution by hearings and for issuance of a Recommended Decision, and the matter was assigned to Presiding Administrative Law Judge Arlene Ashton.

On March 6, 2023, Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia Inc. (Vicinity) filed a Joint Complaint against PGW with the Commission. The Complaint was docketed at C-2023-3038722.

A prehearing conference in this matter was held on March 9, 2023. Counsel for PGW, I&E, OCA, OSBA, Vicinity and PICGUG participated. PICGUG's Petition to Intervene was

granted. Presiding ALJ Ashton issued an Order, on March 16, 2023, to memorialize the results of the prehearing conference and issued a Protective Order on March 29, 2023.

On April 3, 2023, Vicinity served the Direct Testimony of James L. Crist. On April 10, 2023, Norman J. Kennard, Esq. entered a Notice of Appearance on behalf of PGW. On April 13, 2023, OSBA served the Rebuttal Testimony and Exhibits of Robert D. Knecht. Also on April 13, 2023, PGW served the Rebuttal Testimony of Ryan Reeves.

On April 17, 2023, a Hearing Notice was issued advising the parties that a telephonic evidentiary hearing would be held in this proceeding on April 25, 2023. On April 20, 2023, Vicinity served the Surrebuttal Testimony and Exhibits of James L. Crist. On April 24, 2023, PGW served the Rejoinder Testimony of Ryan Reeves.

On April 25, 2023, an evidentiary hearing was held as scheduled. At the hearing, PGW and OSBA each moved to have the testimony and exhibits of their respective witnesses who were not subject to cross examination entered into the record. Ryan E. Reeves provided Rejoinder Testimony for PGW and was cross examined by counsel for Vicinity. Vicinity's witness, James L. Crist, was cross examined by PGW counsel. PGW and Vicinity each moved to have the testimony and exhibits of their respective witnesses entered into the record.

On April 26, 2023, the Presiding ALJ issued a briefing order, and this brief is supplied in compliance therewith.

III. LEGAL STANDARDS AND BURDEN OF PROOF

The Public Utility Code ("Code") permits certain Natural Gas Distribution Companies ("NGDC"), including PGW, to file tariffs "reflecting actual and projected increases in their natural gas costs." These costs are then subject to a review process where the rates produced by these

costs, and the costs, including the prudence of the costs, are annually considered.⁶ Part of that prudence review under Section 1318 requires the Commission to affirmatively state that the contracts for natural gas, including the transportation of the gas, are just and reasonable. This includes a review of both short- and long-term interstate transportation contracts.⁷ What that means is that in this case, the contracts held by PGW for natural gas transportation are expressly under review for the prudence of those contracts and must be found to be consistent with least cost procurement policy. Accordingly, all of PGW's interstate gas transportation contracts must be reviewed and must be determined to provide the necessary services in a prudent manner that will produce the least cost over time.

In proceedings before the Commission concerning any proposed rate or tariff, the Public Utility proposing such rate or tariff bears the burden of proving the justness and reasonableness of the rates.⁸ Section 1307(f)(5) of the Code,⁹ requires that the Commission determine that PGW's historic period actual gas costs meet the least cost fuel procurement standards set forth in Section 1318 of the Code, 66 Pa.C.S. § 1318. In addition, Section 1318 findings must be made with respect to the new Purchased Gas Cost (PGC) rates to be established in this proceeding. *Id.* In determining whether PGW is pursuing a least cost fuel procurement policy as required by Section 1318, the Commission must make the following specific findings: (1) that the utility has fully and vigorously represented its ratepayers' interests before the Federal Energy Regulatory Commission; (2) that the utility has taken all prudent steps necessary to negotiate favorable gas supply contracts and to relieve the utility from terms in existing contracts with its gas suppliers which are or may be adverse to ratepayer interests; (3) that the utility has taken all prudent steps necessary to obtain

⁶ 66 Pa. C.S. § 1318.

⁷ 66 Pa. C.S. § 1318(a)(3).

⁸ 66 Pa. C.S. § 315(a).

⁹ 66 Pa. C.S. § 1307(f)(5).

lower cost gas supplies on both short-term and long-term bases both within and outside the Commonwealth, *including the use of gas transportation arrangements with pipelines and other distribution companies*; and (4) that the utility has not withheld from the market or caused to be withheld from the market any gas supplies which should have been utilized as part of a least cost fuel procurement policy. 66 Pa.C.S. § 1318(a) (emphasis added). In short, PGW must establish that its use of interstate transportation capacity has been prudent and that it has taken the steps necessary to obtain lower cost gas supplies. Vicinity contends that what it has proposed is both prudent and will provide lower cost for customers.

IV. STATEMENT OF THE ISSUES

A. Is the Proposed GCR Rate Just and Reasonable?

Suggested Answer: NONE.

B. Should PGW's Capacity Portfolio be Adjusted as Suggested by Vicinity?

Suggested Answer: Yes.

V. SUMMARY OF THE ARGUMENT

Of the capacity PGW holds, it has dedicated 21,000 Dth/day of capacity that includes the Philadelphia Lateral for Vicinity's seasonal use for the past twenty-five years under rate GTS-F. In the summer months, PGW has provided a straight up capacity release to Vicinity for which Vicinity pays a rate determined by PGW based upon the 1996 contract. In the winter months (November through March) PGW provides the capacity through a service called ARS which requires Vicinity to deliver the specified quantity of gas to the Skippack Lateral, which is connected to TETCO but not on the Philadelphia Lateral, while PGW delivers the same quantity to Vicinity using the Philadelphia Lateral and the single-use four-mile pipeline that connects Vicinity's facilities directly to the Philadelphia Lateral. This volume swap has allowed PGW to use the 21,000 Dth/Day of capacity on the Philadelphia Lateral exclusively to provide ARS to Vicinity in the winter months. This arrangement has never reduced PGW's total supply of gas with which to serve its other customers. Vicinity seeks assurance that PGW is either mandated to continue providing ARS as it has indicated it will do or is compelled to release to Vicinity 21,000 Dth/day of PGW's full, long-haul capacity rights (including those on the Philadelphia Lateral). PGW has indicated that it will continue to provide ARS to Vicinity and made a point of confirming that during the hearing in the cross examination of Mr. Crist (Tr at 94-95):

Q. Would you accept, subject to check, that PGW has agreed on the record of that case and in briefs, and reply briefs, exceptions to continue to offer ARS-like service to Grays Ferry?

A. Yes, that's correct. Again, because of the Order last Thursday, I have no idea what that impact is. But I would agree, subject to check.

Q. You're not aware of anything where PGW has changed its mind on that matter. Correct?

A. Correct.

Therefore, to achieve a mutually acceptable decision in this case Vicinity would agree to continue to receive ARS, if the terms and conditions, including the price, are reasonable. As acknowledged by PGW in the Complaint case, the cost to PGW of providing ARS was “minimal”¹⁰ At most, the price for ARS should be consistent with the price the parties have accepted for the last 25 years (\$54,000/year). With regard to the rate in particular, such a rate should not overstate the actual value of the capacity used to provide it. Without ARS, however, Vicinity would need to acquire 21,000 Dth/day of capacity and PGW would have that exact amount in excess of its needs.

VI. ARGUMENT

A. Proposed GCR Rate

Vicinity does not offer any opinion on the appropriateness of the GCR rate except as possibly impacted by PGW’s interstate pipeline capacity choices as discussed below.

B. Grays Ferry/Vicinity Issues

1. Grays Ferry/Vicinity’s Need for Capacity

Until January 1, 2023, Vicinity had sufficient capacity for its needs through a combination of its own 35,000 Dth/day of capacity and receiving additional seasonal capacity through ARS. Its contract with PGW, as expressed in the requirements of Rate GTS-F, provided for up to 21,000 Dth/day of capacity through ARS service that swapped (a) capacity that Vicinity acquired on TETCO and delivered to PGW via TETCO’s Skippack Lateral for PGW’s use with (b) the same amount of PGW’s capacity on the Philadelphia Lateral that would then be used to deliver gas to Vicinity at the intersection of the 4-mile single use pipeline and the Philadelphia Lateral. In 2017, Vicinity initiated negotiations with PGW recognizing that the end of the 1996 agreement would occur on December 31, 2022. Failing to reach any agreement, Vicinity filed the Complaint case.

¹⁰ *Vicinity v. PGW*, Docket No. C-2021-3029259, Tr. 163.

It became clear in the Complaint case, however, that PGW was intent on using ARS service as a hammer to pound the square peg of PGW's ill-founded theory of ARS cost causation into the round hole of the fact that ARS does not use PGW's system or cause any costs for PGW's low pressure distribution system and the 20 + years of PGW's own testimony that says the same. The Commission agreed that PGW's approach was suspect and sent that matter to PGW's ongoing base rate case for determination.

In the Complaint case, an allegation was raised by PGW that the charge for ARS was less than the cost of the capacity used to provide it, and that Vicinity was being subsidized in its acceptance of ARS.¹¹ In this case, coincidentally, Vicinity proved that the capacity used to provide ARS is worth far less than PGW asserted in the Complaint case, somewhere between the \$0.35/Dth day average price over the past 5 years and as PGW witness Mr. Reeves testified, "The Paulsboro transaction was for 15,708 Dth/Day at a rate of \$0.10/Dth under which PGW realized \$237,190.80" (Statement 2RJ 4:17-18).¹² The premise is simple -- rather than be wrongly accused of accepting a subsidy, and rather than subject itself to the whims of PGW and its ratemaking aspirations --the best way for Vicinity to provide cost certainty is for it to own its own capacity and forgo entangling itself with PGW's ratemaking efforts, at least for the parts it can control. Lest we not forget that Vicinity subsidiary, Vicinity Energy Philadelphia, Inc. ("VEPI") is a public utility whose main price input is fuel, and that Grays Ferry is a substantial capacity resources for PJM, that burns natural gas.¹³

Contrary to PGW's assertion that Vicinity does not "need" the 21,000 Dth/Day of capacity that PGW uses to provide ARS, Vicinity does need the 21,000 Dth/Day. Even PGW does not refute

¹¹ Oddly, while it was PGW that raised the subsidy issue, in this case it pretended that it had every intention to continue to provide ARS, with a major caveat -- the issue of price.

¹² Exhibit JC-8; Tr. 73:14-17.

¹³ Vicinity St. 1, 3:18-4:9).

that Vicinity is short capacity, so need is not the issue.¹⁴ Rather, the issue is whether it is prudent for PGW to hold this capacity and continue to provide ARS at PGW's future whim. The notion of Vicinity's need is a red herring – Vicinity needs a total of up to 56,000 Dth/day of capacity in the winter, and it owns only 35,000, because it had no incentive to purchase capacity as long as PGW was mandated to provide ARS. PGW will argue that any future failure of PGW to provide ARS is hypothetical. But without some assurance, either in the form of an ARS mandate or PGW releasing 21,000 dth/day of its full, long haul, capacity rights to Vicinity, Vicinity's capacity needs are not secure. Moreover, a mandate that PGW release its full capacity rights to Vicinity would provide additional revenue to PGW and cost savings to PGW's GCR customers along with rate stability. Mr. Crist provided the explanation during cross-examination (Tr at 101-102):

Q. And the request by Grays Ferry in this case for 21,000 dekatherms of capacity is being requested in anticipation of a higher price or less favorable terms determined by the Commission in that base rate case?

A. Mr. Kennard, I cannot predict the future. But I'm in a GCR case right now where it's identified that PGW certainly has 21,000 dekatherms of capacity that they could release...to Grays Ferry. And that the customers of Philadelphia Gas Works would enjoy a greater financial benefit than what Mr. Reeves has been able to achieve with his Philadelphia lateral capacity releases since 2018.

It should be obvious that PGW can release the needed capacity to the benefit of all its customers, including Vicinity.

2. Availability of Capacity for Mandated Release

PGW's own analysis shows that if PGW releases the 21,000 Dth/Day to Vicinity on a recallable basis, it has sufficient capacity to meet its design day supply requirements.¹⁵ PGW will make accusations that Vicinity is being deceptive or self-serving and that PGW needs that capacity

¹⁴ Tr. 93:16-22.

¹⁵ Exhibit RER-1, p. 1.

to maintain system integrity. The facts, however, are clear and contrary – PGW has provided ARS over the past 25 winters and has not once refused to provide capacity to Vicinity even though it has the ability to do so if the temperature is forecast to be below 25° F. It would be prudent to expect that if PGW were to release the capacity and Vicinity was able to acquire it on a similarly recallable basis and PGW ever experienced the need, that it could recall the capacity on the basis of its operational necessity.¹⁶ PGW’s speculation regarding Vicinity’s motives aside, Mr. Crist’s analysis demonstrates that PGW has sufficient capacity and will continue to have sufficient capacity to meet its customers' needs.¹⁷ PGW presented no evidence that its demand or sendout is increasing or likely to do so. Rather, Mr. Reeves surrebuttal exhibit, Exhibit RER-1 plainly states that if the capacity release were recallable all of PGW's reliability concerns would be met.

3. Effect On Other Customers

PGW releases capacity to Vicinity throughout the year without incident. A permanent release of PGW’s full, long haul, capacity rights to Vicinity would similarly be without incident. Indeed, as part of such a release, Vicinity would agree to make such a release recallable under the same conditions as Vicinity’s prior contract with PGW. As discussed above, PGW’s GCR customers pay for the capacity now and so any incremental revenue earned by PGW releasing the capacity to Vicinity would accrue to the customers' benefit. The average price for release capacity on the Philadelphia Lateral since 2018 has been \$0.35 Dth/day and the maximum tariff rate is \$0.61 Dth/day, so the expected revenue benefit to PGW's GCR customers would be substantial.¹⁸ To be clear, Vicinity is requesting PGW release its full rights to the capacity, not just that portion on the Philadelphia Lateral. Notwithstanding the broader release, Vicinity would continue to allow

¹⁶ Tr. 65:20-24.

¹⁷ Vicinity St. 1-SR, 3:49-62.

¹⁸ Tr. 102:3-11.

PGW to recall capacity under the terms of the prior contract between the parties; that is, when temperatures fall to less than 25° for up to 15 days annually. PGW's suggestion that Vicinity could not endure the potential for interruption that has been possible for 25 years defies the fact that PGW never interrupted Vicinity and it is not clear what different criteria would exist for PGW recalling capacity would be a lower hurdle than the temperature being less than 25° F.¹⁹ Again, the parties have co-existed under this arrangement for 25 years and PGW has presented no reason why its needs have suddenly changed. There is no new large customer, no increase in system demand, sudden or otherwise. In other words, PGW's speculation regarding alternative use of the capacity aside, there is no better alternative use for the 21,000 Dth/Day that PGW now uses to provide ARS.

Critically for this matter, the Commission must determine if PGW's pipeline capacity strategy is consistent with least cost procurement.²⁰ If the Commission finds, as Vicinity proposes, that PGW's refusal to release the capacity is not prudent, the Commission can take action to rectify the situation. In *Equitable Gas Co. v. Pennsylvania Public Utility Commission*, 526 A.2d 823 (Pa. Cmwlth. 1987), appeal denied, 533 A.2d 714, the Commonwealth Court determined that the Commission has the discretion to require a utility to modify its purchasing practices if it finds that they do not comport with least cost purchasing. That is the situation present here and the Commission can and should require PGW to release its full capacity rights, up to 21,000 dth/day, to Vicinity.

VII. CONCLUSION

The facts of this case are not complex. PGW holds capacity on the Philadelphia Lateral that is the only path for delivering gas to Vicinity. PGW currently uses this capacity to serve

¹⁹ PGW St. 2RJ, 1:18-3:7.

²⁰ 66 Pa. C.S. §§ 1318, 1307(f).

Vicinity exclusively during the winter. What that means is that in 25 years, PGW has not used this block of capacity for anything other than serving Vicinity. Vicinity would like to end its dependence on PGW capacity for a number of reasons, including future uncertainty around price, availability and other terms and conditions it does not face now. Vicinity also is sensitive to PGW's likely attempt in the related Base Rate Case to argue that because Vicinity takes ARS, it somehow "uses" PGW's low pressure distribution service and should be allocated substantial costs that would result in Vicinity subsidizing PGW's other customers. This argument is "nonsense" but PGW is certain to raise it again.²¹ If Vicinity held the capacity on its own, it would not continue to face this argument in future rate proceedings.

Releasing the capacity to Vicinity is not a one-sided transaction, however, PGW customers would realize a return on the GCR dollars that go toward paying for this capacity. The tariff maximum rates for transactions over one year in duration is \$0.61 Dth/day, but the average price for PGW's releases of Philadelphia Lateral capacity since 2018 is \$0.35. Even at \$0.35/Dth/day, customers would benefit.²² Vicinity needs 21,000 Dth/day of capacity to meet its peak needs. PGW holds that exact amount that it has only used for Vicinity in last 25 plus years. There is no demonstrated need for the capacity on the PGW system, except for hypothetical worst-case scenarios that can be addressed by Vicinity's agreement that the capacity be recallable. PGC customers will not be harmed, but rather benefitted as will PGW.

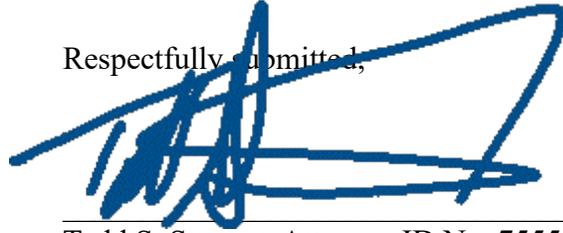
Vicinity seeks here an order concluding that PGW will continue to provide ARS using its Philadelphia Lateral capacity and that in the absence of ARS service, PGW holds excess capacity

²¹ *Grays Ferry Cogeneration Partnership, et al v. Philadelphia Gas Works*, Docket No. C-2021-3029259; Opinion and Order entered April 20, 2023, slip op at p. 21.

²² Exhibit JC-8; Vicinity St. 1-SR, 8:165-175.

and should be required to release 21,000 dth/day of its full capacity rights to Vicinity on a recallable basis.

Respectfully submitted,



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VIII. PROPOSED FINDINGS OF FACT

1. Grays Ferry operates a cogeneration facility completed in 1997 that produces electricity to that is sold into the PJM grid; and 2) steam, which is sold to its city steam system public utility affiliate, VEPI. (Vicinity Statement No. 1 "Vicinity St. 1", 3:18-23).

2. Grays Ferry's electricity production capability is 193 MW, when burning natural gas, but it is able to operate by burning low sulfur distillate oil in its auxiliary boilers to produce sufficient steam for VEPI's requirements. (Vicinity St. 1, 3:22-4:9).

3. Vicinity and PGW were parties to a 25-year contract that expired at the end of December 2022. Vicinity is served under PGW's Rate GTS-F, a rate class in which it is the only customer. (Vicinity St. 1, 4:13-19).

4. In agreeing to be served by PGW, Vicinity agreed to abandon its already approved project to construct its own pipeline to connect its plant directly to the Philadelphia Lateral. Instead, PGW refurbished an existing 2-mile naphtha pipeline and constructed another 2-mile segment to connect Grays Ferry to the Philadelphia Lateral. Vicinity paid for the costs for the project. (Vicinity St. 1, 5:13-20).

5. In the summer, all of Vicinity's natural gas supply flows on the Philadelphia Lateral using Vicinity's own 35,000 Dth/day of capacity. During the winter, PGW provides an additional 21,000 Dth/Day through the ARS swap mechanism. (Vicinity St. 1, 6:3-17).

6. Capacity is the right to transport a specific amount of natural gas on a particular interstate pipeline between two specific points and is typically measured in dekatherms per day ("Dth/Day"). (Vicinity St. 1, 6:20-7:4).

7. PGW has not curtailed Vicinity's use of ARS or any other customer for that matter in the past 10 years. PGW holds more capacity than it needs on the Philadelphia Lateral. (Vicinity St. 1, 7:16-8:9; Exhibit JC-3).

8. PGW has never reached its design day conditions. (Tr. 68:16-69:12).

9. PGW's supply plan shows that on its peak day it has sufficient capacity to supply all of its customers, without the 21,000 Dth/Day that it uses to provide ARS. (Vicinity St. 1, 8:19-9:2).

10. PGW has excess capacity overall. Its most recent peak day resulted in a sendout of only 81% of its forecast peak. (Vicinity St. 1, 9:5-9).

11. PGW regularly releases capacity to third parties. It credits 75% of the revenue to GCR customers who pay for it and 25% to address general business expenses. (Vicinity St. 1, 9:12-23).

12. If PGW were not overcapacity, i.e., if it were to release some of the excess capacity it holds, it could avoid the expense of paying for that capacity. Also, to the extent that PGW uses an asset manager for the short-term capacity transactions, which it does, it pays 40% of the revenue to the asset manager. (Vicinity St. 1, 10:3-16; Tr. 63:22-25).

13. Vicinity currently pays PGW for the summer release capacity at an annual cost of \$1.4 million, even though it does not use the capacity. (Vicinity St. 1, 12:1-7).

14. PGW customers would see benefit of if, for example, PGW released the 21,000 Dth/Day to Vicinity at the current max rate of \$0.61 Dth/Day which would produce \$4.6 million. (PGW St. No. 2RJ, 6:1-4).

15. If Vicinity were to agree that the capacity that it requests to be released would be recallable, it would eliminate all of PGW's concerns regarding capacity needs to retain the 21,000 Dth/day. (Exhibit RER-1R, page 1).

16. In 25 years, PGW has not once interrupted Vicinity, even though it has the ability to do so. (Vicinity St. 2-SR, 1:20-23).

17. Mr. Crist contends that the Peak Day analysis he did is more valid than PGW's design day because it has actually occurred. (Vicinity St. 1-SR, 2:1-10).

18. Mr. Crist stated that in 25 years, PGW has used the 21,000 Dth/Day only to serve Vicinity and that if Vicinity ceased to exist or left the system, then PGW would have 21,000 Dth/Day of excess capacity. That uncertainty equates to risk for PGW customers. (Vicinity St. 1-SR, 2:16-22).

19. PGW has demonstrated that it has sufficient supply resources to supply its customers and Grays Ferry and if the capacity it uses were released to Grays Ferry, PGW would still have enough capacity to meet its other customers' needs. (Vicinity St. 1-SR, 3:3-16).

20. PGW receives, on average, \$0.35 per Dth/Day for capacity it releases on the Philadelphia lateral. The maximum tariff rate is \$0.61 Dth/Day. (Vicinity St. 1-SR4:6-14; PGW St. 2RJ, 6:1-4).

21. Mr. Reeves cited capacity releases not made with Philadelphia Lateral capacity in response to a question about releases of Philadelphia lateral capacity. (PGW St. 1RJ, 4:7-24; Tr. 73:4-8, 76:18-20). To the contrary, Mr. Reeves admitted that the most recent release of Philadelphia Lateral capacity yielded a mere \$0.10 Dth/Day, which is substantially below average. (Tr. 73:14-17)

22. Mr. Crist opines that PGW's customers are better off if PGW is not in the arbitrage business. PGW receives on average, \$0.35 Dth/day for the capacity it releases on the Philadelphia lateral and based on Mr. Reeves testimony under cross examination, that number is going down, not up. (Vicinity St. 1-SR, 5:11-19; Tr. 73-74, 78:21-23).

23. Mr. Reeves claims that the results of his failure study are "probable", and yet admits that he has done no probability study to determine the likelihood of the scenarios occurring. Mr. Crist explains that a failure study that does not address the probabilities of a particular failure is worthless because even if a particular result would be dramatic, if it is unlikely that it would ever occur, it would be a waste of resources to plan for it. (Tr. 79:23-80:6; Vicinity St. 1-SR, 5:22-6:16).

IX. PROPOSED CONCLUSIONS OF LAW

1. The Public Utility Code requires that any rate demanded or received by any public utility be just and reasonable and in conformity with regulations or orders of the Commission. 66 Pa. C.S. § 1301. The Code also requires that in setting rates for natural gas distribution companies, under Section 1307, as in this case, that no rate shall be deemed to be just and reasonable unless the Commission finds that the utility is pursuing a least cost fuel procurement policy, including the use of gas transportation arrangements with pipelines. 66 Pa. C.S. § 1318(a).

2. The evidence in this case amply demonstrates that in the absence of its continued provision of ARS to Vicinity, PGW's retention of the 21,000 Dth/Day of Philadelphia Lateral Capacity that it now uses to provide ARS, is not prudent, not in conformity with a least cost procurement policy and is therefore not just and reasonable.

3. The evidence demonstrates that in the absence of PGW's continued provision of ARS, the release of the 21,000 Dth/Day of capacity on the Philadelphia Lateral would benefit PGW customers and not put PGW's system in any greater risk of supply shortages than it faces today.

4. Vicinity holds 35,000 Dth/day of Philadelphia Lateral Capacity but needs 56,000 Dth for its peak needs. PGW has supplied the needed 21,000 Dth/day capacity through its provision of ARS for over 25 years and has never once refused to provide the service even though it is able to do so.

X. PROPOSED ORDERING PARAGRAPHS

1. The Complaint of Vicinity is sustained.
2. That PGW shall be required to continue to provide ARS to Vicinity indefinitely at rates, terms and conditions that are currently in effect.

XI. INDEX OF ABBREVIATIONS AND ACRONYMS

VEPI	Vicinity Energy Philadelphia, Inc
Grays Ferry	Grays Ferry Cogeneration Partnership
Vicinity	Grays Ferry and VEPI
PGW	Philadelphia Gas Works
GTS-F	General Transportation Service – Firm
ARS	Alternate Receipt Service
Dth	Dekatherm
Dth/Day	Dekatherms per day – a measure of pipeline capacity
NGDC	Natural Gas Distribution Company
PGC	Purchased Gas Cost