

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2023-3038069
Office of Consumer Advocate	:	C-2023-3038375
Office of Small Business Advocate	:	C-2023-3038286
Grays Ferry Cogeneration Partnership & Vicinity	:	C-2023-3038722
Energy Philadelphia, Inc.	:	
	:	
	:	
v.	:	
	:	
	:	
Philadelphia Gas Works	:	

**RECOMMENDED DECISION**

Before  
Arlene Ashton  
Administrative Law Judge

**INTRODUCTION**

This Decision recommends that the Joint Petition for Partial Settlement of Philadelphia Gas Works’ 2023-2024 Gas Cost Rate Proceeding filed on May 9, 2023, by Philadelphia Gas Works and the Office of Consumer Advocate be approved by the Commission. The Joint Petition for Partial Settlement resolves all issues in dispute except for one issue.

In accordance with the Pennsylvania Public Utility Commission Opinion and Order issued in *Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia Inc. v. Philadelphia Gas Works*, Docket No. C-2021-3029259 (Opinion and Order Apr. 20, 2023), this Decision recommends that the issue “reserved for litigation” under the Joint Petition for Partial Settlement of Philadelphia Gas Works’ 2023-2024 Proceeding be referred to the PGW 2023 Base Rate Case currently pending before the Pennsylvania Public Utility Commission at

Pennsylvania Public Utility Commission v. Philadelphia Gas Works at Docket R-2023-3037933 for resolution.

This Decision recommends that the Joint Petition for Partial Settlement of Philadelphia Gas Works' 2023-2024 GCR Proceeding be approved because it was not opposed by any party, is in the public interest and is consistent with the requirements of the Public Utility Code, 66 Pa. C.S. §§ 1307(f), 1318. It is also recommended that Philadelphia Gas Works be authorized to file tariff supplements to reflect rates and terms consistent with this Decision and the partial settlement set forth in the Joint Petition for Partial Settlement of Philadelphia Gas Works' 2023-2024 GCR Proceeding, and applicable to the Section 1307(f) purchased gas cost rate investigation at Docket No. R-2023-3038069, to be effective for services rendered on or after September 1, 2023, subject to quarterly adjustments as permitted by Commission regulations or other applicable Commission rule or order.

#### HISTORY OF THE PROCEEDING

On February 1, 2023, Philadelphia Gas Works (PGW or Company) filed its pre-filing information required for its 2023-2024 Gas Cost Rate (GCR) filing with the Pennsylvania Public Utility Commission (Commission).<sup>1</sup>

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).

On February 14, 2023, 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. Also on February 14, 2023, Sharon E. Webb, Esq. entered a Notice of Appearance on behalf of OSBA.

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<sup>1</sup> The GCR filing was made pursuant to Sections 1307(f), 1317, 1318, and 2212 of the Public Utility Code, and Sections 53.64 and 53.65 of the Commission's Rules and Regulations. 66 Pa.C.S. §§ 1307(f), 1317, 1318, 2212; 52 Pa. Code §§ 53.64, 53.65.

Also on February 14, 2023, the Philadelphia Industrial and Commercial Gas Users Group (PICGUG) filed a Petition to Intervene in this proceeding.

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

On February 21, 2023, Deanne M. O'Dell, Esq. entered a Notice of Appearance on behalf of PGW.

On February 28, 2023, PGW filed Revised Schedule 53.6(c)7, Schedule 1 to replace the schedule filed by PGW as part of its February 1, 2023, pre-filing information.

On March 1, 2023, PGW filed its 2023-2024 GCR filing (2023-2024 GCR filing), which included: proposed tariff revisions (Supplement No. 160 to PGW's Gas Service Tariff – Pa P.U.C. No. 2 and Supplement No. 106 to PGW's Gas Supplier Tariff – Pa P.U.C. No. 1); supporting information regarding the computation of annual purchased gas costs for the twelve months ending August 31, 2023; and the Direct Testimony of Florian Teme ("PGW Statement No. 1") and Ryan E. Reeves ("PGW Statement No. 2"). The Company's 2023-2024 GCR filing proposed increasing the GCR effective September 1, 2023, from \$0.49740 per Ccf to \$0.50576 per Ccf.<sup>2</sup>

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The GCR filing was assigned to the Office of Administrative Law Judge for resolution by hearings and for issuance of a Recommended Decision. The matter was assigned to me.

On March 2, 2023, I issued a Prehearing Conference Order, setting a Prehearing Conference for March 9, 2023, and directing the parties to comply with various procedural requirements in connection with the scheduled prehearing conference.

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<sup>2</sup> Supplement No. 149 to PGW's Gas Service Tariff – Pa P.U.C. No. 2 at 2.

On March 3, 2023, Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia Inc. (collectively, Vicinity) filed a Joint Complaint against PGW with the Commission. The Vicinity Complaint was docketed at C-2023-3038722.

In accordance with the Prehearing Conference Order, PGW, I&E, OCA, OSBA, PICGUG and Vicinity submitted prehearing memoranda on March 7, 2023.

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

No party opposed the Petition to Intervene filed by PICGUG. Accordingly, I granted the Petitions to Intervene during the Prehearing Conference and memorialized its status in Prehearing Order #1 issued March 16, 2023. Therefore, the active parties to this proceeding are: PGW, OCA, OSBA, I&E, PICGUG and Vicinity.

The March 16, 2023, Prehearing Order #1 also established the procedural schedule and the procedures applicable to this proceeding.

On March 21, 2023, PGW filed a Motion for Protective Order pursuant to the provisions of 52 Pa. Code §§ 5.362(a) and 5.365. By Prehearing Order #2 dated March 29, 2023, I granted PGW's Motion for Protective Order.

The Parties engaged in discovery.

On April 3, 2023, Vicinity served the Direct Testimony of James L. Christ, P.E. (Vicinity Statement No. 1). Also on April 3, 2023, OCA, I&E and PICGUG each submitted correspondence indicating that they would not be serving direct testimony. OSBA did not serve direct testimony.

On April 6, 2023, Sarah N. Hibbert filed a withdrawal of appearance for PICGUG in this matter.

On April 10, 2023, Norman J Kennard entered a notice of appearance in this matter on behalf of PGW.

On April 13, 2023, OSBA served the Rebuttal Testimony and Exhibits of Robert D. Knecht (OSBA Statement No. 1-R).

Also on April 13, 2023, I&E, PICGUG and Vicinity each filed correspondence indicating that they would not be serving rebuttal testimony. That same day, OCA sent email correspondence indicating that it would not be serving rebuttal testimony.

On April 14, 2023, PGW served the Rebuttal Testimony of Ryan E. Reeves, Statement No. 2-R.

By Initial Telephonic Hearing Notice dated April 17, 2023, a call-in telephonic evidentiary hearing was scheduled for April 25, 2023.

On April 20, 2023, Vicinity submitted Surrebuttal Testimony and Exhibits of James L. Christ. Also on April 20, 2023, I&E, OSBA and PICGUG submitted correspondence indicating that they would not be serving rebuttal testimony.

On April 24, 2023, PGW served Rejoinder Testimony of Ryan Reeves (PGW Statement 2RJ).

The April 25, 2023, evidentiary hearing was held as scheduled. The witnesses for PGW and OSBA were excused from appearing at the hearing since all other parties waived cross examination of these witnesses, and also because I did not have questions for them. PGW moved to have the pre-filing and definitive GCR filings admitted into the record. 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. As there were no objections, the testimony and exhibits of those witnesses were admitted into the record during the hearing.

At the April 25, 2023, evidentiary hearing, Ryan E. Reeves provided rejoinder testimony for PGW and was cross examined by Vicinity counsel. Vicinity's witness, James L. Christ 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. As there were no objections, the testimony and exhibits of those witnesses were also admitted into the record during the hearing.

On April 26, 2023, I issued a Briefing Order.

On May 4, 2023, PGW, Vicinity and OSBA filed Main Briefs. OCA, I&E and PICGUG each filed correspondence indicating that they would not be filing a Main Brief in this proceeding.

On May 5, 2023, I&E filed a Withdrawal and Notice of Appearance withdrawing the appearance of Prosecutor Gina L. Miller and entering the appearance of Deputy Chief Prosecutor Allison C. Kaster for I&E in this proceeding.

The Parties continued to engage in settlement discussions. As a result of these discussions, PGW and OCA (Settling Parties) were able to reach a partial settlement (Partial Settlement) which resolves all issues pertaining to PGW's 2023-2024 annual GCR filing, with the exception of Vicinity's proposal that PGW release 21,000 Dth/day of capacity on a recallable basis to Vicinity year-round at a fair market rate, whether pursuant to a tariff, Alternative Rate Service (ARS) or an Asset Management Agreement approved by the Commission (Excess Capacity/ARS issue).<sup>3</sup>

On May 9, 2023, the Settling Parties filed their Joint Petition for Partial Settlement of Philadelphia Gas Works' 2023-2024 GCR Proceeding (Partial Settlement Petition). The terms of the settlement were set forth in Section III of the Joint Petition.

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<sup>3</sup> Vicinity Statement No 1-SR at 8-9; *See also* Vicinity Statement 1 at 8, 12-13.

On May 10, 2023, PGW filed a Statement in Support of the Partial Settlement<sup>4</sup> (PGW Statement in Support) confirming that it is a signatory party to the Partial Settlement Petition and that the Partial Settlement Petition supports PGW’s GCR filing, as filed. Also on May 10, 2023, PGW and Vicinity each filed Reply Briefs.

On May 11, 2023, OCA filed a Statement in Support of the Partial Settlement with the Commission (OCA Statement in Support) confirming that it is a signatory party to the Partial Settlement Petition.

The record consists of a 113-page transcript, the Company’s filing, the testimony, and exhibits submitted by PGW, Vicinity and OSBA, the Partial Settlement Petition, and the Settling Parties’ Statements in Support of the Partial Settlement Petition.

The statutory deadline for the Commission to take action on this matter is September 1, 2023. The last reasonable public meeting date is August 3, 2023.

### FINDINGS OF FACT

In the Partial Settlement Petition, the Settling Parties offered proposed Findings of Fact in addition to whatever other findings and conclusions as may be required as appropriate to support approval of the Partial Settlement. Partial Settlement Petition at 4-5 ¶¶ 27-30. With minor modification, the Findings of Fact proposed in the Partial Settlement Petition are found in paragraphs 7 through 13 below:

1. PGW operates a natural gas distribution system in the southeastern portion of Pennsylvania subject to the jurisdiction of the Commission (PGW St. 2, p. 2) and is authorized by the provisions of Section 1307(f) of the Public Utility Code, and the Commission’s gas cost

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<sup>4</sup> The title of the document filed with the Commission by PGW is “Statement in Support of Joint Petition for Settlement of Philadelphia Gas Works 2022-2023 GCR Proceeding” (italics added) The document, as filed is dated March 10, 2022, repeatedly references PGW’s 2022-2023 GRC rather than its 2023-2024 GRC and fails to identify the settlement as a partial settlement, in the title of the document and in the text. Any misunderstanding or ambiguity arising out of such typographical errors was resolved by reference to the docket numbers indicated in the header of the filing and the actual date the filing was recorded by the Commission.

recovery regulations at 52 Pa. Code §§ 53.61-53.68 to make annual purchased gas cost filings proposing gas rate modifications to reflect increases or decreases in its natural gas costs.

2. The Office of Consumer Advocate is authorized to represent the interests of consumers before the Commission. Act 161 of 1976, 71 P.S. § 309-2.

3. The Commission's Bureau of Investigation and Enforcement serves as the prosecutory bureau for purposes of representing the public interest in ratemaking and service matters before the Office of Administrative Law Judge and enforcing compliance with laws and regulations. Implementation of Act 129 of 2008 Organization of Bureaus and Offices, Docket No. M-2008-2071852 (Order entered August 11, 2011).

4. The Office of Small Business Advocate 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.

5. The Philadelphia Industrial and Commercial Gas Users Group is an *ad hoc* group of large volume natural gas customers receiving service from PGW under various rate schedules, including Rate Schedule – Interruptible Transportation.

6. PGW and OCA have filed a Joint Petition for Partial Settlement signed by each of them. Vicinity has expressed neither approval nor opposition to the Partial Settlement; however, I&E, OSBA and PICGUG are not opposed to the Settlement. PGW Statement in Support p. 3.

7. The Gas Cost Rate is a mechanism used to flow through the costs of natural gas and other raw materials in a timely and equitable manner. PGW Statement No. 1 at 7.

8. The pricing methodology utilized by PGW relied on actual prices for January 2023 and the NYMEX Futures close data (as of January 18, 2023) for the 19 forecast months of February 2023 through August 2024. PGW Statement No. 1 at 9.

9. PGW submitted supporting schedules as required by Section 53.64(a) in support of its GCR; the Price to Compare; and the rates for various surcharges including the Restructuring and Consumer Education Surcharge, the Universal Service and Energy Conservation Surcharge (USC), the Other Post Employment Benefit Rider Surcharges. PGW Statement No. 1 at 3-6.

10. The proposed GCR to be effective September 1, 2023, is \$5.0576 per Mcf. PGW Statement No. 1 at 3.

11. The projected rates for the Universal Services Surcharge, Other Post Employment Benefits and Load Balancing charges are reflected in Appendix A to the Partial Settlement Petition. PGW Statement No. 1 at 3-5, Schedules 9(a), 11(a) and 13.

12. None of the parties challenged PGW's proposed calculation for the GCR, or other charges shown on Appendix A to the Partial Settlement Petition. Partial Settlement Petition at 5 ¶ 29.

13. Following the Commission's final order in this matter, PGW will file tariff supplements to implement the new rates. Partial Settlement Petition at 5 ¶ 30.

14. The issues raised by Vicinity in this proceeding relating to pipeline capacity, mandatory release of excess capacity, and their impact on Vicinity and other PGW customers were not resolved by the Settling Parties in the Partial Settlement Petition and were expressly "reserved for litigation" under the terms of the Partial Settlement Petition. Vicinity Reply Brief 2-4. Partial Settlement Petition at 4 ¶ 22.

15. PGW and Vicinity were parties to *Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. v. Philadelphia Gas Works Docket*, Docket No. C-2021-3029259 (Opinion and Order entered Apr. 20, 2023) (*Vicinity Complaint Case*).

16. The parties in this matter are parties to an on-going base rate proceeding. *Pa. Pub. Util. Cmm'n v. Phila. Gas Works*, Docket No. R-2023-3037933 (*PGW Base Rate Case*).

17. The Commission Order issued April 20, 2023, in the *Vicinity Complaint Case* directed that the issue of rates for gas services provided by PGW to Vicinity be resolved in PGW's pending base rate proceeding at Docket No. R-2023-3037933. *Vicinity Complaint Case* at 38, O.P. #3.

#### DESCRIPTION AND TERMS OF THE JOINT PETITION FOR PARTIAL SETTLEMENT

The Partial Settlement Petition is an eight-page document signed by two of the six parties, PGW and OCA (the Settling Parties). The Partial Settlement Petition covers all issues raised in this proceeding, with the exception of the Excess Capacity/ARS issue. In the Partial Settlement Petition, the Settling Parties agree to accept the data and calculations submitted by PGW in its February 1, 2023, Pre-filing and in its March 1, 2023, Annual Filing, including Supplement No. 160 to PGW's Gas Service Tariff – Pa P.U.C. No 2 and Supplement No. 106 to PGW's Gas Supplier Tariff – Pa P.U.C. No. 1 as filed on March 1, 2023, to go into effect on September 1, 2023. The Partial Settlement Petition also approves PGW's proposed expansion of its hedging program from 5% to 50% of its monthly baseload purchases, as described in PGW Exhibit RR-1. Appendix A to The Partial Settlement Petition contains the rates agreed upon by the Settling Parties.<sup>5</sup>

I&E, OSBA, PICGUG and Vicinity are not parties to the Partial Settlement Petition. However, in the PGW Statement in Support, PGW indicated that “[n]o party has opposed the GCR calculations as filed by PGW.”<sup>6</sup> PGW also indicated that while I&E, OSBA,

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<sup>5</sup> The rates set forth in Appendix A to the Partial Settlement Petition are: Universal Services Surcharge \$1.690 per Mcf; Other Post Employment Benefit Surcharge \$0.3385per Mcf; and Load Balancing Charge \$62.9290 per Mcf.

<sup>6</sup> PGW Statement in Support 3.

and PICGUG were not signatories to the Partial Settlement Petition, each of those parties had authorized PGW and OCA to “state their non-opposition” to the Partial Settlement Petition.<sup>7</sup> Vicinity did not file a statement or otherwise express either approval or opposition to the Partial Settlement Petition.

The essential terms of the Partial Settlement of the Philadelphia Gas Works’ GCR proceeding are set forth in Section III of the Partial Settlement Petition for Settlement. The settlement terms are as follows, verbatim (including paragraph numbers):

**A. PGW’S GCR FILING IS ACCEPTED AS FILED**

19. The undersigned Settling Parties agree to accept the underlying data and calculations submitted by PGW in its February 1, 2023, Pre-filing and its March 1, 2023, Annual Filing subject to the terms and conditions set forth below:

20. Supplement No. 160 to PGW’s Gas Service Tariff – Pa P.U.C. No. 2 and Supplement No. 106 to PGW’s Gas Supplier Tariff – Pa P.U.C. No. 1 as filed on March 1, 2023, shall be permitted to go into effect on September 1, 2023. Consistent with past practice, PGW shall file its 3<sup>rd</sup> Quarter Update prior to September 1, which update will update the GCR rate set forth in Supplements No. 160 and 106.

**B. CONFIRMATION OF HEDGING PROGRAM<sup>8</sup>**

21. Pursuant to the Commission-approved settlement of its 2022 PGC proceeding, PGW conducted a study to determine if hedging gas purchases could reduce price volatility. In this proceeding, PGW proposed expansion of its hedging program after completion of this study, wherein the company targets to hedge 5% to 50% of its monthly baseload purchases as conditions permit. PGW’s proposed hedging program as described in PGW Exhibit RR-1 is approved.

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<sup>7</sup> *Id.*

<sup>8</sup> (Font change to all capitals added.)

**C. ISSUES RESERVED FOR LITIGATION (THE “LITIGATED ISSUES”)**

22. GFCEP/VEPI’s claim that PGW should be required to release to them 21,000 Dth/Day of capacity on the TETCO pipeline.

Joint Petition for Partial Settlement, at 4.

The Settling Parties also agreed to certain Conditions, which are set forth in Section V of the Partial Settlement Petition.<sup>9</sup> These conditions, verbatim, are as follows:

44. This Settlement will go into effect upon the Commission’s entry of a final order approving the Settlement, in full and without modification. If the Commission rejects the Settlement, the Agreement will automatically terminate and be null and void with the exception of paragraph 45 below, which will continue in full force and effect. The Settlement also shall automatically become null and void (except for paragraph 45 below) if the Commission, in approving the Settlement, modifies any of its terms or conditions or adds any conditions, unless it is subsequently accepted by the aggrieved signatory party, or parties, as so modified. If the Commission approves the Settlement in full and without modification, the Stipulation:

(a) shall be deemed to resolve with prejudice all issues addressed by this Settlement; and

(b) shall be implemented and shall be enforceable notwithstanding the pendency of a petition for reconsideration or a legal challenge to the Commission’s approval, unless such implementation and enforcement of the Settlement is stayed or enjoined by the Commission, another regulatory agency, or a Court having competent jurisdiction over the matter.

This Paragraph does not apply to any modifications made by the Commission in adjudicating the Litigated Issues.

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<sup>9</sup> Partial Settlement Petition at 5-7. The paragraph numbers in the Partial Settlement Petition were not always sequential e.g., paragraphs numbered 31-43 were not included and the numbering jumped from 30 to 44 without explanation. For ease of reference, the paragraph numbering indicated herein is as it appears in the Partial Settlement Petition, as filed.

45. This Settlement is made without admission against or prejudice to any factual or legal positions which any of the signatories hereto may assert in subsequent litigation in the event that the Commission does not issue a final Order approving this Settlement in full and without modification. If the Commission does not adopt this Settlement in accordance with the terms set forth herein, the Settling Parties reserve their full right to argue that the Commission is without the legal authority to order the implementation of all or part of the terms and conditions set forth herein and no party shall be deemed to have waived or be estopped from asserting such a position before the Commission or before any court.

46. This Settlement Petition may be executed in counterparts, all of which shall constitute one agreement binding on all signatories and shall have the same force and effect as an original instrument, notwithstanding that the signatories may not be signatories to the same original or the same counterpart.

47. Statements in Support of this Settlement are attached hereto as Appendices C-D.

48. The Settling Parties agree to waive exceptions to the ALJ's Recommended Decision on the issues addressed in this settlement if the ALJ recommends that the Partial Settlement Petition for Partial Settlement of Philadelphia Gas Works' 2023-2024 GCR Proceeding be approved without change or modification. The Settling Parties remain free to submit exceptions and replies on matters the issues raised by party not a signatory to this Settlement, including the Litigated Issues.

Joint Petition for Partial Settlement, at 5-7.

By its terms, the Settlement resolves all but one issue or claim raised in this proceeding. The Partial Settlement Petition explicitly excludes the Excess Capacity/ARS issue, indicating that the claim is “reserved for litigation.”<sup>10</sup>

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<sup>10</sup> Partial Settlement Petition ¶C. 22. at 4.

## DISCUSSION

Section 1307(f)(5) of the Public Utility Code (Code), 66 Pa.C.S. § 1307(f)(5), 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.<sup>11</sup> In addition, Section 1318 findings must be made with respect to the new Purchased Gas Cost (PGC) rates to be established in this proceeding.<sup>12</sup>

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 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.<sup>13</sup>

PGW and OCA have agreed to a Settlement that resolves all but one of the issues in this proceeding. OCA, which is charged with protecting the interests of consumers agrees that the Partial Settlement is in the public interest and complies with the Public Utility Code. OSBA, which is charged with protecting the interests of small businesses has not expressed any opposition to the Partial Settlement and has authorized PGW and OCA to state its non-opposition to the Partial Settlement. Likewise, the large industrial users participating in this proceeding

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<sup>11</sup> 66 Pa.C.S. § 1318.

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

<sup>13</sup> 66 Pa.C.S. § 1318(a).

under the PICGUC umbrella, have not expressed any opposition to the Partial Settlement and have authorized PGW and OCA to state its non-opposition to the Partial Settlement.

PGW and OCA each provided statements in support of the Settlement, each requesting that the presiding officers and the Commission approve the Partial Settlement Petition for Settlement in its entirety. I&E, PICGUC and Vicinity have each provided a statement indicating that it neither supported nor opposed the settlement reached by the Settling Parties. OSBA has not expressed an opinion or indicated any opposition to the Settlement.

It is the policy of the Commission to encourage Settlements.<sup>14</sup> In its policy statement regarding Settlements in major rate cases the Commission provides in pertinent part:

In the Commission's judgment, the results achieved from a negotiated Settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding.<sup>[15]</sup>

Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative hearing resources. A settlement, which allows the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, yields significant expense savings for the utility's customers.

In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest.<sup>16</sup>

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<sup>14</sup> 52 Pa. Code § 5.231.

<sup>15</sup> 52 Pa. Code § 69.401.

<sup>16</sup> *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Opinion and Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. C S Water & Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991).

The Partial Settlement Petition will be examined in accordance with the above principles.

As discussed in more detail below, the Partial Settlement Petition reflects a Partial Settlement that is reasonable and in the public interest and therefore should be approved without modification by the Commission. It represents a just and fair compromise by the Settling Parties. This conclusion is based on an analysis of the following key terms of the Settlement and PGW and OCA's respective Statements in Support. As noted above, none of the other parties filed statements in support or opposition to the Settlement.<sup>17</sup>

A. PARTIAL SETTLEMENT AND STATEMENTS IN SUPPORT OF PARTIAL SETTLEMENT

1. Purchased Gas Cost Rates

Pursuant to the Partial Settlement Petition, PGW proposes a GCR of \$5.0576 per Mcf and other charges as set forth in Appendix A of the Partial Settlement Petition, which is reproduced in full below.

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<sup>17</sup> The Partial Settlement Petition indicates that "the Settling Parties will separately file their Statements in Support of Settlement no later than noon May 10, 2023." Partial Settlement Petition at 1. Commission records reflect no other filing by any party relating to the Settlement.

<b><u>Gas Cost Rate</u></b>	9/1/2023
Rate per Mcf \$5.0576	
<b><u>Universal Services</u></b>	
<b><u>Surcharge</u></b>	9/1/2023
Rate per Mcf \$1.4690	
<b><u>Other Post Employment Benefit</u></b>	
<b><u>Surcharge</u></b>	9/1/2023
Rate per Mcf \$0.3385	
<b><u>Load Balancing Charge</u></b>	9/1/2023
Rate per Mcf \$62.9290	

2. Statements in Support

PGW and OCA each filed a Statement in Support of the Partial Settlement Petition with the Commission. The PGW Statement in Support<sup>18</sup> affirms that PGW’s 1307(f) filing is consistent with the Commission’s goal of ensuring the least cost procurement policy and will result in rates and surcharges that are just, reasonable and in compliance with the Code.<sup>19</sup> In its Statement in Support, PGW also argues that by reducing the administrative burden and costs to resolve the issues in this proceeding, the Partial Settlement Petition is in the public interest and should be adopted.<sup>20</sup>

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<sup>18</sup> The full title of the document filed with the Commission by PGW is “Statement in Support of Joint Petition for Settlement of Philadelphia Gas Works” 2022-2023 GCR Proceeding.” Although the text of PGW Statement in Support refers to a “partial settlement” multiple times, the word “partial” was not included in the title of the document filed with the Commission. The same document also misstated the years at issue in this proceeding elsewhere in the text.

<sup>19</sup> PGW Statement in Support at 3.

<sup>20</sup> *Id.*

The OCA Statement in Support confirms that OCA accepts the underlying data and calculations submitted by PGW in its February 1, 2023 Pre-filing and its March 1, 2023 Annual Filing, subject to the terms and conditions contained in the Partial Settlement.<sup>21</sup> In its Statement in Support, OCA agrees that the GCR rates set forth above accurately represent the implementation of the terms of the Partial Settlement Petition and that the proposed tariff changes should be permitted to go into effect on September 1, 2023.<sup>22</sup> In its Statement in Support, OCA also maintains that the terms of the Settlement are in the public interest and in the interest of PGW’s ratepayers and should be approved.<sup>23</sup>

In their statements in support of the Partial Settlement Petition, PGW and OCA agree that consistent with past practice, PGW shall file its 3<sup>rd</sup> Quarter Update prior to September 1, 2023, which update will update the GCR rate set forth in Supplements No. 160 and 106.<sup>24</sup>

OCA also affirmed its support of the proposed expansion of PGW’s hedging program as provided in the Joint Statement, which would allow PGW to modify its purchasing targets to hedge 5% to 50% of its monthly baseload purchases, conditions permitting.<sup>25</sup> In the OCA Statement in Support, OCA indicated that the hedging program is “a step in the right direction toward reducing price volatility to the benefit of residential ratepayers.”<sup>26</sup> Summarizing its position, OCA stated “the terms of the [Partial Settlement Petition] are in the public interest and in the interest of PGW’s ratepayers” and concluded that the Partial Settlement Petition should be approved.<sup>27</sup>

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<sup>21</sup> OCA Statement in Support at 3.

<sup>22</sup> *Id.*

<sup>23</sup> OCA Statement in Support at 8

<sup>24</sup> PGW Statement in Support at 4; OCA Statement in Support at 3.

<sup>25</sup> OCA Statement in Support at 3-4.

<sup>26</sup> OCA Statement in Support at 4.

<sup>27</sup> OCA Statement in Support at 5.

### 3. Settlement in General

In support of the Partial Settlement, PGW indicates that approval of the Partial Settlement will result in PGW pursuing a least cost fuel procurement policy consistent with the Company's obligation to provide safe, adequate, and reliable service.<sup>28</sup> PGW observes that no party has opposed the GCR calculations as filed by PGW.<sup>29</sup> In addition, PGW states that the partial Settlement: (a) is consistent with the Commission's goal of ensuring the least cost procurement policy, (b) will result in rates and surcharges that are just, reasonable, and in compliance with the Public Utility Code, and (c) reduces the administrative burden and costs to resolve the issues.<sup>30</sup> Furthermore, PGW argues that its 2023-2024 GCR filing is in full and complete compliance with all statutory and regulatory requirements.<sup>31</sup> PGW also argues that the Partial Settlement is supported by the record and satisfies the requirements of the Code and specifically the requirements of Section 1318 of the Code.<sup>32</sup>

For its part, OCA opined that it found the terms and conditions of the Settlement Agreement in the public interest.<sup>33</sup> OCA submitted that the provisions contained in the Partial Settlement are designed to benefit ratepayers, and that the Settlement should be approved because it is in the public interest.<sup>34</sup> Further, despite the active participation of statutory advocates representing the interests of consumers and small business and advocates for the interests of large industrial users in this proceeding, all of which have participated in previous filings of this type by PGW, no party has expressed opposition to the Partial Settlement.

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<sup>28</sup> PGW Statement in Support at 2.

<sup>29</sup> *Id.*

<sup>30</sup> PGW Statement in Support at 3.

<sup>31</sup> PGW Statement in Support at 3.

<sup>32</sup> *Id.*

<sup>33</sup> OCA Statement in Support at 1.

<sup>34</sup> OCA Statement in Support at 2.

4. Excess Capacity/ARS Issue

In this proceeding, Vicinity argued that PGW has excess overall gas capacity and that PGW should be required to release to Vicinity 21,000 Dth/Day of capacity on the TETCO pipeline.<sup>35</sup> Vicinity also argued such a requirement would provide significant financial benefits to PGW and its customers and foster rate stability.<sup>36</sup> In addition, Vicinity argued that the least cost procurement analysis in this proceeding should include an evaluation of PGW's pipeline capacity strategy.<sup>37</sup>

PGW categorically denied that it has or holds excess capacity and advanced multiple arguments against Vicinity's claim and arguments.<sup>38</sup> OSBA was the only other party to address the Excess Capacity/ARS issue and disagreed with the arguments on the issue presented by Vicinity and PGW.<sup>39</sup> For the reasons outlined below, I recommend that all issues relating to PGW's capacity and capacity revenues should be referred to and resolved in the *PGW base rate case* currently pending before the Commission.<sup>40</sup>

The Excess Capacity/ARS issue arises out of and is inextricably linked to the expiration of certain service contracts between PGW and Vicinity (the 1996 Contracts) on December 31, 2022,<sup>41</sup> which served as the basis for the establishment of Rate GTS-F currently

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<sup>35</sup> Vicinity Statement No. 1 at 8-10; Vicinity Statement No. 1-SR at 8.

<sup>36</sup> Vicinity Statement No. 1 at 12; Vicinity Main Brief at 12.

<sup>37</sup> Vicinity Main Brief at 14, (*citing* Equitable Gas Co. v. Pa. Pub. Util. Comm'n, 526 A.2d 823 (Pa. Cmwlth. 1987)).

<sup>38</sup> PGW Statement 2R at 2, 7, 9, 13-16; PGW Main Brief at 5, 7, 16, 22, 26-27, 29-30.

<sup>39</sup> OSBA Main Brief at 10.

<sup>40</sup> Docket No. R-2023-3037933.

<sup>41</sup> 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 (the 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 on behalf of PGW: one regarding the Partnership Service Contract (Partnership Service Agreement) and one regarding the Trigen Service Contract (Trigen Service Agreement) (collectively, Service Agreements). The Service Contracts and the Service Agreements are collectively referred to as the 1996 Contracts. The 1996 Contracts were the subject of a formal complaint filed by Vicinity against PGW in

applicable to service supplied by PGW to Vicinity.<sup>42</sup> In October 2021, Vicinity filed a Formal Complaint against PGW alleging that in light of the impending expiration of the Service Contracts on December 31, 2022, PGW was demanding unjust and unreasonable rates from it, that PGW's demand to provide service under a variable rate is unreasonable, and that PGW is providing unreasonable and discriminatory services.<sup>43</sup> OCA, OSBA and PICGUG intervened in that case and I&E entered an appearance in the case as well, which was fully litigated.<sup>44</sup> Thus, all the parties to this proceeding were also involved in the *Vicinity Complaint Case*.

In the *Vicinity Complaint Case*, the Commission ruled that the question of the just and reasonable rate and rate class applicable to PGW's service to Vicinity raised issues concerning the prohibition against "single-issue rate making."<sup>45</sup> The Commission also stated that the question of rates payable by Vicinity was not properly presented in that proceeding which involved "an individual customer complaint focused on the rate to be charged to a single PGW customer."<sup>46</sup> The Commission concluded that "the question of the proper . . . gas transportation rate applicable to PGW's service to Vicinity is properly considered at PGW's currently pending base rate proceeding."<sup>47</sup> The Commission directed PGW to make a filing that would "bring the pending question of the proper rate class and actual COS of PGW's provision of service to Vicinity for resolution at PGW's pending base rate proceeding at Docket No. R-2023-3037933." (*PGW Base Rate Case*).<sup>48</sup> The Commission also ruled that the rate and rate class proposed by

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October 2021 (Vicinity Complaint Case). See *Grays Ferry Cogeneration P'ship and Vicinity Energy Phila., Inc. v. Phila. Gas Works*, Docket No. C-2021-3029259 (Opinion and Order entered Apr. 20, 2023) (Vicinity Complaint Case Opinion and Order). This summary of the 1996 Contracts appears in the Initial Decision issued by ALJ Marta Guhl on December 27, 2023, in that matter (Vicinity Complaint Case ID). Vicinity Complaint Case ID 5-6.

<sup>42</sup> See *Vicinity Complaint Case* Opinion and Order at 2 n.3; Vicinity Complaint Case ID at 1-4.

<sup>43</sup> *Grays Ferry Cogeneration P'ship and Vicinity Energy Phila. Inc. v. Phila. Gas Works*, Docket No. C-2021-3029259 (Opinion and Order entered Apr. 20, 2023) (Vicinity Complaint Case).

<sup>44</sup> *Vicinity Complaint Case* ID at 2.

<sup>45</sup> *Vicinity Complaint Case* Opinion and Order at 37.

<sup>46</sup> *Vicinity Complaint Case* Opinion and Order at 37-38.

<sup>47</sup> *Vicinity Complaint Case* Opinion and Order at 38. The pending PGW base rate proceeding is at *Pa. Pub. Util. Comm'n v. Phila. Gas Works*, Docket R-2023-3037933.

<sup>48</sup> *Vicinity Complaint Case* Opinion and Order at 40, 51.

PGW for Vicinity . . . will not take effect until the Commission renders a final decision of the approved Tariff rate and class to take effect, to replace the current effective PGW Tariff Rate GTS-F, if any.”<sup>49</sup>

The prohibition against “single issue rate making” cited by the Commission in the *Vicinity Complaint Case* is equally relevant here. As indicated by the Commission in the *Vicinity Complaint Case*, the rate to be charged a single customer such as Vicinity “should be addressed in a base rate proceeding and . . . may touch upon changes to the overall rate-making scheme for PGW.”<sup>50</sup>

Notwithstanding the Commission’s decision in the *Vicinity Complaint Case*, Vicinity re-asserted its arguments regarding its need for additional capacity, excess capacity held by PGW and its claim that a new rate for ARS should be established in this proceeding.<sup>51</sup> While I agree with Vicinity that “there is nothing in the [*Vicinity Complaint Case* Opinion and Order] that explicitly mandates that a new rate for ARS be established,”<sup>52</sup> Vicinity’s argument ignores the Commission’s unambiguous directive and order that PGW Tariff Rate GTS-F “remains in effect”<sup>53</sup> and that the “determination of the ‘just and reasonable’ rate for the provision of gas transportation service by [PGW] to [Vicinity] . . . must be resolved by and is hereby referred to [PGW’s] currently pending rate proceeding.”<sup>54</sup>

The parties to this proceeding are also parties to the pending *PGW Base Rate Case*. Thus, they have begun to develop a record on PGW’s proposal to amend the service tariffs under which it currently provides service to Vicinity and other customers. Furthermore, in accordance with the Commission’s directive in the *Vicinity Complaint Case*, PGW has filed a

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<sup>49</sup> *Vicinity Complaint Case* Opinion and Order at 36, 43, 51-52.

<sup>50</sup> *Vicinity Complaint Case* Opinion and Order at 38.

<sup>51</sup> Vicinity Reply Brief at 2-4.

<sup>52</sup> Vicinity Reply Brief at 4.

<sup>53</sup> *Vicinity Complaint Case* Opinion and Order at 54 ¶ 9.

<sup>54</sup> *Vicinity Complaint Case* Opinion and Order at 51 ¶ 3.

proposal for a new Tariff Rate for Vicinity in that proceeding.<sup>55</sup> In light of the Commission’s clear and unambiguous holding that the terms under which PGW provides service to Vicinity are to be resolved in the pending *PGW Base Rate Case*, it is unnecessary to address in detail the various arguments on the Excess Capacity/ARS issue put forward by PGW, Vicinity or OSBA in this proceeding. Accordingly, no recommendation will be made with respect to the Excess Capacity/ARS issue and the parties will be directed to address the issue in the *PGW Base Rate Case*, to the extent they deem it appropriate to do so.

### PARTIAL SETTLEMENT RECOMMENDATION

The Settlement contains provisions that are designed to advance the least cost procurement objective which ultimately benefits ratepayers. The Settling Parties agree to accept the underlying data and calculations submitted by PGW in its February 1, 2023, pre-filing and its March 1, 2023, annual filing. The PGC rate adopted by the Settlement is \$5.0576 per Mcf.

The Settlement indicates that PGW will pursue a least cost fuel procurement policy consistent with the Company’s obligation to provide safe, adequate, and reliable service. Additionally, pursuant to a Commission-approved settlement of PGW’s 2022-2023 PGC proceeding,<sup>56</sup> PGW conducted a study to determine if hedging gas purchases could reduce price volatility. This Settlement also approves PGW’s proposed expansion of its gas purchase hedging program, pursuant to which PGW will aim to hedge 5% to 50% of its monthly baseload purchases, market conditions permitting.<sup>57</sup>

PGW, OSBA and Vicinity were the only parties that submitted testimony in this proceeding on the Excess Capacity/ARS issue. OSBA has authorized the Settling Parties to state its non-opposition to the Partial Settlement.<sup>58</sup> Vicinity has taken no position on the Partial

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<sup>55</sup> PGW Reply Brief at 5.

<sup>56</sup> Docket No. R-2023-3038069.

<sup>57</sup> PGW Statement in Support at 4.

<sup>58</sup> PGW Statement in Support at 3.

Settlement and the Excess Capacity/ARS issue it raised in this proceeding was expressly excluded by the Partial Settlement. OCA's support indicating that the terms and conditions of the Partial Settlement are in the public interest and should be approved is convincing.

After considering the Partial Settlement Petition, the PGW and OCA Statements in Support, the lack of opposition to the Partial Settlement by any party, as well as the savings achieved by not fully litigating this case, it is my opinion that the Partial Settlement is fair, just, reasonable and in the public interest. Accordingly, I recommend that the Petition for Partial Settlement of Philadelphia Gas Works' 2023-2024 Proceeding be approved. I also recommend that the parties be directed to address the Excess Capacity/ARS issue in the *PGW Base Rate Case*, to the extent they deem it appropriate to do so.

#### CONCLUSIONS OF LAW

1. With respect to PGW's gas purchases and gas purchasing practices during the twelve-month historical reconciliation period ended December 31, 2022, PGW has met the standards of Section 1318 of the Public Utility Code, 66 Pa.C.S. § 1318, as required by Section 1307(f)(5) of the Public Utility Code, 66 Pa.C.S. § 1307(f)(5), as to all actual purchased gas costs in the historical period.

2. During twelve months ended December 31, 2022, PGW met the requirements of Section 1318(a) of the Public Utility Code, 66 Pa.C.S. § 1318(a), by pursuing a least-cost fuel procurement policy, consistent with its obligation to provide safe, adequate, and reliable service to its customers.

3. With respect to the eight-month interim period beginning on January 1, 2023, and the projected twelve-month period beginning September 1, 2023, the rates to be adopted by the Commission result from PGW's compliance with all of the provisions of Section 1318 of the Public Utility Code, 66 Pa.C.S. § 1318.

4. A settlement should be approved, if it is fair, just, reasonable, and promotes the public interest. *See, Pa. Pub. Util. Comm'n v. C S Water & Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa.P.U.C. 1 (1985).

5. The Petition for Partial Settlement of Philadelphia Gas Works' 2023-2024 GCR Proceeding filed with the Commission on May 10, 2023, is just, reasonable and in the public interest. *Pa. Pub. Util. Comm'n v. C S Water & Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa.P.U.C. 1 (1985).

6. The pending PGW Base Rate Case at Docket R-2023-3037933 is the appropriate proceeding in which to address issues relating to changes to terms and prevailing tariff rate for gas service provided by PGW to Vicinity, PGW excess capacity, the continued offering of ARS and related issues. *Grays Ferry Cogeneration P'ship and Vicinity Energy Phila. Inc. v. Phila. Gas Works* at Docket C-2021-3029259 (Opinion and Order entered Apr. 20, 2023).

#### ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Partial Settlement Petition for Partial Settlement of the Philadelphia Gas Works' 2022-2023 Gas Cost Rate Proceeding, including all appendices and documents identified therein, is admitted into the record of the proceeding at Docket No. R-2023-3038069.

2. That the Partial Settlement Petition for Partial Settlement of the Philadelphia Gas Works' 2022-2023 Gas Cost Rate Proceeding submitted by the Philadelphia

Gas Works and the Office of Consumer Advocate at Docket No. R-2023-3038069 be approved in its entirety without modification.

3. That the Philadelphia Gas Works be authorized to file a tariff supplement, on at least one day's notice to the Commission, implementing rates and terms consistent with the rates and terms of the Joint Petition for Partial Settlement of the Philadelphia Gas Works' 2023-2024 Gas Cost Rate Proceeding filed May 9, 2023 and this Order to be effective for services rendered on or after September 1, 2023, subject to quarterly adjustments permitted by Commission regulations at 52 Pa. Code § 53.64(i)(5), including a quarterly adjustment to be effective on September 1, 2023 to reflect actual experience and changes in forecasted natural gas prices.

4. That the price for gas service by Philadelphia Gas Works to Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. including the resolution of Excess Capacity/ARS issue be referred for resolution to Philadelphia Gas Works' currently pending base rate proceeding at *Pennsylvania Public Utility Commission v. Philadelphia Gas Works*, Docket No. R-2023-3037933.

5. That the Formal Complaint filed by the Office of Consumer Advocate at C-2023-3038375 be deemed satisfied.

6. That the Formal Complaint filed by the Office of Small Business Advocate at Docket No. C-2023-3038286 be dismissed.

7. That the Formal Complaint filed by Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. at Docket No. C-2023-3038722 be dismissed.

