



Eckert Seamans Cherin & Mellott, LLC
213 Market Street
8th Floor
Harrisburg, PA 17101

TEL: 717 237 6000
FAX: 717 237 6019

Sarah C. Stoner, Esq.
717.237.6026
sstoner@eckertseamans.com

July 17, 2023

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: PA Public Utility Commission, et al., v. Philadelphia Gas Works
2023 PGW Base Rate Case – Docket No. R-2023-3037933

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Philadelphia Gas Works' ("PGW") Motion to Exclude Vicinity Hearing Exhibit 1 and/or Requesting Leave to File a Verified Statement in the Nature of a Response to Vicinity's Late Filed Testimony and Exhibits with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely

Sarah C. Stoner

Sarah C. Stoner
Counsel for Philadelphia Gas Works

Enclosure

cc: Hon. Eranda Vero w/enc.
Hon. Arlene Ashton w/enc.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of PGW's Motion to Exclude Vicinity's Hearing Exhibit 1, upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email and/or First Class Mail

Allison C. Kaster, Esq.
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
akaster@pa.gov

Sharon E. Webb, Esq.
Office of Small Business Advocate
Forum Place, 1st Floor
555 Walnut Street
Harrisburg, PA 17101
swebb@pa.gov

Harrison Breitman, Esq.
Mackenzie C. Battle, Esq.
David T. Evrard, Esq.
Darryl Lawrence, Esq.
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
OCAPGW2023BRC@paoca.org

Craig Berry, Esq.
Philadelphia Gas Works
800 West Montgomery Avenue
Philadelphia, PA 19122
Craig.Berry@pgworks.com

Dennis A. Whitaker, Esq.
Kevin J. McKeon, Esq.
Todd S. Stewart, Esq.
Hawke McKeon & Sniscak LLP
100 N 10th Street
Harrisburg, PA 17101
dawhitaker@hmslegal.com
kjmckeon@hmslegal.com
tsstewart@hmslegal.com

Charis Mincavage, Esq.
Adeolu A. Bakare, Esq.
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
cmincavage@mcneeslaw.com
abakare@mcneeslaw.com

Glenn A. Watkins
President/Senior Economist
Jenny Dolen
Technical Associates, Inc.
6377 Mattawan Trail
Mechanicsville, Va. 23116
watkinsg@tai-econ.com
jenny.dolen@tai-econ.com

Robert D. Knecht
Industrial Economics Incorporated
5 Plymouth Road
Lexington, MA 02421
rdk@indecon.com

John W. Sweet, Esq.
Elizabeth R. Marx, Esq.
Ria M. Pereira, Esq.
Lauren N. Berman, Esq.
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@pautilitylawproject.org

Robert W. Ballenger, Esq.
Joline R. Price, Esq.
Daniela E. Rakhlina-Powsner, Esq.
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102
rballenger@clsphila.org
jprice@clsphila.org
drakhlinapowsner@clsphila.org

Devin McDougall, Esq.
Rebecca Barker
Clean Energy Program
Earthjustice
1617 John F. Kennedy Blvd., Suite 2020
Philadelphia, PA 19103
dmcDougall@earthjustice.org
rbarker@earthjustice.org

Hon. Rick Krajewski
109B East Wing
P.O. Box 202188
Harrisburg, PA 17120
repkrajewski@pahouse.net

James Williford
2730 W Allegheny Ave.
Philadelphia, PA 19132

Sarah C. Stoner

Sarah C. Stoner, Esq.

Date: July 17, 2023

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PA Public Utility Commission, et al. :
 :
 v. : Docket No. R-2023-3037933
 :
 Philadelphia Gas Works :
 :

**MOTION OF PHILADELPHIA GAS WORKS
TO EXCLUDE VICINITY HEARING EXHIBIT 1
AND/OR REQUESTING LEAVE TO FILE A STATEMENT
IN THE NATURE OF A RESPONSE TO VICINITY’S
LATE FILED TESTIMONY AND EXHIBITS**

Pursuant to Section 5.103 of the Pennsylvania Public Utility Commission’s (“Commission” or “PUC”) regulations, 52 Pa. Code § 5.103, Philadelphia Gas Works (“PGW” or “Company”) submits this Motion to Exclude Vicinity Hearing Exhibit 1 from the record in this proceeding, or in the alternative, for Leave to File a Verified Statement in the Nature of a Response to the late filed testimony and exhibits submitted by Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. (“GFCP/VEPI”). Given the short timeframes in this matter, and with Main Briefs due in just 10 days on July 27, 2023, PGW respectfully requests expedited consideration of this Motion.

In support of this Motion, PGW avers as follows:

I. BACKGROUND

1. On July 11 and 12, 2023, evidentiary hearings were held in the above referenced matter before Administrative Law Judges Eranda Vero and Arlene Ashton (“ALJs”).

2. PGW presented its witnesses on Tuesday, July 11, 2023. GFCP/VEPI presented their witness, Mr. James L. Crist, on Wednesday, July 12, 2023.

3. On July 12, 2023, approximately 30 minutes before the start of the second day of evidentiary hearings, when Mr. Crist was scheduled to take the stand, GFCP/VEPI provided a revised version of Mr. Crist's Exhibit JC-7. This revised exhibit was provided after PGW's witnesses had presented their testimony.

4. Exhibit JC-7 contains GFCP/VEPI's suggested modifications to the proposed Rate GS-XLT tariff and was originally submitted on June 2, 2023 with Mr. Crist's direct testimony. The document has been addressed by PGW in successive rounds of rebuttal and surrebuttal testimonies. At no time did GFCP/VEPI previously intimate that the exhibit would be revised. All hearing exhibits were due, under Your Honors' directive, on Monday, July 10, 2023 by 7:00am.

5. When introduced on July 12, 2023, the Revised Exhibit JC-7 was characterized by GFCP/VEPI as a "correction." However, as discussed further below, it actually raised a new issue, not previously addressed in this proceeding, claiming that GFCP/VEPI's meters are "parallel meters" such that only one customer charge should be assessed.

6. PGW objected to the admission of this late exhibit, but the objection was overruled. Mr. Crist proceeded to provide testimony regarding this exhibit and the new argument regarding parallel meters.

7. PGW sought to recall its witness, Mr. Ryan Reeves, to provide testimony on this point, which it had not previously had the opportunity to address. This request was denied.

8. Then, on Thursday, July 13, 2023, after the evidentiary hearings were completed, GFCP/VEPI submitted Vicinity Hearing Exhibit 1, which is a photograph purporting to show that GFCP/VEPI's meters are in parallel. This photograph was not previously presented, has not been authenticated, has not been presented by a witness, and has not been subject to cross examination. There is no verification attached.

9. PGW now submits this Motion requesting that the ALJs deny the admission of Vicinity Hearing Exhibit 1 into the record. In the alternative, PGW seeks leave to submit a verified statement in the nature of a response to this late-filed testimony and exhibits.

II. LEGAL STANDARDS

10. Section 5.402 of the Commission's regulations specifies that for evidence may be admitted to the record "upon presentation by the sponsoring witness, and after opportunity for other parties to examine the witness." 52 Pa. Code § 5.402.

11. Section 5.403 of the Commission's regulations empowers the ALJs to control the receipt of evidence, including limiting the production of further evidence, and otherwise directing the proceedings "consistent with due process." 52 Pa. Code § 5.403.

III. MOTION

12. Through this Motion, PGW objects to the admission of Vicinity Hearing Exhibit 1 to the evidentiary record in this proceeding.

13. As noted above, a revised version of GFCP/VEPI's Exhibit JC-7 was submitted approximately 30 minutes before the start of the second day of evidentiary hearings. This exhibit provided GFCP/VEPI's suggested revisions to PGW's proposed tariff pages for Rate GS-XLT.

14. The revision to Exhibit JC-7 was described by GFCP/VEPI as a "correction." However, the revised exhibit made a change to the customer charge section of the proposed tariff. This change added the phrase "(Parallel meters are considered one meter)."

15. After providing this late revision to Exhibit JC-7 moments before the second day of hearings began (when Mr. Crist was scheduled to take the stand, and after all PGW witnesses had completed their testimony and cross examination), Mr. Crist then testified that GFCP/VEPI's meters are "parallel meters" and, thus, should be considered one meter with only one customer charge assessed.

16. Prior to Mr. Crist's appearance on the stand, GFCP/VEPI had never previously asserted that their meters are in parallel, either in this case or the previous complaint proceedings. As such, this was a new issue being raised for the first time on the final day and the final witness of the evidentiary hearings.¹

17. Mr. Crist's direct testimony quoted the Rate IT customer charge which contains the language regarding parallel meters, but GFCP/VEPI never asserted that this was relevant or should apply to them. GFCP/VEPI St. JC-1 at 24. Only the rate was addressed, not its application.

18. PGW timely objected to the admission of the Revised Exhibit JC-7 and associated testimony from Mr. Crist, arguing that: (1) this was not a "correction" but rather a new substantive position; (2) this change was offered too late in the proceeding; (3) PGW and the parties were deprived of the opportunity to investigate the new GFCP/VEPI position; and (4) PGW had no opportunity to respond on the record given that its witnesses had already appeared, testified, and been excused. This objection was overruled.

19. Now, after the hearing has been completed, GFCP/VEPI have submitted Vicinity Hearing Exhibit 1 that purports to be a photograph of GFCP/VEPI's meters. This photograph has neither been verified nor authenticated. There has been no opportunity for PGW or the parties to review the photograph or to cross examine Mr. Crist on its content. This violates the Commission's regulations and also violates PGW's due process rights. *See* 52 Pa. Code §§ 5.402 (providing that evidence may be admitted upon presentation by the sponsoring witness, and after opportunity for other parties to examine the witness) and 5.403 (providing the ALJs authority to control the receipt of evidence "consistent with due process").

¹ Mr. Crist's testimony in comparing the relative levels of proposed Rate GS-XLT customer charges with Rate IT charges quotes the Rate IT language regarding parallel meters, but GFCP/VEPI never asserted that this was relevant or should apply to them. Only the rate itself is addressed in Mr. Crist's testimony, not the application of it. GFCP/VEPI St. JC-1 at 24.

20. For these reasons, Vicinity Hearing Exhibit 1 cannot properly be admitted into the evidentiary record in this proceeding. PGW respectfully requests that the ALJs reject GFCP/VEPI's attempt to introduce Vicinity Hearing Exhibit 1 into the record.

21. In the alternative, PGW asks you Honor to accept the following statements as verified by Robert K. Smith, Vice President, Operations & Supply Chain, a witness, previously sworn during the hearing of July 11, 2023 and still under oath, that contains important information in response to Mr. Crist's new arguments. Specifically:

- a. GFCP/VEPI are not served by parallel meters. There are two separate meters that serve the two separate corporate entities: (1) Grays Ferry Cogeneration Partnership is served by a 12-inch meter connected to the GFCP Cogeneration Plant; and (2) Vicinity Energy Philadelphia, Inc. is served by an 8-inch meter that is connected to VEPI's Boiler #26 load.
- b. Each of the two meters operates independently and serves a separate load/customer fuel line.
- c. This is demonstrated by a schematic of the GFCP and VEPI meters as previously distributed to the parties by PGW in Confidential attachments provided response to GFCP/VEPI's interrogatories, Set I.
- d. Vicinity Hearing Exhibit 1 shows two gas lines and two separate meters, which happen to run side-by-side.
- e. "Parallel meters," on the other hand, are connected to serve a single customer load and one single fuel line. That is not the case here.

- f. Photographic examples of parallel lines are attached as PGW Hearing Exhibits #19 and 20, which show a single line of ingress and a single line of egress. This does not match the configuration of Vicinity Hearing Exhibit 1.

22. These facts are essential to providing context in response to GFCP/VEPI's untimely testimony and exhibits, to which PGW has not previously had an opportunity to respond. As the party with the burden of proof and consistent with due process, PGW has to right to respond to GFCP/VEPI's testimony and exhibits and to have the last word in this proceeding.

IV. CONCLUSION

WHEREFORE, PGW hereby respectfully requests that the Administrative Law Judges: (1) disallow Vicinity's Hearing Exhibit 1 from being admitted to the record; or in the alternative, (2) grant PGW leave to file a verified statement in the nature of a response to GFCP/VEPI's late-filed testimony and exhibits; and (3) grant any other relief to PGW deemed appropriate under the circumstances. PGW further requests expedited consideration of this Motion given the short timeframes in the litigation schedule for this matter.

Respectfully submitted,

/s/ Sarah C. Stoner

Daniel Clearfield, Esq. Atty ID 26183
Sarah C. Stoner, Esq. Atty ID 313793
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Fl.
Harrisburg, PA 17101
717.237.6000
dclearfield@eckertseamans.com
sstoner@eckertseamans.com

Dated: July 17, 2023

VERIFICATION

I, Robert K. Smith, have been previously sworn and still under oath, hereby state that: (1) I am the Senior Vice President, Operations & Supply Chain for Philadelphia Gas Works (“PGW”); (2) the facts set forth in the foregoing Motion are true and correct to the best of my knowledge, information and belief; and (3) I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

July 17, 2023

Dated

Robert K. Smith

Robert K. Smith
Vice President, Operations & Supply Chain
Philadelphia Gas Works



