



Dennis A. Whitaker
Office: 717 236-1300 x226
Direct: 717 703-0805
dawhitaker@hmslegal.com

Kevin J. McKeon
Office: 717 236-1300 x235
Direct: 717 703-0801
kjmckeon@hmslegal.com

Todd S. Stewart
Office: 717 236-1300 x242
Direct: 717 703-0806
tsstewart@hmslegal.com

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

July 21, 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; Docket Nos. R-2023-3037933 and C-2023-3038727; **ANSWER OF GRAYS FERRY COGENERATION PARTNERSHIP AND VICINITY ENERGY PHILADLPHIA, INC. TO MOTION OF PHILADELPHIA GAS WORKS TO EXCLUDE HEARING EXHIBIT OR TO RESPOND**

Dear Secretary Chiavetta:

Please find enclosed the Answer of Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. to Motion of Philadelphia Gas Works to Exclude Hearing Exhibit or to Respond in the above-captioned dockets. Copies of the Answer have been served in accordance with the attached Certificate of Service.

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

Very truly yours,

Todd S. Stewart
Dennis A. Whitaker
Kevin J. McKeon
*Counsel for Grays Ferry Cogeneration
Partnership and Vicinity Energy Philadelphia,
Inc.*

TSS/jld/das
Enclosure

cc: Administrative Law Judge Eranda Vero (via electronic mail – evero@pa.gov)
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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket Nos. R-2023-3037933
Grays Ferry Cogeneration Partnership and	:	C-2023-3038727
Vicinity Energy Philadelphia, Inc.	:	
	:	
v.	:	
	:	
Philadelphia Gas Works	:	

**ANSWER OF
GRAYS FERRY COGENERATION PARTNERSHIP
AND VICINITY ENERGY PHILADELPHIA, INC.
TO MOTION OF PHILADELPHIA GAS WORKS
TO EXCLUDE HEARING EXHIBIT OR TO RESPOND**

NOW COMES Grays Ferry Cogeneration Partnership (“GFCP”) and Vicinity Energy Philadelphia, Inc. (“VEPI”) (collectively, “Vicinity”), and hereby Answers the Motion of the Philadelphia Gas Works (“PGW”) to exclude Hearing Exhibit 1, or to Respond thereto (“Motion”) filed with the Commission on July 17, 2023. PGW attached a so-called "Response" to its Motion. Vicinity Answers PGW’s Motion as follows:

1. Admitted.
2. Admitted. By way of further answer, it is noted that Mr. Crist was on the stand for more than four hours.
3. Admitted.
4. Admitted in Part, Denied in Part. Exhibit JC-7 was originally submitted on June 2, 2023, with Mr. Crist’s Direct Testimony. PGW did address JC-7 in testimony. It is Denied that JC-7 is or was a hearing exhibit and thus subject to the July 10, 2023, deadline. Rather, JC-7 is an

exhibit to Mr. Crist's testimony which remained subject to change until it was admitted to the record.

5. Admitted in Part, Denied in Part. When JC-7 was offered for the record, it contained corrections. It also contains a provision referred to in Mr. Crist's Direct Testimony at page 24, that includes the descriptive language from the Rate IT tariff of "Per Meter Per Month (Parallel Meters are considered one meter)". It is Denied that JC-7 suggests that Vicinity's meters are parallel meters. Mr. Crist made no statement regarding Vicinity's meters being presently considered one meter, rather, JC-7 simply would attach the same billing regimen to Rate GS-XLT meters that applies to Rate IT, namely, that parallel meters are treated as one meter. Mr. Crist acknowledged under cross-examination on the subject that indeed, Vicinity's meters presently serve two distinct corporate entities. Mr. Crist also acknowledged that the two Vicinity Entities are presently charged a combined \$500 per month as a meter charge.

6. Admitted in Part, Denied in Part. It is admitted that PGW objected to the admission of Revised Exhibit JC-7, it is also admitted that PGW's motion was appropriately denied. It is denied that JC-7 suggests that Vicinity would presently be eligible for a parallel meter pricing arrangement if JC-7 were adopted.

7. Admitted.

8. Admitted in Part, Denied in Part. It is admitted that on July 13, 2023, Vicinity submitted Hearing Exhibit 1, as requested by Administrative Law Judge Eranda Vero. The photograph had been identified for the record during the hearing on July 12, 2022. The photograph speaks for itself and was represented as depicting Vicinity's meters. Vicinity denies that its submission sought to move the photograph into the record. It is admitted that no verification is

attached to the photograph, although one can be provided if it is ultimately determined that Hearing Exhibit 1 should be entered into the record.

9. PGW is free to oppose the entry of Hearing Exhibit 1 into the record. Vicinity has not moved, and does not intend to move, for the entry of the Exhibit into the record. There is no basis under the facts of this matter, that PGW should be permitted the opportunity to place a statement into the record without cross examination. PGW's effort to tie Exhibit JC-7 to the photograph should be discarded. Exhibit 7 merely proposes a tariff provision for rate GS-XLS, that parallels that found in Rate IT, namely that parallel meters be treated as one meter. The photograph depicts Vicinity's meters. There is nothing for PGW's witness to refute and hence no need to confuse the record and provide what amounts to testimony not subject to cross-examination. Mr. Crist was cross examined on JC-7.

10. The Commission's regulations speak for themselves, and any characterization thereof is denied. In this matter, Vicinity has not moved for the admission of Hearing Exhibit 1. However, as to exhibit JC-7, it was subject to cross-examination and was properly admitted into evidence as was Mr. Crist's testimony regarding the status of Vicinity's meters, wherein he acknowledged that the two meters serve two separate corporate entities. PGW's motion here, to the extent it seeks to alter JC-7 or Mr. Crist's testimony, is duplicative of its requests at the hearing that were properly denied.

11. The Commission's Regulations speak for themselves, and any characterization thereof is denied.

12. Neither admitted nor denied. It is noted, however, that PGW's motion is premature in that Vicinity has not moved for the admission of Hearing Exhibit 1 into the record.

13. Admitted. It is admitted that Exhibit JC-7 was subject to cross-examination and was properly admitted to the record in this proceeding. 52 Pa. Code § 5.412(d).

14. Admitted in Part, Denied in Part. It is admitted that JC-7 was marked as revised. It is denied that the inclusion of the phrase “Parallel meters are considered one meter” is in any way a change in position for Vicinity.

15. Denied. While Mr. Crist did testify that Vicinity’s meters are parallel, he did concede that they serve two distinct corporate entities and did not suggest that those meters be treated as one presently

16. PGW’s argument regarding Exhibit JC-7 is moot, as that exhibit has been entered into evidence. If PGW’s motion seeks only to oppose the admission of Hearing Exhibit 1 into the record, Vicinity does not oppose said motion. Exhibit JC-7 was subject to cross examination and was properly admitted. PGW's collateral attack on the order admitting it should not be considered.

17. Denied. Mr. Crist’s testimony speaks for itself and PGW’s characterization thereof is Denied.

18. Admitted. It is admitted that PGW’s Objection to the admission of JC-7 was appropriately overruled, and it is admitted that the collateral attack on that ruling in PGW’s Motion is inappropriate and should be disregarded.

19. Admitted in Part, Denied in Part. It is admitted that Vicinity has submitted, as requested by Judge Vero, Hearing Exhibit 1 for the record. It is denied that Vicinity has moved for the admission of Hearing Exhibit 1.

20. Neither admitted nor denied. Paragraph 20 contains a request for relief to which no response is ordinarily required. To the extent that a response is appropriate, Vicinity has not

moved for the admission of Hearing Exhibit 1 and leaves the need to include it in this record to the presiding Administrative Law Judges.

21. Denied. It is denied that any of the statements purported to have been made by Mr. Smith are accurate, true or correct. It is denied that it is at all appropriate to admit Mr. Smith's statements into the record. It is denied that the photographs attached to Mr. Smith's statement are of Vicinity's meters or accurately depict Vicinity's meter arrangement.

22. Denied.

I. CONCLUSION

In its conclusion, PGW seeks three forms of relief: 1) that Hearing Exhibit 1 not be admitted into evidence, 2) that it be permitted to enter its "statement" into the record of this proceeding, which would plainly violate Vicinity's right to cross examine the witness, and 3) any other relief. As to PGW's first request, Vicinity offers no response other than to point out that Hearing Exhibit 1 was presented in response to a request made by Judge Vero, and that Vicinity has not moved, nor will be moving it into the record. As to request 2, it amounts to a collateral attack on the admission of Exhibit JC-7, which was properly admitted into evidence after being subject to cross examination. Such a collateral attack is inappropriate. Moreover, the extent that Mr. Smith's statement addresses the notion of *whether* parallel meters should count as one meter for purposes of the meter charge for Rate GS-XLT, as it does for rate IT, as opposed to the question of *whether* Vicinity's meters are or are not parallel meters as defined by PGW's current tariff, it is contrary to Judge Vero's denial of PGW's multiple requests to exclude Exhibit JC-7 from this record.

Vicinity has not moved Hearing Exhibit 1 into evidence. Accordingly, PGW's Motion should be denied, and Mr. Smith's statements should not be entered into the record.

Respectfully submitted,



Todd S. Stewart, Attorney ID No. 75556
Dennis A. Whitaker, Attorney ID No. 53975
Kevin J. McKeon, Attorney ID No. 30428
Hawke McKeon & Sniscak LLP
100 N 10th Street
Harrisburg, PA 17101
(717) 236-1300
(717) 236-4841 (fax)
tsstewart@hmslegal.com
dawhitaker@hmslegal.com
kjmckeon@hmslegal.com

*Counsel for Grays Ferry Cogeneration
Partnership and Vicinity Energy
Philadelphia, Inc.*

DATED: July 21, 2023

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)

VIA ELECTRONIC MAIL ONLY

Daniel Clearfield, Esquire
Sarah Stoner, Esquire
Norman J. Kennard, Esquire
Karen O. Moury, Esquire
Lauren M. Burge, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
dclearfield@eckertseamans.com
sstoner@eckertseamans.com
nkennard@eckertseamans.com
kmoury@eckertseamans.com
lburge@eckertseamans.com
Counsel for Philadelphia Gas Works

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

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

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

Charis Mincavage, Esquire
Adeolu A. Bakare, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166
cmincavage@mcneeslaw.com
abakare@mcneeslaw.com
Counsel for the Philadelphia Industrial and Commercial Gas Users Group

Rebecca Barker, Esquire
EarthJustice
311 S. Wacker Drive, Suite 1400
Chicago, IL 60606
rbarker@earthjustice.org
Counsel for POWER Interfaith

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

Devin McDougall, Esquire
Senior Attorney
Clean Energy Program
EarthJustice
1617 John F. Kennedy Blvd., Suite 2020
Philadelphia, PA 19103
dmcdougall@earthjustice.org
Counsel for POWER Interfaith

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

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 W. Ballenger, Esquire
Joline R. Price, Esquire
Daniela E. Rakhlina-Powner, Esquire
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102
rballenger@clsphila.org
jprice@clsphila.org
drakhlinapowner@clsphila.org



Todd S. Stewart

DATED: July 21, 2023