



Dennis A. Whitaker  
Office: 717 236-1300 x226  
Direct: 717 703-0805  
[dawhitaker@hmslegal.com](mailto:dawhitaker@hmslegal.com)

Todd S. Stewart  
Office: 717 236-1300 x242  
Direct: 717 703-0806  
[tsstewart@hmslegal.com](mailto:tsstewart@hmslegal.com)

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 [www.hmslegal.com](http://www.hmslegal.com)

July 27, 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; **MAIN BRIEF**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the Main Brief 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  
Dennis A. Whitaker  
*Counsel for Grays Ferry Cogeneration  
Partnership and Vicinity Energy  
Philadelphia, Inc.*

TSS/jld

Enclosure

cc: Administrative Law Judge Eranda Vero (via electronic mail – [evero@pa.gov](mailto:evero@pa.gov))  
Administrative Law Judge Arlene Ashton (via electronic mail – [aashton@pa.gov](mailto:aashton@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)

**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, 8<sup>th</sup> Floor  
Harrisburg, PA 17101  
[dclearfield@eckertseamans.com](mailto:dclearfield@eckertseamans.com)  
[sstoner@eckertseamans.com](mailto:sstoner@eckertseamans.com)  
[nkennard@eckertseamans.com](mailto:nkennard@eckertseamans.com)  
[kmoury@eckertseamans.com](mailto:kmoury@eckertseamans.com)  
[lburge@eckertseamans.com](mailto: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  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
[OCAPGW2023BRC@paoca.org](mailto: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](mailto:akaster@pa.gov)

Sharon E. Webb, Esquire  
Office of Small Business Advocate  
555 Walnut Street  
1<sup>st</sup> Floor, Forum Place  
Harrisburg, PA 17101  
[swebb@pa.gov](mailto: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](mailto:cmincavage@mcneeslaw.com)  
[abakare@mcneeslaw.com](mailto: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](mailto:rbarker@earthjustice.org)  
*Counsel for POWER Interfaith*

Robert D. Knecht  
Industrial Economics Incorporated  
5 Plymouth Road  
Lexington, MA 02421  
[rdk@indecon.com](mailto: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](mailto: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](mailto:pulp@pautilitylawproject.org)

Glenn A. Watkins  
President/Senior Economist  
Jenny Dolen  
Technical Associates, Inc.  
6377 Mattawan Trail  
Mechanicsville, VA 23116  
[watkinsg@tai-econ.com](mailto:watkinsg@tai-econ.com)  
[jenny.dolen@tai-econ.com](mailto: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](mailto:rballenger@clsphila.org)  
[jprice@clsphila.org](mailto:jprice@clsphila.org)  
[drakhlinaowner@clsphila.org](mailto:drakhlinaowner@clsphila.org)



---

Todd S. Stewart

DATED: July 27, 2023

**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	:	

---

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

---

Todd S. Stewart, Attorney ID No. 75556  
Dennis A. Whitaker, Attorney ID No. 53975  
Hawke McKeon & Sniscak LLP  
100 North Tenth Street  
Harrisburg, PA 17101  
(717) 236-1300  
(717) 236-4841 (fax)  
[tsstewart@hmslegal.com](mailto:tsstewart@hmslegal.com)  
[dawhitaker@hmslegal.com](mailto:dawhitaker@hmslegal.com)

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

DATED: July 27, 2023

**TABLE OF CONTENTS**

I. INTRODUCTION AND PROCEDURAL HISTORY ..... 1

    A. Introduction..... 1

    B. Procedural History ..... 7

II. LEGAL STANDARDS..... 9

    A. Just and Reasonable Rates ..... 9

    B. Burden of Proof..... 9

III. SUMMARY OF THE ARGUMENT .....11

IV. ARGUMENT ..... 14

    A-C. Vicinity has no argument for these sections other than as contained in its argument  
        in Section D below. .... 14

    D. GFCP/VEPI - Class GS-XLT ..... 14

        1. PGW has Proposed that Vicinity Should be Served Under a Special Rate  
            Class (Commission Question 1)..... 14

            a. PGW has not Proposed Appropriate Terms or Conditions for a  
                Special Rate for Vicinity. ....14

            b. PGW has Unreasonably Refused to Provide an Interruptible Rate  
                that recognizes Vicinity's ability to be interrupted.....16

            c. Vicinity’s special rate should incorporate the service conditions  
                that were established in the Contract. ....17

        2. PGW has not proposed an appropriate methodology to determine the  
            “actual cost of service” for Vicinity. (Commission Question 2)..... 18

        3. PGW continues to insist that ARS uses the low pressure Distribution  
            System – It does not. (Commission Question 3)..... 20

        4. PGW’s service to Vicinity does not use PGW’s low pressure Distribution  
            service. (Commission Question 4)..... 23

        5. PGW has not proposed Just and Reasonable Rates for Vicinity ..... 26

a.	PGW’s proposed distribution rate includes inappropriately assigned costs.....	26
b.	There is no basis for assessing surcharges to Vicinity. ....	27
c.	PGW has failed to offer a market value ARS product. ....	31
6.	Vicinity has Proven that it is ready, willing, and able to bypass PGW. ....	32
E.	Customer Service Issues .....	33
F.	Low-Income Customer Service Issues.....	33
G.	Pipeline Replacement/Alternatives .....	33
H.	Miscellaneous Issues.....	33
V.	CONCLUSION.....	33
<b>APPENDIX A</b>	Proposed Findings of Fact	
<b>APPENDIX B</b>	Proposed Conclusions of Law	

**TABLE OF AUTHORITIES**

**Cases**

*City of Lancaster (Sewer Fund) v. Pa. PUC*,  
793 A.2d 978, 982 (Pa. Cmwlth. 2002) ..... 9

*Generic Investigation Regarding Gas-On-Gas Competition Between Jurisdictional Natural Gas  
Distribution Companies*, Docket No. I-2012-2320323 (Opinion and Order entered May 4,  
2017, at 20-21) ..... 30

*Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. v. Philadelphia  
Gas Works*, Docket C-2021-3029259 ("*Complaint Case Order*"), (Opinion and Order entered  
April 20, 2023 at 3) ..... 2

*Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. v. Philadelphia  
Gas Works*, Docket Nos. R-2023-3038069 and C-2023-3038722 ..... 3

*Lower Frederick Twp. Water Co. v. Pa. PUC*,  
409 A.2d 505, 507 (Pa. Cmwlth. 1980) ..... 9

*Pa PUC v. Equitable Gas Company*,  
Docket No. R-00050272 (Opinion and Order entered September 28, 2005, slip op. at 42)..... 29

*Pennsylvania Public Utility Commission v. Peoples Natural Gas*,  
Docket R-00050267 (Opinion and Order Entered September 30, 2005, slip op. at 34)..... 30

*Popowsky v. Pa. PUC*,  
683 A.2d 958, 961 (Pa. Cmwlth. 1996) ..... 9

**Statutes**

66 Pa. C.S. § 315(a) ..... 9

66 Pa. C.S. § 1301..... 9

66 Pa. C.S. § 2212..... 1, 9

**Regulations**

52 Pa. Code §§ 69.2701-2703 ..... 10

## **I. INTRODUCTION AND PROCEDURAL HISTORY**

### **A. Introduction**

The seeds of this case were sown in 1995-96 when a contract (“Contract”) was negotiated and executed between the City of Philadelphia (“City”), the Philadelphia Authority for Industrial Development (“PAID”), the Philadelphia Gas Works (“PGW”); Grays Ferry Cogeneration Partnership (“GFCP”) and Vicinity Energy Philadelphia, Inc. (“VEPI”) or their predecessors.<sup>1</sup> The Contract (which is actually several agreements), in addition to containing a renewal clause (with the consent of the parties), was consummated before PGW became subject to the jurisdiction of the Pennsylvania Public Utility Commission (“Commission”) and before PGW’s service to GFCP or VEPI (collectively “Vicinity”) would be subject to a Commission tariffed rate and subject to a rigorous Commission review and approval process.<sup>2</sup>

PGW claimed in the Complaint Case that its intention was that when the Contract expired, the terms of service and rates would be changed.<sup>3</sup> Vicinity did not participate in that view and built its businesses in reliance on reasonably priced delivery service that acknowledged its unique circumstances – that Vicinity is a public utility, that it is an environmentally friendly generator of electricity located in the City, its ability to bypass PGW, its ability to be interrupted, the size of its load, and the single purpose dedicated high pressure distribution line by which it is served (and for which it paid). These circumstances all continue to this day as does Vicinity's willingness to continue to take service from PGW, which was and is still contingent on reasonable cost-based service.

---

<sup>1</sup> See Exhibit JC-2.

<sup>2</sup> See 66 Pa. C.S. § 2212.

<sup>3</sup> *Answer with New Matter to Formal Complaint (PGW)*, C-2021-3029259 (filed November 22, 2021, at page 8).



Regardless of the expiration of the Contract, however, its terms continue to control the relationship between PGW and Vicinity, as the Commission concluded in its April 20, 2023, Order in the Complaint Case<sup>4</sup>. In its April 20, 2023 Order, the Commission recited the history of ongoing service:

In 1995, Vicinity actively pursued the available means to by-pass PGW's system by working in cooperation with Texas Eastern Transportation Company (TETCO) in seeking Federal Energy Regulatory Commission (FERC) approval to construct a Vicinity-owned pipeline to connect TETCO's Philadelphia Lateral and Vicinity's facilities at Grays Ferry. Vicinity's plans were to secure a source of natural gas in sufficient volume and pressure to produce both electricity and steam from a single unit of fuel. PGW actively opposed Vicinity's plan to bypass PGW. Despite PGW's opposition, the FERC approved Vicinity's plan. Exc. At 3; citing, St. JC1, 6:1-15.

In order to avoid Vicinity's bypass of its system, PGW negotiated a 25-year agreement with Vicinity whereby Vicinity would agree not to bypass PGW and would abandon the FERC-approved plan to construct a bypass with TETCO. Under the agreement, Vicinity agreed to pay PGW over \$10 million to construct a new PGW-owned two-mile segment of pipeline and repurpose a PGW-owned two-mile petroleum products pipeline to provide service to Vicinity at very high pressure directly from TETCO's interstate Philadelphia Lateral, collectively called "the four-mile line." At present, PGW has no scheduling or balancing duties or obligations related to Vicinity's interstate deliveries directly with TETCO. In addition, Vicinity pays PGW a separate annual \$160,000 Operation and Maintenance (O&M) charge for the four-mile line. Since PGW's service to Vicinity began, Vicinity has been the only customer ever served from the PGW-owned four mile line, which is a high-pressure pipeline. Exc. At 2-3, citing Vicinity St. No. 1, 22 17:16-18:3; St. JC1, 17:13-19; JC1, 8:13-18.

Prior to the Commission's assumption of jurisdiction over PGW, the rates and terms of service between PGW and Vicinity were established under a group of four contracts, referred to as "the 1996 Contracts" or hereafter referred to as "the Agreement." See I.D. at 5, F.O.F. No. 9, citing PGW St. 1R at 6.5.

---

<sup>4</sup> *Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. v. Philadelphia Gas Works*, Docket C-2021-3029259 ("Complaint Case Order"), (Opinion and Order entered April 20, 2023 at 3).

Vicinity's participation in the instant case, as well as PGW's 2023 1307(f) case<sup>5</sup> and of course the Complaint case before it, is intended to secure service from PGW under reasonable terms and conditions that recognize that Vicinity is a unique PGW customer and has been a unique customer for the past 25 + years. The Commission recognized that fact when it transferred determination of an appropriate rate for Vicinity to this rate case. Importantly, the Commission recognized that Vicinity had met the burden of proving that it was eligible for a special rate by demonstrating that it had been served under a special rate for the past 25 years.<sup>6</sup>

In its April 20, 2023, Complaint Case Order in the Commission also designated four questions that must be answered in this case. These questions are critical to determining whether the rates proposed in this case are just and reasonable. These questions are:

- a. the proper rate class for Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc., including, if necessary, whether a special rate class is appropriate,
- b. the appropriate methodology and evidence necessary to apply the methodology, to determine Philadelphia Gas Works' actual cost of service for Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc.
- c. consideration and resolution of the question of whether and, if so, to what extent Philadelphia Gas Works' transportation service to Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc., utilizes PGW's low pressure distribution system, and if so, what impact does such use have upon the Philadelphia Gas Work's actual cost of service and the resulting "just and reasonable" rate for Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc.
- d. consideration and resolution of the question whether Philadelphia Gas Works should be held to its prior position in base rate proceedings that Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc., do not utilize Philadelphia Gas Works' distribution system.

---

<sup>5</sup> *Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. v. Philadelphia Gas Works*, Docket Nos. R-2023-3038069 and C-2023-3038722. ("1307(f) case").

<sup>6</sup> *Complaint Case Order*, slip op. at 42.

In this case, PGW continues with its game of hide and seek, seeming to acknowledge the Commission's Order, while at the same time continuing its effort to substantially increase the revenue it receives from Vicinity. An example is PGW's approach to the Commission's mandate to consider the proper rate class for Vicinity (which is a competitor of PGW) -- PGW concedes that Vicinity should be served under a special rate. However, the terms and conditions of the special rate that PGW now proposes are more onerous than anything it had previously proposed for Vicinity and would for the first time include surcharges that would dwarf the actual transportation charges. In a similar vein, PGW concedes that the distribution rate should be determined by direct allocation of the actual costs of serving Vicinity through the four-mile line, except that PGW continues to insist that Vicinity's acceptance of Alternate Receipt Service ("ARS") "uses" PGW's low pressure distribution system and unsuccessfully attempts to justify the assignment of substantial low pressure distribution costs to ARS. This is in addition to allocating selective low pressure system costs to Vicinity's distribution rate that Vicinity witness Mr. Crist has removed in the adjustments he made to PGW's class cost of service study ("CCOSS"). PGW's continuing effort to allocate low pressure distribution system costs to Vicinity, in the various forms those claims take, seem to be focused on unsuccessfully creating an argument that Vicinity is a typical low pressure distribution system customer that should therefore share the costs that such customers pay, and base on that cost sharing on Vicinity's transportation volumes which are obviously many multiples larger than any low pressure distribution system customer. PGW's effort resulted in \$25 million per year in surcharges in PGW's initial filing, then reduced to \$3.8 million by the date of the hearing, as contrasted to PGW's proposed distribution charges to transport gas for Vicinity for a year at just over \$1 million. That bears repeating -- PGW's proposed surcharges exceeded their proposed distribution charges, which is absurd on its face.

The evidence in this case demonstrates that Vicinity is a unique customer served from a unique facility (for which Vicinity paid in full) that in no way uses PGW's low pressure system and does not require the same level of PGW involvement as service to other customers; because unlike other customers, Vicinity does its own balancing and nominations with TETCO. Because of its unique position, including its ability to bypass PGW entirely, Vicinity should not be assessed the variety of surcharges that are collected from customers who benefit from the services the surcharges support. Nonetheless, PGW erroneously claims that ARS is the nexus to the low pressure distribution system (it is not), therefore PGW is justified in allocating these devastating surcharges to Vicinity.

The Philadelphia Lateral is the only source of the gas that Vicinity burns at its facility. The Philadelphia Lateral is fully subscribed, meaning that all its capacity is allocated. PGW holds 134,800 Dth/day of Philadelphia Lateral Capacity and Grays Ferry holds 35,000 Dth/day. In the winter, Vicinity has peak needs of 56,000 Dth/day. Instead of releasing the needed 21,000 Dth/day (56,000 less 35,000) of its capacity on the Philadelphia Lateral to Vicinity, PGW created the ARS.

When the 1996 Contract was executed, Vicinity's capacity shortfall could have been simply addressed had PGW released 21,000 Dth/day of its Lateral capacity to Vicinity (with appropriate compensation, of course). That did not happen. Instead, PGW has held Vicinity – a major competitor – hostage through the ARS.

At the center of the controversy over PGW's service to Vicinity, apart from setting a just and reasonable rate for transporting gas over the dedicated four mile high pressure line, is PGW's provision of ARS. ARS was proposed as part of the 1996 Contract, and it is not possible to determine the then contemporary motives of the parties, except to state that Vicinity needed 21,000

dth/day of capacity and PGW was willing to acquire that amount of capacity for Vicinity.<sup>7</sup> Rather than simply release that capacity to Vicinity year round, however, (1) PGW agreed to release the capacity in the summer months (at a price that recently has vastly exceeded the market price) and (2) utilizes ARS in the winter months. Under ARS, PGW and Vicinity swap delivery of gas to two separate gate stations so that PGW “uses” the Philadelphia Lateral capacity that it holds to deliver gas to Vicinity via the four mile line and Vicinity delivers an equivalent quantity of gas to PGW at Skippack, without PGW releasing the capacity or providing the benefits of the use of the full capacity path to Vicinity. Mr. Crist acknowledged under examination by Judge Vero that PGW simply releasing the capacity to Vicinity would have been cleaner and would not have left this legacy issue for the Commission to resolve today. Vicinity had agreed that if PGW were to release the full extent of the capacity used to provide ARS to Vicinity – not just the Philadelphia Lateral segment—that Vicinity would be willing to pay up to the tariff maximum rate for that capacity release, but PGW refused and instead insists on providing only ARS at a price that is at or above the tariff maximum rate for that capacity, but without providing the ability for Vicinity to purchase the lower cost gas that the full capacity path provides.<sup>8</sup> As proposed, the only value that ARS provides to Vicinity is the ability to have gas delivered over the capacity-constrained Philadelphia lateral, for which the market price is \$0.10/Dth/day.<sup>9</sup>

The issues that were raised in the Complaint case remain: 1) the actual cost of service, the appropriate distribution rate classification and the rate; 2) whether ARS “uses” the low pressure distribution system; 3) the appropriate cost of ARS and whether alternatives to ARS exist; and, 4) whether Vicinity's ability to bypass PGW as well as its willingness to continue its historic

---

<sup>7</sup> In 1996, PGW executed two capacity agreements (800514, 800515) with TETCO, each for 18,000 Dth/day that deliver to the Philadelphia Lateral. See Exhibit JC-12.

<sup>8</sup> Tr. at 310, 17-19.

<sup>9</sup> Vicinity St. No. 1, 24:10-17.

interruptibility should be considered in deciding whether to impose the proposed surcharges (surcharges that are an order of magnitude higher than the proposed distribution rates). As discussed more fully below, Vicinity's approach has been consistent: a special rate class that recognizes Vicinity's unique situation and a distribution rate that is consistent with the actual cost to serve it via the dedicated facilities used to do that; some form of relief for its capacity needs at a rate that recognizes the market value of the service – be that ARS or capacity release. Similarly, Vicinity believes that its unique ability to interrupt coupled with its current readiness to bypass make the application of any surcharges inappropriate.

The record is unambiguous that Vicinity is prepared to bypass PGW if it is forced to bear unreasonable rates and/or surcharges. If that happens, PGW will be left with no revenue from the four-mile line. Vicinity understands that such a move may harm other customers, and that is not Vicinity's intent, as evidenced by its engagement in this process seeking a just and reasonable result. But so far, PGW's various pricing proposals have left Vicinity no choice. Make no mistake, if the rates are what PGW has proposed, Vicinity will bypass.

## **B. Procedural History**

As to Vicinity, this matter began with its filing of a Formal Complaint against PGW, docketed at C-2021-3029259, on October 22, 2021. The Complaint was addressed by the Commission in an April 20, 2023, Order issued after this proceeding had begun. That Order required the ALJ presiding over this matter to address certain specific questions posed by the Commission and to determine just and reasonable rates terms and conditions for PGW's service to Vicinity.

On February 27, 2023, PGW filed with the Commission its proposed Supplement No. 105 to PGW Gas Supplier Tariff Pa. P.U.C. No. 1 and proposed Supplement No. 159 to PGW Gas

Service Tariff Pa. P.U.C. No. 2 to become effective April 28, 2023. The filing contained proposed changes in rates, rules, and regulations calculated to produce \$85.8 million (10.3%) in additional annual revenues, an increase in residential customer's bills using 71 Mcf/year to increase from \$125.38 to \$137.73/month (9.9%). Within the general rate increase filing, PGW filed a Petition for Waiver seeking waiver of the application of the statutory definition of the fully projected future test year ("FPFTY") so as to permit PGW to use a FPFTY beginning on September 1, 2023, in this proceeding.

By Commission Order entered April 20, 2023, the proposed Tariffs were suspended by operation of law until November 28, 2023. The Commission ordered an investigation into the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in the proposed Tariffs. The Commission also ordered an investigation into the reasonableness of PGW's existing rates, rules, and regulations.

Vicinity filed a Complaint against the rate filing on March 3, 2023. Vicinity's Complaint is docketed at C-2023-3038727.

On April 28, 2023, a Prehearing Conference was held and the specific procedural rules for this matter, and the litigation schedule were established. The schedule provided for the filing of Supplemental Direct Testimony by PGW's witnesses, and Direct, rebuttal and surrebuttal testimony for all parties.

On July 11 and 12, 2023, hearings were held where evidence was admitted into the record, and sponsoring witnesses cross-examined, where such was requested.

The litigation schedule provides for Main Briefs to be filed on July 27, 2023, and this brief is presented in fulfillment of that requirement.

## II. LEGAL STANDARDS

### A. Just and Reasonable Rates

Section 1301 of the Public Utility Code, 66 Pa. C.S. § 1301, requires that every rate demanded by a public utility be just and reasonable. The Code gives the Commission broad authority to determine that rates are just and reasonable and such rates allow a utility to recover those expenses that are reasonably necessary to provide service to its customers as well as a reasonable rate of return.<sup>10</sup> Importantly, there is no one way to determine whether rates are just and reasonable and the Commission has the discretion to evaluate utility rates.<sup>11</sup>

### B. Burden of Proof

The burden of proving the justness and reasonableness of a rate is placed on the public utility. 66 Pa. C.S. § 315(a) (relating to reasonableness of rates). The evidence necessary to meet this burden of proof must be substantial. *Lower Frederick Twp. Water Co. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980).

In discharging its burden of proof in general rate increases, a public utility traditionally submits an overall claim of its cost of service, or total revenue requirement, which is established through the following two main components in a test year:

(1) the allowed total expense claim, plus (2) the allowed return on investment. *Columbia Order* at 47. However, PGW is a cash flow utility which does not rely on equity financing. It is well settled that, pursuant to 66 Pa. C.S. § 2212(e), the Commission utilizes the cash flow method of ratemaking to establish PGW's rates, rather than having its revenue requirement determined on the basis of a fair rate of return on a used and useful rate base.

In 2010, the Commission issued a policy statement setting forth the criteria and the financial and other considerations that are to be examined in setting base rates at “just and

---

<sup>10</sup> *City of Lancaster (Sewer Fund) v. Pa. PUC*, 793 A.2d 978, 982 (Pa. Cmwlth. 2002).

<sup>11</sup> *Popowsky v. Pa. PUC*, 683 A.2d 958, 961 (Pa. Cmwlth. 1996).



reasonable” levels, applicable to PGW. See 52 Pa. Code §§ 69.2701-2703. In its Policy Statement, the Commission described the requirements of the Cash Flow Method as follows:

(b) The Commission is obligated under law to use the cash flow methodology to determine PGW’s “just and reasonable” rates. Included in that requirement is the subsidiary obligation to provide revenue allowances from rates adequate to cover its reasonable and prudent operating expenses, depreciation allowances and debt service, as well as sufficient margins to meet bond coverage requirements and other internally generated funds over and above its bond coverage requirements, as the Commission deems appropriate and in the public interest for purposes such as capital improvements, retirement of debt and working capital.

### **III. SUMMARY OF THE ARGUMENT**

Vicinity has been seeking one goal since filing a formal complaint in October 2021 – to continue the service that it had received for nearly 25 years (at that point) at a reasonable rate. While the scope of the issues in contention has narrowed, there remain three issues (with sub issues) that are contested.

First, is the question of an appropriate distribution rate. In the Complaint Case, PGW made the now debunked argument that ARS service (discussed below) uses its low pressure distribution system, and then used that fallacy as an excuse to allocate nearly \$9 million of low pressure distribution system costs to the distribution service it provides to Vicinity which resulted in a rate demand of \$0.65/Dth for distribution.

In this case, PGW appears to have changed its approach and Ms. Heppenstall (who did the allocation in the Complaint case) now agrees with the sworn testimony proffered by her and every other PGW witness since the first Commission rate case, that direct allocation is the appropriate method for Vicinity and the rate produced by her CCOSS in this case is just over \$0.10 /Dth. It is clear that PGW's demand in the Complaint case was clearly wrong. However, what PGW proposes in this base rate case continues to contain other flaws. Specifically, despite the apparent admission that the Complaint Case CCOSS inappropriately allocated low pressure distribution costs to Vicinity's standalone, dedicated high pressure, four-mile pipeline, PGW continues to allocate low pressure distribution system costs to Vicinity. Indeed, in this case PGW has included \$784,000 of low pressure distribution system costs in the proposed transportation rate and, at least in Ms. Heppenstall's testimony, tried to attach the very same costs she previously allocated to the transportation rate but now to the proposed ARS rate (discussed below). There is no evidence that the \$784,000 was expended for equipment or services that PGW funded, rather, the expenses were

allocated on a usage basis which is not appropriate in a direct allocation. Mr. Crist, Vicinity's witness, proposed a corrected rate of \$0.0397/Dth, which simply removes the low pressure system costs.

The second item at issue is the appropriate rate for ARS which has been much discussed in this proceeding and the immediately preceding 1307(f) case. ARS is a service that has allowed PGW to provide access to capacity that it holds, and which allows it to deliver gas on the Philadelphia Lateral to Vicinity, without releasing the capacity, and instead swapping gas with Vicinity. PGW delivers gas to the Philadelphia Lateral and Vicinity delivers the same quantity of gas to PGW at the Skippack Lateral. None of the ARS gas that is delivered by PGW ever goes into the low pressure distribution system and none of the gas Vicinity delivers to Skippack is ever used by Vicinity, and so there is no basis for PGW's position. Despite PGW's consistent insistence that nearly \$9 million of low pressure distribution costs be allocated to ARS, PGW has agreed in this case that ARS should be based on a market value of the capacity assets used to provide it. PGW is intent on charging Vicinity an excessive price for the capacity--\$1.05 \Dth/day initially, but lowered to \$0.61/Dth/Day in exhibit Ft-14—but does not intend to provide the value of the full capacity path to Vicinity. Stated differently, PGW has priced ARS as though it were releasing the full capacity path to Vicinity, when in reality, it is not proposing to release any capacity and instead is using the capacity it holds on the Philadelphia Lateral segment to provide ARS. The Philadelphia Lateral segment capacity has a much lower market value: currently it is \$0.10 Dth/Day. If PGW were to release the full path of the capacity to Vicinity, it would have a greater value than the sole Philadelphia Lateral segment. ARS does not provide the ability for Vicinity to use the full capacity path or to access its value of sourcing inexpensive gas. Under PGW's approach, PGW would be

able use the valuable upstream segment of the capacity to generate revenue, while Vicinity would be left paying for delivered gas.

The final issue of contention is PGW's assertion, for the first time, that Vicinity should be assessed \$25 million in surcharges. Admittedly, that number has been reduced to \$3,775,922 in PGW's most recent testimony, but without explanation as to why and without any assurance that PGW will not continuously seek such surcharges in future rate cases. Regardless, the total of the surcharges PGW is still insisting on is almost \$4 million per year, which dwarfs the proposed distribution charge. This, even though Vicinity is not eligible to participate in any of the programs supported by the surcharges, and perhaps more relevant – it does not and has not caused the costs that are recovered in the surcharges. Perhaps the most critical reason for not applying the surcharges is that doing so would cause Vicinity to bypass PGW. Vicinity has proven beyond a doubt that it has done as much as is prudent to prepare for bypassing PGW while awaiting the result of this matter, and application of the surcharges would trigger that process. This proposed application of surcharges violates the principles that 1) costs should be allocated to the cost-causer and 2) gradualism, in addition to violating Commission precedent that discourages imposing surcharges on customers with special or competitive rates, such as PGW has proposed for Vicinity here. Moreover, PGW does not apply the surcharges to services for Rate IT customers and even though Vicinity is and has been interruptible for more than 25 years, PGW refuses to acknowledge that interruptibility or adjust GS-XLT accordingly. In short, none of the surcharges should apply.

#### IV. ARGUMENT

**A-C.** Vicinity has no argument for these sections other than as contained in its argument in Section D below.

#### **D. GFCP/VEPI - Class GS-XLT**

##### **1. PGW has Proposed that Vicinity Should be Served Under a Special Rate Class (Commission Question 1)<sup>12</sup>**

##### **a. PGW has not Proposed Appropriate Terms or Conditions for a Special Rate for Vicinity.**

PGW proposed that Vicinity be served under a new rate class GS-XLT. This rate class would have a single customer, Vicinity, and purports to address all the components of the service including (for the first time) the application of surcharges. While it is appropriate that Vicinity be served under a special rate, because it meets the criteria for a special rate, PGW has not proposed a typical special rate. PGW ignores the fact that Special Rate customers typically do not pay the add-ons and surcharges assessed to other customers, nor does its proposal recognize the circumstances that are the foundation of a special rate; that is, PGW conceding that Vicinity qualifies for a special rate does not erase the need to address the reasons why a special rate applies. For example, a customer that can bypass the utility must be charged a rate sufficient to obtain the

---

<sup>12</sup> The Specified Questions are:

- a) the proper rate class for Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc., including, if necessary, whether a special rate class is appropriate,
- b) the appropriate methodology and evidence necessary to apply the methodology, to determine Philadelphia Gas Works' actual cost of service for Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc.
- c) consideration and resolution of the question of whether and, if so, to what extent Philadelphia Gas Works' transportation service to Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc., utilizes PGW's low pressure distribution system, and if so, what impact does such use have upon the Philadelphia Gas Work's actual cost of service and the resulting "just and reasonable" rate for Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc.
- d) consideration and resolution of the question whether Philadelphia Gas Works should be held to its prior position in base rate proceedings that Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc., do not utilize Philadelphia Gas Works' distribution system.

patronage of the customer, otherwise the customer will choose the more attractive option of bypassing the utility. PGW has submitted its CCOSS for the rate it proposed for Vicinity, however the rate included allocated costs that Vicinity did not cause, and Mr. Crist has addressed those inappropriate cost allocations and removed them from the rate calculation. However, customers who qualify for special rates involving competitive circumstances such as bypass are not assessed the extra charges that other non-competitive customers pay for such costs because they would drive the customer to abandon utility service. Vicinity is isolated from PGW's low pressure distribution system. Vicinity is served from a four-mile high-pressure line, that does not connect with PGW's low pressure distribution system, and its volume is ten times larger than any other customer. For the first time in their mutual history, PGW now proposes assessing four surcharges on Vicinity. Though PGW has reduced these surcharges somewhat from their initial absurd levels, even as revised in Mr. Teme's Exhibit FT-14 the collective surcharges still result in a total cost to Vicinity sufficient to drive Vicinity from PGW's system.<sup>13</sup> In this instance, the surcharges initially proposed were approximately \$25,000,000 per year while the distribution charges would have been just over \$1 million. Not only is that amount facially absurd when one considers the rates currently charged to Vicinity and the fact that if it is forced to pay any substantial surcharge, but Vicinity's incentive to bypass becomes overwhelmingly clear and actionable. Indeed, PGW's attempts to impose these surcharges, even at the reduced level, leave Vicinity no choice but to bypass. Adding to the absurdity of PGW's proposal, Vicinity does not even qualify for the surcharge programs as currently designed, nor impose the costs that are supported by such surcharges.

Mr. Crist's Exhibit JC-7 lists a number of changes to the proposed tariff, most notably the rejection of the surcharges, a proper market price for the ARS that reflects the actual value of the

---

<sup>13</sup> PGW's current revenue from Vicinity is \$1,129,040. PGW's original proposed full tariff revenue was \$28,065,256, and its revised proposal is \$7,685,993. (Exhibit FT-14).

segment of lateral at issue (rather than the upstream segment that provides additional benefits and, thus, costs more) and PGW's proposed meter charge for Vicinity of \$1,100 per meter per month when it is presently charged \$250/meter/month. Mr. Crist proposed that, as in Rate IT, that parallel meters for GS-XLT should be counted as one meter. While Vicinity's meters currently serve two separate corporate entities and thus do not qualify as parallel meters, if that would change in the future Vicinity should receive non-discriminatory treatment that is consistent with all other PGW tariffs.<sup>14</sup> In short, the primary failure of Rate GS-XLT as proposed by PGW is that it does not recognize the singularity of Vicinity which is the basis for the special rate in the first instance.

**b. PGW has Unreasonably Refused to Provide an Interruptible Rate that recognizes Vicinity's ability to be interrupted.**

As a general matter, it is important that PGW recognize that Vicinity's service is entirely different from any other customer on the system, but it refuses to acknowledge that Vicinity's service has been interruptible and will continue to be interruptible, even under the conditions it has proposed. Vicinity's peak usage is well documented at 56,000 Dth/day, but 21,000 Dth/day of that peak day capacity is proposed to continue to be provided via ARS as an interruptible service, which means that nearly half of Vicinity's load on that peak day is subject to interruption. Under the terms of the 1996 contract, PGW can interrupt up to 15 days per year when the temperature is below 25 degrees, and Vicinity has agreed to continue providing PGW with such flexibility. PGW's proposed interruptible service for Vicinity was prior to Vicinity initiating the Complaint case. Vicinity was not fully aware of the meaning of "interruptible" in the context of PGW's offer, nor the ramifications of that designation and initially resisted. Nonetheless, in this case, Vicinity has made it clear that it is willing to continue under the same historic interruptibility it has accepted

---

<sup>14</sup> PGW Rates GS, MS, PHA, IT all treat parallel meters as one meter subject to customer charges. (Supplement 159 to Gas Service Tariff – Pa P.U.C. No. 2, Revised Pages 83,84, 90 and 115.

for the past 25 years, in addition to the interruptibility conditions of existing Rate IT and proposed Rate GS-XLT.

PGW's argument is that Rate IT has a different standard for interruptibility, and while that is true, it also is true that in many respects, Vicinity is subject to a greater degree of interruptibility now and has a greater capacity to address such interruption than most IT customers.<sup>15</sup> Classifying the service as firm, as PGW has done, is incorrect because Vicinity owns 35,000 Dth of capacity that can deliver its gas through the Philadelphia Lateral to the four-mile line which serves only Vicinity. Even if interrupted, Vicinity can continue to operate for considerable periods of time<sup>16</sup> without the ARS if that service is not provided, which would interrupt 37% of its peak day load. Mr. Crist explained during cross-examination,

[a]nd in fact, Vicinity's got six million gallons of oil sitting right there on their site. They're probably the most interruptible capable customer that PGW has. That only benefits the GCR customers of PGW to have an interruptible resource such as Vicinity.<sup>17</sup>

Vicinity is clearly a unique customer who became a customer under unique circumstances and whose service needs are unique.

**c. Vicinity's special rate should incorporate the service conditions that were established in the Contract.**

PGW has offered no compelling reason why Rate GS-XLT cannot be modified in accordance with Mr. Crist's changes which align the tariff with Vicinity's historic operation. Vicinity signed a long term contract and invested substantially (in both the pipeline and its business) and continues to invest substantially in Philadelphia operations and intends to continue

---

<sup>15</sup> Vicinity St. No. 1-SR, 10:13-22.

<sup>16</sup> Vicinity St. No. 1-SR, 11:3-18. ("I have provided significant evidence that Vicinity has oil storage and is capable of operating its facility for 70 days in the summer, 30 days in the winter, and 20 days at peak, and that is without replenishment of its oil stores.")

<sup>17</sup> Tr. at 589.



its business. It is inexcusable that PGW seeks to impose conditions of service to Vicinity that would drive it to the point where it considers bypassing the utility to remain viable, but PGW has done just that. Vicinity seeks service conditions that allow it to continue its business, continue to serve its steam customers and continue its generation of environmentally friendly electricity. The analysis performed by PGW's own CCOSS witness, Ms. Heppenstall, shows that when calculated without the specious argument that ARS volumes somehow use PGW's low pressure distribution system, the distribution rate that Vicinity has paid for 25 years, is closer to the actual cost of service than PGW's various and shifting demands. The demand in the Complaint case (eventually PGW settled on a demand of \$0.65/Dth) shows that if there was a subsidy in that rate, it was Vicinity subsidizing PGW's customers. The parties appear to agree that ARS is a gas cost issue and that the service should be priced based on the market value of the assets used to provide it, but because of the nature of ARS (Vicinity receives only gas, not capacity that it can use as it sees fit), Vicinity does not receive the full market value of that capacity. It is PGW's insistence on attaching the surcharges where the apparent agreement between the parties breaks down, because it is the surcharges that cause the millions of dollars of increase in costs to Vicinity and those are costs it cannot and will not pay that will trigger the bypass. There are many bases for not charging the surcharges; the same cannot be said for charging them.

**2. PGW has not proposed an appropriate methodology to determine the “actual cost of service” for Vicinity. (Commission Question 2)**

Compared to the Complaint case, the CCOSS presented in this case properly allocated the cost of serving Vicinity to the proposed distribution service under Rate GS-XLT, with a few exceptions. In addition to the substantial shift Ms. Heppenstall herself made from the Complaint case to this case (going from \$0.65/Dth to \$0.11 for transportation) Mr. Crist also proposed to remove \$784,000 of additional low pressure distribution system costs that Ms. Heppenstall

inappropriately allocated to Vicinity. Even if it were determined that some of those costs are appropriate for Vicinity, it is not appropriate to allocate maintenance of a gate station that serves multiple customers on a volumetric basis because cost causation is not volume based.<sup>18</sup> Mr. Crist's \$0.0397/Dth distribution rate appropriately allocates the direct costs of service to Vicinity.<sup>19</sup>

It is important to note, however, that just because PGW did not include ARS volumes in its determination of distribution service costs, does not mean that it did not allocate substantial low pressure distribution system costs to Vicinity. To the contrary, it did when Ms. Heppenstall allocated over \$8 million in low pressure distribution costs to ARS.<sup>20</sup> While PGW has claimed it wishes to set the ARS rate on a "market" basis (i.e., at the market price of the capacity), it has not and it has not explained its allocation of substantial low pressure distribution system costs to ARS in what appears to be an effort to justify a price substantially above the market price for ARS. This allocation is functionally ineffective, incorrect, and contrary to PGW's testimony in other cases.<sup>21</sup> ARS does not use PGW's low pressure distribution system and the costs of providing distribution service to PGW's other customers is not impacted by ARS. Allocating any low pressure distribution system costs to ARS is simply wrong. In all its rate cases prior to this one, PGW did not allocate low pressure distribution system costs to Vicinity, either through the distribution rate or ARS. It was not until the Complaint Case that PGW attempted to allocate such costs to transportation service, and after the Final Order in that case was issued, that PGW changed its strategy in this case to allocate those costs to ARS. ARS does not incur any low pressure

---

<sup>18</sup> TR. at 561.

<sup>19</sup> Contrary to PGW's oft repeated misrepresentation, Mr. Crist never said that a \$0.212/Dth rate was appropriate for Vicinity. He clearly stated that would be the maximum rate under PGW's own Complaint Case CCOSS once certain cost were removed, and he clearly stated that other Operations and Maintenance ("O&M") costs needed to be removed. Vicinity St. No. 1-SR, 2:10-4:6. This approach is consistent with Mr. Crist's approach here, and in fact, is exactly what he did in this case.

<sup>20</sup> PGW St. No. 5-SD, 5:21-6:2.

<sup>21</sup> Vicinity St. No. 1, 15:9-20.

distribution system cost, and the nearly \$9 million in costs Ms. Heppenstall assigned to ARS should not be allocated to it. Regarding costs of service to Vicinity's distribution service, it is inappropriate to allocate costs that PGW cannot show were actually incurred to serve Vicinity.<sup>22</sup>

**3. PGW continues to insist that ARS uses the low pressure Distribution System – It does not. (Commission Question 3).**

As discussed above, PGW's cost of service study allocates nearly \$9 million of new low pressure distribution costs to ARS, and yet PGW proposes to charge \$3.957 million based on prior year's usage.<sup>23</sup> Such an allocation, in light of the proposed pricing for ARS, makes no logical sense except as a circuitous attempt to try to preserve the argument that any service to Vicinity uses the low pressure system. This premise has been rejected by Office of Small Business Advocate's ("OSBA") Mr. Knecht and Mr. Crist.<sup>24</sup>

The Philadelphia Lateral is fully subscribed, meaning that all its capacity is allocated. PGW holds 134,800 Dth/day and Grays Ferry holds 35,000 Dth/day. In the winter Grays Ferry has peak needs of 56,000 Dth. Instead of releasing the needed 21,000 Dth/day of additional capacity on the Philadelphia Lateral to Grays Ferry, PGW created the ARS.

ARS has been much discussed in this matter and merits a comprehensive explanation. ARS exists because Vicinity needed 21,000 Dth/day of capacity on the Philadelphia Lateral which is owned by TETCO, and in 1996, PGW was willing to provide that capacity, at least a proxy for it.<sup>25</sup> The TETCO pipeline is one of two interstate pipelines transporting gas to the Philadelphia area and to PGW.<sup>26</sup> In 1996 PGW obtained two capacity contracts (800514, 800515) each for 18,000 Dth/day of capacity with numerous receipt points in the Gulf of Mexico region and firm delivery

---

<sup>22</sup> Tr. 561.

<sup>23</sup> PGW St. No. 6-SD, 4:3-15.

<sup>24</sup> OSBA St. No. 1, 37:12-22; Vicinity St. No. 1, 20:17-21:28.

<sup>25</sup> Exhibit JC-2.

<sup>26</sup> Exhibit JC-3.

points on TETCO's Philadelphia Lateral.<sup>27</sup> Vicinity was unable to obtain all the capacity it required to meet its peak day because no additional capacity was available on the Philadelphia Lateral which is constrained in the winter.

Under the ARS, Vicinity delivers the quantity of gas it needs each day to a different, unconstrained delivery point, the Skippack Lateral (TETCO station 70034), and that gas flows into the PGW low pressure system and is used by PGW to satisfy the needs of its other customers. PGW then allows Vicinity to use gas that PGW has brought down the Philadelphia Lateral to meter 73060 at the city gate of the dedicated four-mile high pressure pipeline, to meet Vicinity's needs. Basically, it is a simple swap of gas that benefits Vicinity by providing winter gas deliveries, while allowing PGW to still obtain an identical amount of gas for its system, and benefits PGW by providing a guaranteed purchaser of summer release capacity. PGW charged Vicinity \$4,500/month or \$54,000 annually, and also required Vicinity to pay for 36,000 Dth/day of release capacity for the summer period of May through September. In 2022 that release capacity cost was \$2.3 million.

In the summer months, virtually all of Vicinity's high pressure gas supply flows down the Philadelphia Lateral using Vicinity's TETCO capacity. In the winter months, deliveries require Vicinity's capacity and some of PGW's capacity on the Philadelphia Lateral. Under either the summer release capacity scenario or the winter ARS scenario, all the physical gas that flows to Vicinity is transported down the four-mile, dedicated high-pressure pipeline paid for by Vicinity. None of the gas consumed by Vicinity transits PGW's low pressure system, nor would it be able to due to the pressure differences. It is not disputed that all the gas used by Vicinity flows through

---

<sup>27</sup> Exhibit JC-12.

the high pressure four-mile line, and in fact could not flow through the low pressure distribution system.

The TETCO contracts that PGW uses to provide capacity to Vicinity have a contract path from receipt points in the Gulf region all the way up through TETCO zones M-1, M-2 and M-3 with delivery meters specified on the Philadelphia Lateral. The availability of inexpensive gas in zone M-2 makes this full path capacity valuable. More specifically, the capacity can be segmented, and each segment can be used by different parties. The high value segment is from the Gulf region to M-3, and the low value segment is the Philadelphia Lateral used by Vicinity. As Mr. Crist explained on cross-examination:

Grays Ferry should pay the market price for capacity. And I've actually offered two choices. One is for short capacity solely on the Philadelphia lateral, current market price being 10 cents a dekatherm. And the other would be the release of the entire capacity path for the TETCO contract PGW uses that would be from M1 all the way to M3 on the Philadelphia lateral, and the price for that current market price is 35 cents a dekatherm.<sup>28</sup>

This leads to several conclusions. First, none of the gas that is consumed by Vicinity ever flows through PGW's low pressure distribution system. Second, none of the gas that Vicinity delivers to Skippack is ever used by Vicinity, rather, it is consumed by PGW customers just like any other system supply gas, because that is what it is. Third, the costs of ARS from an operational perspective are *de minimis*. Fourth, ARS does not use the PGW low pressure distribution system, rather Vicinity is merely delivering wholesale gas to PGW that PGW sells to its customers. Finally, the only portion of its capacity that PGW necessarily uses to deliver ARS gas to Vicinity at Gate Station 73060, is the segment on the Philadelphia lateral. Philadelphia Lateral capacity is thinly traded with only two potential buyers, Paulsboro Refinery and Vicinity. Those market conditions

---

<sup>28</sup> Tr. At 547.

resulted in a value for Philadelphia Lateral release capacity of \$0.10 Dth/day in the most recent winter season. The market conditions were discussed in the following exchange between PGW's Counsel and Mr. Crist:

Q. That's the - and that's the price, it's that [price]that you want to use for the purposes of ARS?

A. The only price market for last winter that 10 cents a dekatherm. So yes, that's the price that I recommend currently as the market price for ARS.

Q. With what - what customer, if any?

A. That's what the market is on that particular segment. Again, Mr. Reeves may have been disappointed by the low price, but that's the reality of the market price. It's a very thinly traded market.<sup>29</sup>

It is that segment of capacity that is necessary for Vicinity. Consequently, if ARS is to be priced at the market, that market price must reflect the underlying release capacity value of \$0.10 Dth/day. If PGW were to agree to release the entire contract capacity path to Vicinity, that would allow Vicinity to deliver gas from M1, then Vicinity has proven that the value is \$0.35 Dth/day; but that is not what ARS offers as proposed by PGW in this case. PGW has not proposed a release of capacity (yet has proposed charging as if it had, indeed at a premium). PGW proposed continuing the gas swap arrangement, delivering gas to Vicinity at meter 73060 and Vicinity delivering gas to PGW at meter 70034, nothing more. ARS does not use the low pressure distribution system and such costs cannot legitimately be used as a basis for demanding a higher price for ARS than is warranted by the facts.

**4. PGW's service to Vicinity does not use PGW's low pressure Distribution service. (Commission Question 4).**

For the first time in its 20 plus year history of being regulated by the Commission, PGW contended in the Complaint Case that service to Vicinity used the low pressure distribution system

---

<sup>29</sup> Tr at 538.

and should be allocated substantial costs of that system. This approach was not only unprecedented, but directly contrary to PGW's sworn testimony in its prior rate cases that stated because Vicinity paid for the four-mile line and that line served only Vicinity, that it should be allocated only the costs associated with serving it, not the cost of serving PGW's low pressure distribution system customers. In its April 20 Order, the Commission expressed skepticism towards PGW's assertion, but provided PGW an opportunity in this case to explain how that happens. PGW has completely failed to explain how Vicinity uses the low pressure distribution system. In this case, however, rather than allocate those costs to distribution service, nearly \$9 million in all, PGW chose to allocate those costs to ARS, under the theory that the distribution rate should be based upon directly allocated costs; i.e., those cost incurred to provide service to Vicinity via the four-mile line. The general assertion that the distribution rate should be based upon directly allocated costs is consistent with Vicinity's position throughout this litigation. However, PGW now contends that these same low pressure distribution costs should be allocated to ARS yet fails to explain how the gas volume swap, where neither party consumes what it delivers, causes Vicinity to use PGW's low pressure distribution system. PGW's theory that without its low pressure distribution system it would not be able to absorb the 21,000 Dth/day that is delivered to Skippack, begs the question of whether PGW would be able to accept deliveries from any wholesale supplier, for its own use or for that of Natural Gas Suppliers ("NGSs") on its system, without such deliveries "using" the system and thus being allocated distribution costs. The answer is that PGW seeks to allocate cost responsibility only to Vicinity, even though Mr. Reeves admitted under cross exam that the process for accepting deliveries from NGSs is the same as accepting deliveries from Vicinity at Skippack.<sup>30</sup> Vicinity has not claimed that there are no operational costs

---

<sup>30</sup> Tr. 300-301.

associated with ARS, only that they are minimal and that the fee PGW previously charged for those expenses was more than adequate.<sup>31</sup> Mr. Crist and Mr. Knecht have both testified that ARS does not use the low pressure distribution system, and PGW has offered nothing in return to refute that argument. Simply put, PGW attempted to bait and switch fictitious distribution costs from the delivery rate to the ARS but continues to lack a foundation for imposing the costs on Vicinity at all.

PGW's proposal in this case was that it not recover the \$9 million determined from Ms. Heppenstall's CCOSS, but instead that ARS be priced based upon the value of the assets used to provide it.<sup>32</sup> This change reduced the revenue allocation by more than half, to \$3.957 million. In his Rejoinder Testimony Exhibit FT-14, Mr. Teme presents PGW's revised proposal for ARS revenue of \$2,298,920, but never explained why ARS should be valued at any amount greater than the market value of \$0.10 Dth/day.

Simply put, there is no basis in fact to suggest that any gas used by Vicinity uses the PGW low pressure distribution system and there is no rationale to assign any such costs to Vicinity unless Vicinity causes those costs, which remains unproven. Mr. Crist has adjusted Ms. Heppenstall's CCOSS to remove costs that she allocated for use of the low pressure distribution system because there is no proof that any such costs were incurred serving Vicinity. A portion of those costs are related to metering equipment at gate stations and the maintenance of those stations. Mr. Crist under cross examination was asked why he removed the costs, and his response was that Vicinity had paid \$10.5 million in 1996 for the construction of the four-mile line including the gate station, and that notwithstanding the numerous data requests issued to PGW it had not provided any

---

<sup>31</sup> Vicinity St. No. 1, 19:20-21:14.

<sup>32</sup> PGW St. No. 8, 6:12-17.



evidence showing that PGW paid for construction or maintenance of the gate station serving Vicinity.<sup>33</sup> <sup>34</sup> Vicinity's witness explain it this way:

let me start with some fundamentals here. If I am a maintenance person working for PGW and I go out to do my business for the day, I keep a record I presume of where I go and what I do and what I spend. And in fact, if I work on a high pressure 4 mile line, I would have a record of that. Now if the cost accounting system of PGW doesn't preserve that granularity, that's a shortcoming of how they do cost accounting in line maintenance.

Q. Again, because PGW couldn't demonstrate that there were costs expressly associated with that particular gate station, you deny recovery of any cost whatsoever. Correct?

A. Correct because PGW produced absolutely no evidence or proof that they have done any maintenance on the four mile line or the gate station 060. I said you haven't produced any evidence, therefore you've not demonstrated and met your burden of proof requirement. So I denied those costs. I removed them from Ms. Heppenstall's calculation.<sup>35</sup>

Simply put, PGW has failed to meet its burden of proving that it has any funds invested in the gate station or high pressure pipeline assets that serve Vicinity. In the absence of such proof, Vicinity should not bear the cost allocation included in Ms. Heppenstall's CCOSS.

## **5. PGW has not proposed Just and Reasonable Rates for Vicinity**

### **a. PGW's proposed distribution rate includes inappropriately assigned costs.**

There are three rate issues that are contested – the distribution rate, the associated surcharges, and the rate for ARS. The parties appear to agree that the rate for distribution should be based on direct allocation of the cost of providing the service, although the parties do disagree on what items should be allocated. PGW's allocation includes costs for the low pressure

---

<sup>33</sup> Tr. at 561.

<sup>34</sup> Mr. Knecht made a similar remark in his testimony (OSBA St. No.1, 3:11-18) and at the hearing was asked to prepare an exhibit that showed the rate impact of re-allocating those same assets to Vicinity. Mr. Knecht offered a hypothetical response consistent with his previous statements that PGW has no records to prove it paid for the installation or maintenance of those facilities. Tr. at 417; PGW Hearing Exhibit 23;

<sup>35</sup> Tr at 560-561.

distribution system including metering and gate station equipment that PGW cannot show it ever paid for or maintained. There simply is no basis to allocate the substantial costs to Vicinity for there is no evidence that PGW paid for the equipment, because it would otherwise be customer capital contribution and not be subject to allocation.

**b. There is no basis for assessing surcharges to Vicinity.**

The surcharges are the most destructive portion of the rates proposed by PGW in this case, initially adding nearly \$25,000,000 to Vicinity's annual bill. \$25 million is in the ballpark of what Vicinity estimates it will cost to build a bypass pipeline and if those annual surcharges were imposed, it would ensure that bypass was certain. In PGW's latest demand, contained in Exhibit FT-14, despite the complete lack of supporting discussion in its testimony, PGW appears to contend that it is now demanding \$3,775,992 in surcharges, which still exceeds the rate PGW is now demanding for distribution service or 3 times the rate Vicinity pays currently.<sup>36</sup>

It is not appropriate to charge any level of surcharges to Vicinity. PGW's argument for imposing them is that other customers pay them so Vicinity should as well. PGW did not refute the fact that Vicinity would not benefit from any of the surcharges or that Vicinity is served by a distinct single use facility (paid for by Vicinity) that does not interact with the low pressure distribution system, PGW also fails to agree, wrongly, that Vicinity is and historically has been interruptible for a significant portion of its load. Interruptible customers on the PGW system are not assessed surcharges and yet now, PGW refuses to concede that Vicinity is interruptible, even though in the Complaint Case, it insisted that Vicinity be served at an interruptible rate. PGW has offered no explanation for the flip flop on this issue. When requested by ALJ Vero, "Were the transportation service to GFCP/VEPI to be converted to interruptible status from firm would there

---

<sup>36</sup> Exhibit FT-14. (The current proposed amount is \$1,129,040)

be an impact on the base rate charged?” PGW responded that for policy reasons the Universal Service and Energy Conservation (“USEC”) surcharge should apply to Vicinity but failed to cite any basis on cost causation.

A review of each surcharge illustrates why there is no cost basis to assess the surcharge to Vicinity. The USEC funds programs for income-eligible and age-eligible customers to provide assistance in paying their gas bills, and to fund conservation programs available to residential customers. PGW’s revised proposal assesses \$290,000 to Vicinity. Vicinity is not eligible to receive such assistance from PGW.

The Efficiency Cost Recovery (“ECR”) surcharge recovers costs for the Company’s demand side management programs and applies only to firm customer rate classes, as such should not apply to Vicinity as an interruptible customer. PGW’s revised proposal assesses \$111,811 to Vicinity. Even if the ECR surcharge were assessed to Vicinity, the program benefits would apply to the Rate GS-XLT class, and Vicinity is the only customer in that class. Assessing the charge to Vicinity would be like taking money from Vicinity’s right pocket and putting it back in its left pocket.

The Other Post Employment Benefits (“OPEB”) surcharge funds PGW’s obligations and is adjusted annually through the 1307(f) filing. PGW’s revised proposal assesses \$3,287,979 to Vicinity, or three times Vicinity’s current total distribution charge amount of \$1,129,040, which PGW proposes to increase to \$1,321,441. Proposing to assess a surcharge of such a ridiculous amount violates gradualism and can hardly be taken seriously, and PGW has provided no support for its assessment of this amount. It does not apply to interruptible customers and should not apply to Vicinity.

The purpose of Distribution System Improvement Charge (“DSIC”) is to recover pipeline repair and replacement costs between rate cases. PGW’s revised proposal assesses \$375,842 to Vicinity. The four-mile line serving Vicinity has not had any repairs in the past twenty-five years. The PGW tariff allows “the Company may reduce or eliminate the DSIC to any customer with competitive alternatives and customers having negotiated contracts with the Company, if it is reasonably necessary to do so.”<sup>37</sup> Vicinity’s bypass pipeline is certainly a competitive alternative, and DSIC should not be charged. If DSIC were to be assessed, then it should apply solely to repair costs on the four-mile line.

The logic of surcharge inapplicability in competitive situations, such a pipeline bypass, is well established. If there is a credible competitive threat or bypass opportunity, then special rates may be used to retain the patronage of the customer that might otherwise leave the LDC altogether. Once that special rate is determined, it makes no sense to believe that additional charges can be added to the rate without making the total rate realized by the customer in excess of the competitive alternative. Surcharges in a competitive environment are inappropriate.

Commencing with the Gas Wars of the late 1980s the Commission has allowed the flexing of rates and riders so the affected utility would be able to retain large customers. As stated in the Order in the 2005 Equitable Gas Company 1307(f) case (R-00050272), “For approximately twenty years, this Commission allowed NGDCs to negotiate or flex their tariff rates in order to compete with bypass and energy alternatives. One of the principal goals intended to be achieved was to benefit all customers through the retention of the service to large use customers.”<sup>38</sup>

---

<sup>37</sup> Supplement No. 95, to PGW Gas Service Tariff – Pa. P.U.C. No. 2, Seventh Revised Page No. 153.

<sup>38</sup> *Pa PUC v. Equitable Gas Company*, Docket No. R-00050272 (Opinion and Order entered September 28, 2005, slip op. at 42) (“*Equitable*”).

Bypass is specifically included, “There are circumstances in which it may be reasonable to require captive PGC customers to bear the costs of discounted or waived gas delivery-related charges incurred to retain throughput. Those circumstances may include instances in which a customer may obtain service by direct bypass” (*id*, Order at 43).

In that same year, the Commission issued a consistent decision in the Peoples Natural Gas Company 1307(f) case (R-00050267), “we believe that there are circumstances in which it may be reasonable to require captive PGC customers to bear the costs of discounted or waived gas delivery related charges incurred to retain throughput. The circumstances may include instances in which a customer may obtain service by direct bypass.”<sup>39</sup>

This principle was confirmed more recently in 2017 in the Order in the Gas Wars investigation<sup>40</sup> where “(t)he ALJ concluded that flex rates for dual fuel, bypass or economic development purposes can be used to further important public policy goals and the continuance of these practices is in the public interest.”

PGW also fails to acknowledge Vicinity’s present ability to bypass PGW entirely. The Commission has made it clear in prior cases that customers with the ability to bypass should not be charged surcharges and other extraneous fees that make distribution service more costly and thus less economically viable from a customer perspective. The testimony in this case is that if the rates increase dramatically, as they would with the imposition of the surcharges proposed by PGW (multiples of what Vicinity pays now as a distribution rate) it would be financially logical to bypass. In short, if PGW insist on imposing these unjustified surcharges on Vicinity, Vicinity will have strong financial incentive to depart the PGW system with as much speed as it can.

---

<sup>39</sup> *Pennsylvania Public Utility Commission v. Peoples Natural Gas*, Docket R-00050267 (Opinion and Order Entered September 30, 2005, slip op. at 34) (“*Peoples*”).

<sup>40</sup> *Generic Investigation Regarding Gas-On-Gas Competition Between Jurisdictional Natural Gas Distribution Companies*, Docket No. I-2012-2320323 (Opinion and Order entered May 4, 2017, at 20-21). (“*Generic*”)

**c. PGW has failed to offer a market value ARS product.**

Finally, PGW has not offered a reasonable rate for ARS. Vicinity and PGW agree that the rate should be market based<sup>41</sup> but do not agree on which market or which rate. PGW initially proposed a rate of \$1.05 per Dth/day and revised it in Exhibit FT-14 to \$0.61 a Dth/Day. This price is reflective of the cost of capacity that extends from the delivery point on the Philadelphia Lateral all the way to M-1 at the Gulf of Mexico.<sup>42</sup> If PGW were releasing that entire capacity path to Vicinity, as opposed to segmenting the capacity and using only the Philadelphia lateral portion to serve Vicinity, while releasing the other valuable segment to other parties, it may be worth the TETCO Tariff maximum rate. Vicinity proposed such a permanent release and PGW rejected that proposal. Subsequent data requests have produced evidence that the market value of such release capacity is \$0.345/Dth/day. PGW's witness admitted under cross examination, the only segment of the capacity that provides any benefit to Vicinity, under ARS, is the Philadelphia lateral section which has a market value of \$0.10/Dth-day.<sup>43</sup> Contrary to PGW's attempt at misdirection, the "market price" proposal of at least \$2.298 million for ARS<sup>44</sup>, is not a "discount" to what the rate should have been – based on PGW's disproven theory that ARS uses the low pressure distribution system – it is a premium of more than \$0.250/Dth-day (difference between \$0.61 and \$0.345),<sup>45</sup> over the market cost of providing ARS. Contrary to Mr. Reeves' contentions, Mr. Crist has been consistent in his position on ARS or capacity release: when he advocated for PGW to release capacity in the PGC case, his pricing proposal was based on Vicinity having the ability to transport gas from M1 to the city gate and that proposal was based on the actual market

---

<sup>41</sup> Vicinity St. No. 1-SR, 23:19-23.

<sup>42</sup> PGW St, 8, 6:15-24.

<sup>43</sup> Tr. at 310-311.

<sup>44</sup> Exhibit FT-14.

<sup>45</sup> Exhibit FT-14. Row 16 shows charges for ARS at \$0.61/Dth-day.

price. It is not reasonable to compare: 1) ARS under which PGW delivers gas that it owns to Vicinity down the Philadelphia Lateral, where Vicinity has no ability to purchase less expensive M1 gas; to 2) full release, where Vicinity would have the ability buy and transport inexpensive from M1 to meter 73060. PGW has conflated the worst aspects of both, the lack of control of ARS, with the pricing of a full release. They do not match nor does the proposed pricing for ARS.

**6. Vicinity has Proven that it is ready, willing, and able to bypass PGW.**

The Contract between Vicinity and PGW that set the terms for the past 25 plus years was negotiated as a response to Vicinity receiving approval the Federal Energy Regulatory Commission ("FERC") to bypass PGW.<sup>46</sup> Fast forward to today and Vicinity is further down the path to bypass than it was in 1995-it has engineering completed, it has construction bids, it has been diligently working on permits, etc. and as Mr. Crist testified, they have done just about everything that needs to be done except give the command to begin construction, and yet PGW unreasonably refuses to concede that Vicinity is even close to being ready to build its own connection to the Philadelphia Lateral. If the rates approved for Vicinity in this case are not reasonable, Vicinity will bypass PGW, that is a fact. The ability of Vicinity to bypass means that Vicinity will evaluate the resulting rates against the cost of the bypass pipeline, as evidenced in the record to cost \$26 million.<sup>47</sup> It does not take a mathematician to realize that if the rates Vicinity is assessed increase significantly, the financial incentive to build the line increases in the same proportion.

The discussion of Vicinity's ability to bypass is not merely one of, "if we don't get a rate we want, we bypass," rather, the fact that Vicinity has the immediate ability to bypass means that the rate treatment proposed by PGW should recognize that fact; but it does not. Commission precedent is that customers with a bona fide ability to bypass are charged rates that may not be

---

<sup>46</sup> Vicinity St. 1, 4:1-26.

<sup>47</sup> HC Exhibits JC-5 & JC-11.

subject to surcharges.<sup>48</sup> In both cases, the Commission found that rates for bypass able customers should not subsidize other customers, but at the same time should not be subject to additional charges that may apply to customers lacking the competitive option of bypass. That is the case here, but PGW refuses to acknowledge that Vicinity is bypass ready as a means of unreasonably seeking to impose the surcharges. This approach is out of synch with Commission precedent and should be corrected. The surcharges should not be imposed. They were not imposed in the Contract, and PGW should not seek to impose them now.

**E. Customer Service Issues**

**F. Low-Income Customer Service Issues**

**G. Pipeline Replacement/Alternatives**

**H. Miscellaneous Issues**

Vicinity has no argument for Subsections E-H, except as such are contained in its argument in Section D.

**V. CONCLUSION**

It should be clear that Vicinity wishes to establish a rate based on the direct allocation of the costs to serve its facility. Vicinity's rate should not, however, cross-subsidize the rates for other customer classes. Vicinity has provided substantial, credible evidence that a bypass line is technically and economically feasible and were Vicinity to leave the PGW system through bypass, it would be irreversible. Nonetheless, PGW's approach appears to ignore that outcome, putting its remaining customers at risk for further base rate increases and greater GCR costs.

PGW's reduction in its base rate request from \$0.65/Dth to \$0.1054/Dth is dramatic evidence that indeed, PGW's goal was that Vicinity be charged rates far in excess of what its service

---

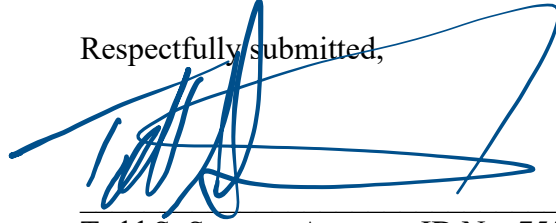
<sup>48</sup> See *Equitable, Peoples, and Generic, supra*.



costs. Likewise, the sudden acknowledgment that a Special Rate is warranted, but without consideration of any of the typical conditions of such special rates in competitive bypass situations, including not being charged surcharges, is insufficient. It has been a game of bait and switch – whenever Vicinity uncovers PGW’s effort to wrongly allocate costs to Vicinity, it shifts those costs somewhere else. In this case, PGW wrongly allocates nearly \$9 million of low pressure distribution costs to ARS and then agrees that a market based rate should apply to ARS. It then applies a tariff maximum rate that presumes that Vicinity would have full access to the capacity asset when in reality, PGW would limit it to provision of service on the final Philadelphia Lateral segment. PGW claims to have established a “special rate” for Vicinity, but then, contrary to precedent and Commission policy, seeks to allocate millions of dollars of surcharges to that special rate.

The evidence shows that based on direct allocation of the costs of serving it, Vicinity is entitled to a distribution rate of \$0.0397/Dth, free from surcharges. The evidence also shows that the market rate for ARS is \$0.10 Dth-day and may be adjusted annually based on the market value of Philadelphia Lateral capacity. Alternatively, PGW could release the full extent of the 21,000 Dth/Day of TETCO capacity on a recallable basis to Vicinity at the market rate of \$0.35/Dth-day. There is no other result that is just and reasonable on this record and no other result that is likely to prevent Vicinity from taking the path to bypass, the future viability of its business is in the balance, and it cannot gamble with rates that PGW has proposed.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'TS Stewart', written over a horizontal line.

---

Todd S. Stewart, Attorney ID No. 75556  
Dennis A. Whitaker, Attorney ID No. 53975  
Hawke McKeon & Sniscak LLP  
100 North Tenth Street  
Harrisburg, PA 17101  
(717) 236-1300  
(717) 236-4841 (fax)  
[tsstewart@hmslegal.com](mailto:tsstewart@hmslegal.com)  
[dawhitaker@hmslegal.com](mailto:dawhitaker@hmslegal.com)

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

DATED: July 27, 2023

## APPENDIX A

### PROPOSED FINDINGS OF FACT

1. Exhibit JC2 is the Contract between the Philadelphia Authority for Industrial Development and Vicinity's predecessors, that obligated PGW to provide service to Vicinity for 25 years. (Vicinity Statement JC-1. (Vicinity St. No. 1), at 4:29-32).

2. In the Complaint Case PGW proposed to increase Vicinity's distribution rate by 750%. (Vicinity St. No. 1, 5:16-18)

3. Vicinity's rate should be less than Ms. Heppenstall's proposed rate of \$0.1054/mcf, because she included costs from the low pressure distribution system. (Vicinity St. No. 1, 6:21-25).

4. No part of the service provided to Vicinity by PGW, neither the distribution service nor ARS, uses PGW's low pressure distribution system. (Vicinity St. No. 1, 6:25-31).

5. The interstate natural gas transmission utility, Texas Eastern ("TETCO") provides transmission service to PGW's service territory. (Exhibit JC-3). TETCO's system is divided into three market zones – M-1, M-2, and M-3. M-3 includes the Philadelphia Lateral and other connections with PGW. (Vicinity St. No. 1, 7:22-8:3).

6. The Philadelphia Lateral is a short segment of pipe, owned by TETCO that connects the TETCO mainline to south Philadelphia. It is the Philadelphia Lateral over which all gas delivered to Vicinity travels. (Vicinity St. No. 1, 8:4-7).

7. The more TETCO zones that a segment of TETCO capacity covers, the greater its value. That is, a capacity right to transport gas from M-1 through M-3 would allow the holder of that capacity to source gas at many locations. However, a segment of M-3 capacity allows the

holder of that capacity only the ability to transport gas within M-3, where pricing is often higher than in M-1 or M-2. (Vicinity St. No. 1, 8:10-18).

8. Vicinity holds 35,000 Dth/Day of capacity that allows it to move gas down the Philadelphia Lateral, but its peak demand is 56,000 Dth/day. (Vicinity St. No. 1, 8:18-21).

9. The current transportation rate charged to Vicinity by PGW is \$0.08/Dth, which translates into an annual cost to Vicinity of \$1,008,064. Vicinity also pays a maintenance fee, a meter charge and for ARS and Release Capacity. (Vicinity St. No. 1, 9:4-7).

10. The maintenance fee is not based on actual costs, but rather is an annual fee that has been escalated over time. In 2022, the maintenance fee was approximately \$180,000. Vicinity requested that PGW provide the actual maintenance records for the four-mile line, but PGW admitted that it does not track such costs as they relate to the four-mile line. (Vicinity St. No. 1, 9:9-15; Exhibit JC4).

11. PGW performs none of the services for Vicinity that are typically part of distribution service, such as balancing. PGW does not charge Vicinity for balancing (nor has it proposed to do so) because Vicinity is responsible for such operational tasks and the associated costs. (Vicinity St. No. 1, 9:18-10:4).

12. PGW does not apply a fee to Vicinity for lost and unaccounted-for Gas ("LUF") because Vicinity's service is via a high pressure line and leaks are not typically difficult to identify. Because Vicinity pays for its gas at TETCO's meter, it assumes the risk of loss as that gas travels on the four-mile line. (Vicinity St. No. 1, 10:7-17).

13. From May to September PGW will release capacity to Vicinity when Vicinity's needs exceed the capacity (35,000 Dth/day) that it holds. PGW will release up to 21,000 Dth/day, and this is referred to as "release capacity" for which Vicinity pays a market rate. (Vicinity St. No.

1, 11:1-4). In 2022, Vicinity paid \$2.4 million for the use of the release capacity during the May to September period. Vicinity has generally not needed the release capacity since 2012 when it purchased additional capacity of its own. Vicinity does not desire to continue with the release capacity arrangement. (Vicinity St. No. 1, 11:16-23).

14. During October through April, PGW will not release the very same 21,000 Dth/day of capacity that is used for release capacity and instead provides Alternative Receipt Service ("ARS"). ARS is a gas swap that allows Vicinity to obtain the benefit of having up to 21,000 Dth/day of gas delivered to it through the Philadelphia Lateral, in exchange for Vicinity delivering the same quantity of gas to PGW, for its use at Skippack, which is connected to TETCO's main line. All of the gas that Vicinity receives through ARS or otherwise, flows down the Philadelphia Lateral and the four-mile line. None of the gas that is delivered to PGW at Skippack uses the four-mile line or is ever consumed by Vicinity. (Vicinity St. No. 1, 10:20-11:13).

15. Under the rate currently in effect, Vicinity pays \$54,000/year for ARS. Philadelphia Lateral capacity historically was worth about \$0.35 Dth/Day, but the most recent sale produced a rate of \$0.10 Dth/day. (Vicinity St. No. 1, 12:3-6).

16. In prior rate cases (2007, 2009, 2017, 2020), witnesses for PGW, including Ms. Heppenstall, testified that because Vicinity's gas is delivered through a dedicated four-mile line that it paid for, no distribution system costs should be allocated to it. (Vicinity St. No. 1, 12:10-13:7).

17. In this case, unlike the Complaint Case, Ms. Heppenstall presented a CCOSS that allocates costs of the four-mile line, and some overhead costs to Vicinity's distribution rate. The rate produced by this about-face from the Complaint case, is \$0.1054/MCF (PGW St. No. 5-SD, 5:16-23). Nonetheless, Ms. Heppenstall chose to allocate additional low pressure system costs to

Vicinity that produces a higher rate than is warranted. However, Ms. Heppenstall then inexplicably allocates \$8,941,824 in low pressure distribution system costs to ARS, which is a gas swap. (Vicinity St. No. 1, 14:4-12).

18. The four-mile line is a clear example of an asset that should be directly assigned: it was constructed for a single customer, paid for by that same single customer who also paid an annual maintenance fee for the four-mile line, and the only gas that ever flows over the four-mile line belongs to that same customer – Vicinity. Vicinity does not use any other PGW lines or facilities and under a direct assignment methodology, should not be charged for them. (Vicinity St. No. 1, 14:19-15:6).

19. Ms. Heppenstall inappropriately assigned \$784,000 of low pressure distribution system costs to the distribution rate proposed for Vicinity. (Vicinity St. No. 1, 16:17-18). Mr. Crist testified that those costs should be removed from the rate. (Vicinity St. No. 1, 17:1-2).

20. The appropriate distribution rate for Vicinity, after removing the \$784,000 of costs that were for the low pressure distribution system, is \$0.0397/Dth. (Vicinity St. No. 1, 17:5-7; Vicinity St. No. 1-SR, 2:10-11).

21. Vicinity is prepared to bypass PGW and has completed engineering studies, received bids and is ready to go. The cost of the new line will be approximately \$26,000,000 and Mr. Crist testified that a cost of \$26,000,000 when compared to the savings over the rates PGW has proposed, make bypass the better option. (Vicinity St. No. 1, 17:1-18:2).

22. If Vicinity bypasses PGW, PGW will lose all the revenue associated with Vicinity, including distribution revenue, ARS and release capacity revenue and other fees. The loss would be close to \$ 4 million per year. (Vicinity St. No. 1, 18:5-8).

23. The engineering work is complete for the bypass line, and bids have been received. Mr. Crist has opined that the bypass option is both viable and ready to go. (Vicinity St. No. 1, 18:11-17; Exhibits JC-5 and JC-11).

24. The operational cost to PGW of providing ARS is minimal. (Vicinity St. No. 1, 19:20-20:14).

25. PGW's provision of ARS does not use its low pressure distribution system. (Vicinity St. No. 1, 20:17-21:28).

26. The most recent transaction for release of Philadelphia Lateral capacity was at a rate of \$0.10/Dth/day. (Vicinity St. No. 1, 22:13-16).

27. Mr. Knecht agrees that the pricing for ARS should be based on the value of service through the Philadelphia Lateral. (OSBA St. No. 1, 37:12-19).

28. Capacity that allows a shipper to purchase gas from the less expensive zones M-1 and M-2 is more valuable than capacity that merely transits the Philadelphia lateral. (Vicinity St. No. 1, 22:3-13; Exhibit JC-6).

29. ARS pricing should be based on the market price of the capacity that is used to provide it – which in this case is Philadelphia Lateral capacity. (Vicinity St. No. 1, 22:22-23:15).

30. Mr. Crist has consistently proposed that Vicinity continue to be served under terms and conditions that are consistent with the contract terms. Vicinity's service under the Contract was subject to interruption of the ARS volumes for up to 15 days per year and interruption of 6,000 Dth/day for whatever reason PGW chose. Vicinity has the capability to produce steam from stored oil for extended periods of time if it is interrupted. (Vicinity St. No. 1, 23:18-24:10; Vicinity St. 1-R, 1:18-22).

31. PGW has proposed to apply the Universal Service and Energy Conservation surcharge; the Efficiency Cost Recovery surcharge; Other Post Employment Benefit surcharge; and the Distribution System Improvement Charge to Vicinity. (Vicinity St. No. 1, 25:3-5).

32. The proposed surcharges should not be applied to ARS and Sales Service because these services are interruptible services. Previous Commission Orders have clarified that riders and surcharges can be waived for customers with the ability to bypass the LDC. (Vicinity St. No. 1, 25:7-12).

33. Vicinity does not presently pay any surcharges and yet PGW initially proposed over \$25 million in surcharges. (Vicinity St. No. 1, 25:14-20).

34. Mr. Crist proposed several edits to PGW's proposed tariff for Rate GS-XLT. These are reflected in Exhibit JC-7. (Vicinity St. No. 1, 30:16-40:15; Exhibit JC-7)

35. The capacity (on the Philadelphia Lateral) that is used for ARS is paid for by PGW's sales customers. (Vicinity St. 1-R, 7:12-17).

36. Interruptible customers are akin to an insurance policy for PGW – they provide an opportunity for PGW to avoid having to curtail critical load. The fact that PGW has not interrupted interruptible customers does not lessen the value of the service they provide or diminish the investment such customers have made in ensuring that they can be interrupted. (Vicinity St. 1-R, 13:6-22).

37. PGW does not interrupt interruptible customers unless the system is going to be unable to deliver all the gas that is projected to be needed. (Vicinity St. 1-R, 14:13-27).

38. Mr. Teme agrees that it is important to evaluate the total bill impact when considering concepts of rate shock and gradualism. (PGW St. 6-R, 12:7-8).



39. Vicinity is willing and able to accept interruptibility on terms comparable to the contract under which it has been interruptible for the past 25 years. (Vicinity St. 1-SR, 9:12-14).

40. Vicinity has operated a regulated thermal distribution system for 36 years and has had no fuel related interruptions. Vicinity has fuel storage of millions of gallons of fuel oil and biofuel. (Vicinity St. No. 1-SR, 10:13-20).

41. PGW's proposed increase to the Metering Charge for Vicinity is not supported by the facts. PGW's typical metering costs for Vicinity do not justify such a dramatic increase in the charge. (Vicinity St. 1-SR, 17:21-19:11; Exhibit JC-11).

42. The capacity used to provide ARS to Vicinity can vary in value depending on the delivery path, with capacity encompassing the entire path (M1 to M3) having a greater value than capacity that transits the Philadelphia Lateral which most recently traded at \$0.10/Dth/day. (Vicinity St. 1-SR, 24:3-17).

43. PGW's most lucrative capacity release, as touted by Mr. Reeves, of \$3.25 Dth/day, was a segmented piece of capacity that did not include the Philadelphia Lateral. Mr. Reeves has misrepresented the costs of capacity. (Vicinity St. 1-SR, 27:6-29:14).

## APPENDIX B

### PROPOSED CONCLUSIONS OF LAW

1. PGW has failed to carry its burden of proving that its proposed rates, terms and conditions for Rate GS-XLT are just and reasonable.
2. Vicinity has proven that it has the present ability to bypass PGW.
3. The Distribution rate for Rate GS-XLT of \$0.1054/MCF (PGW St. No. 5-SD, 5:16-23) is neither just nor reasonable.
4. The appropriate, just and reasonable distribution rate for Rate GS-XLT is \$0.0397/Dth, as proposed by Vicinity.
5. ARS should be priced as a gas cost and designed to recover the market value of the service.
6. The ARS proposed by PGW is not an appropriate incorporation of capacity costs into the rate. PGW should be required to price ARS at the average market price (i.e., rolling 2-year average), for capacity releases on the Philadelphia Lateral, since that is the only capacity asset it uses to provide the service. PGW should have the option to release the full extent of the capacity (M-1 to M-3) it uses to provide ARS to Vicinity on a recallable basis at the market price of \$0.35 Dth/day but no more than the maximum tariff rate.
7. Because Vicinity has proven its ability to bypass PGW and is willing to continue taking service that is interruptible, it should not be assessed any of the surcharges proposed by PGW.
8. A proposed rate increase of five times current rates violates the principle of gradualism.