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August 7, 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; **REPLY BRIEF**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the Reply 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
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TSS/jld

Enclosure

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

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DATED: August 7, 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	:	

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

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I. INTRODUCTION AND SUMMARY OF THE REPLY ARGUMENT

In its Main Brief, Vicinity¹ laid out the case that it has presented in this matter:

1. Vicinity's transportation rate should be based on direct allocation of the high pressure four-mile line and not include allocated costs of the low pressure distribution system. PGW's proposed transportation rate, although far more refined than what it demanded in the Complaint Case², and despite PGW's assertion that it used direct assignment of costs, continues to include \$748,000 of low pressure distribution system costs that should not be assigned to Vicinity;

2. Despite evidence of release capacity value presented by PGW's Mr. Reeves, PGW bases its proposed rate for ARS³ on the maximum tariff rate of PGW releasing the full path of 21,000 Dth/Day of capacity to Vicinity (from M-1 at the Gulf of Mexico to the Philadelphia Lateral)⁴ when PGW is actually using only the last short segment (Eagle Pa to South Philadelphia), the Philadelphia Lateral, to provide service to Vicinity. Further, PGW's proposal, despite proposing a rate based on 21,000 Dth/day of capacity between M-1 and the Philadelphia Lateral, would not release the full capacity path to Vicinity yet demands a rate based on the full capacity path; and

3. PGW's refusal to acknowledge Vicinity's interruptible capabilities through on-site oil storage, and risk-management insurance instruments, and Vicinity's proven capability to construct a bypass pipeline, is PGW's basis for imposing over \$4 million⁵ in surcharges on Vicinity that will increase its rates by multiples and will force Vicinity to bypass PGW, which Vicinity is

¹ Vicinity hereby incorporates the entirety of its Main Brief by reference thereto.

² *Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. v. Philadelphia Gas Works*, Docket No. C-2021-3029259.

³ Exhibit FT-14 shows the proposed rate for ARS to be \$0.61/mcf.

⁴ TETCO contracts 800514 and 800515.

⁵ Exhibit FT-14 Surcharges Revenue totals \$4,065,632.

fully prepared to do. This is the first time in history that PGW has proposed these surcharges, including in the Complaint Case.

In its Main Brief, PGW continues to suggest that the cost to serve Vicinity is \$10,237,000 – based almost entirely on allocating low pressure distribution system costs to Alternative Receipt Service, despite the fact that ARS in no way uses that system. PGW’s contention is a ruse, which seeks to confuse the reader into believing that PGW is proposing service at rates that produce a discount for Vicinity over what it should be assessed under PGW’s incorrect cost of service methodology. The simple reality is that PGW is demanding rates from a competitor that will produce a premium over the cost to serve – in the transportation rate, in ARS and with the devastating surcharges. PGW denies that service to Vicinity is interruptible even though PGW itself proposed an interruptible rate for Vicinity in the Complaint Case; an admission that Vicinity is indeed interruptible and has historically been treated as such. PGW ignores that Vicinity is poised to bypass PGW altogether if the rates produced in this proceeding provide an incentive to do so; i.e., rates that exceed the debt service and operating costs of the new line. PGW also insists on a pricing structure for ARS based on the TETCO tariff maximum for the cost of the entire capacity path (from M-1 to the Philadelphia Lateral) when the only segment of that path PGW uses for Vicinity is the Philadelphia Lateral. ARS should be priced on the market value of the capacity actually offered by PGW, and not allow PGW to charge the maximum tariff rate for the full capacity path for the segment of Philadelphia Lateral capacity which has a current market price of \$0.10/Dth/day. PGW is seeking a rate 600% higher - \$0.61/Dth/day.

In short, the rates proposed by Vicinity in response to PGW’s filings may be lower than what PGW and some of the other parties’ desire, because those parties clearly are looking to Vicinity to subsidize service to their constituencies. But it is not disputed that direct allocation is

the appropriate method of determining the transportation rate for Vicinity, and neither surcharges nor costs associated with low pressure distribution should be recovered from Vicinity because 1) it is interruptible, 2) it does not use the low pressure system and, 3) it can bypass PGW. The just and reasonable rate produced by the CCOSS in this case under a proper direct allocation (as adjusted by Mr. Crist) is \$0.0397/Dth compared to the rate Vicinity paid for the past 25 years of \$0.08/Dth which shows that Vicinity has been a source of subsidy for other customers.

II. REPLY ARGUMENT

D. GFCP/VEPI – Class GS-XLT

1. PGW Continues to Incorrectly claim that Vicinity’s Cost of Service is \$10,237,000. (PGW MB 42-43).

PGW’s case in chief perpetuates a ruse that first appears in Ms. Heppenstall’s Supplemental Direct testimony wherein she states:

[f]or transportation cost, identified as Local Transportation Service in PGW's proposed Rate GS-XLT, I removed all non-high pressure distribution plant costs and overheads, so that only the cost of maintaining the Four Mile line and some overheads are included. This results in the revenue requirement that isolates the costs for transportation. I then assigned the remaining cost that were removed from transportation service to ARS.⁶

There is no explanation as to why or how ARS service incurred these low pressure distribution system costs, yet this statement is relied-upon throughout PGW's testimony as the basis for the insistence on allocating nearly \$9 million of low pressure distribution costs to Vicinity. It also fails to address the Commission’s question “c)” which asks if service to Vicinity uses the low-pressure distribution system and if so, how. PGW leaves this question unanswered, and certainly provides no justification for the persistent allocation of nearly \$9 million of low pressure system costs to ARS. The only costs that should be allocated to transportation are those associated with the four-mile line as discussed at length in Mr. Crist's testimony.⁷ PGW’s insistence on allocating nearly \$9 million of low pressure system costs to ARS is at best misguided and, more likely, deceptive. There is no evidence on the record anywhere, other than Ms. Heppenstall’s naked statement, to support the theory that ARS imposes any costs on PGW or its customers beyond the admittedly “minimal” operational costs, costs that Vicinity has reimbursed PGW for 25 years.⁸ PGW has

⁶ PGW St. No. 5-SD, 5:15-19.

⁷ Vicinity St. 1, 16:17-17:7.

⁸ Complaint Case Tr. at 163. (Reeves; “While that cost might be minimal, it is not no cost.”)

failed to support its “ARS uses the low pressure distribution system” theory and it should be rejected. Likewise, the associated allocation of nearly \$9 million of low pressure distribution system costs should be rejected as there is no basis for assigning them to anything other than the low pressure distribution system, which Vicinity does not use.

2. The Rates Proposed for Vicinity Must be Based on the Actual Costs to Serve it and Must Account for Vicinity's Interruptibility and its Ability to Bypass PGW. (PGW MB at 51-52).

Vicinity has proven that the cost to provide transportation service is substantially less than PGW initially proposed in this case, exactly \$748,000 less.⁹ PGW does not appear to appreciate Vicinity’s position and it maligns the rate revenue produced by correctly assigning costs as “paltry.”¹⁰ Simply put, the costs are what they are and the resultant rate is what is produced by the application of direct assignment, keeping in mind that Vicinity already paid \$10.5 million for the four mile line and gate station interconnection facilities, continues to pay \$180,000/year for its maintenance and operation, and has done so for 25+ years. Low pressure distribution system allocations unrelated to the four mile line are not properly assigned and cannot form the basis of an appropriate rate.¹¹

PGW also attacks Vicinity’s position that it has historically been interruptible and that what PGW has proposed in this case is also interruptible service. PGW acknowledges that ARS is interruptible, but suggests, ignoring the evidence of Vicinity’s oil storage and ability to withstand interruptions of significant duration, that Vicinity may not be interruptible. PGW even goes so far as to suggest that it can interrupt service to Vicinity for economic reasons, which is contrary to its own witness’s testimony and its proposed tariffs. PGW takes this same approach regarding

⁹ Vicinity St. 1, 16:1-17:7.

¹⁰ PGW Main Brief, “MB” at 64.

¹¹ TR. at 560-561 (Crist).

Vicinity's ability to bypass – acting as though Vicinity being prepared to bypass, and having completed the engineering, and having received multiple construction bids, is not evidence of the ability to bypass. The reason is simple, the fact that Vicinity is interruptible and that it is able and prepared to bypass are two prongs of the argument that surcharges are not appropriately charged to Vicinity. As Vicinity argued in its Main Brief,¹² longstanding precedent makes it clear that customers with competitive options should not be charged extras, like surcharges, that make their service uneconomic. Alas, PGW is proposing exactly that here by seeking to impose over \$4 million in annual surcharges on an approximate \$1 million annual transportation charge. The math on bypass is simple. Mr. Crist testified that at an all-inclusive cost of approximately \$27 million, and PGW costs of approximately \$10 million per year, the payback period on its planned bypass facility was roughly 2.5 years.¹³ The point is that based on PGW's demanded rates, bypass very much makes economic and operational sense. PGW may not like the numbers, but that does not mean the figures are incorrect, or can simply be ignored, as PGW suggests.

3. Vicinity Rates Should not be Set to Create a Subsidy for Other Parties. (PGW MB at 51-52).

PGW argues that of all the parties to this proceeding, Vicinity has proposed the lowest rates for its service, suggesting that because the delivery rate is actually less than it was for 25 years that the rate is somehow incorrect. To the contrary, based on (1) Ms. Heppenstall's own CCOSS, (2) the appropriate adjustments for incorrectly assigned costs of the low pressure distribution system, and, (3) removing the surcharges which are not appropriate (which were never charged before), the resulting rate represents the actual cost of serving Vicinity. Suggesting that additional revenue

¹² Vicinity Main Brief ("MB") at 27-30.

¹³ Vicinity St. No. 1, 17:18-21. In terms of a per/Dth rate, and by way of example: if one were to assume a 40 year amortization period (which is short considering that the lifespan of such a pipeline is typically 75 years) and that Vicinity uses 13,000,000 Dth/year, times 40 years is 520,000,000 Dth. \$27 million amortized over 520,000,000 Dth is \$ 0.051/Dth, which is less than half of the \$0.105 rate proposed by PGW.

generated by rates imposed on Vicinity should be available to subsidize the rates of other parties is an admission that the proposed rates are too high. I&E and the OCA in particular have proposed revenue amounts that are multiples of any other proposal and are so far out of the realm of reasonableness that they cannot be given serious attention. Even if other parties believed that the \$0.08/Dth rate that Vicinity paid for 25 years was too low (it clearly was not), going forward there is no legal basis to increase rates to make up the difference.¹⁴ The fact that all the parties except Vicinity agree that Vicinity's rates should be increased, is of no moment here. Each of those parties has a financial incentive to increase Vicinity's rates, as any additional revenue subsidizes the rates of their constituents. Those same parties, with the exception of the OSBA, fail to recognize that if they are successful in setting rates set at the level they propose, Vicinity will construct facilities connecting to the Philadelphia Lateral and bypassing PGW entirely – and remit zero dollars to PGW, thereby providing no supporting revenues at all. One is reminded of Aesop's fable of the goose that laid the golden eggs.

4. Vicinity's Service has Historically Been Interruptible and Should Continue to be so. (PGW MB 52-54).

In the first paragraph of its main brief in the section related to Vicinity issues, PGW acknowledges that Vicinity has always had the ability to burn oil. Mr. Crist testified that Vicinity has millions of gallons of fuel oil and biofuel that it can burn for weeks without replenishment if its service from PGW is interrupted. This capability allows Vicinity to continue to produce steam for its public utility customers even if natural gas service, in the form of ARS, were to be curtailed.¹⁵ Under cross examination Mr. Crist defended and explained the benefit to PGW customers:

¹⁴ 66 Pa. C.S. § 1303; *Pennsylvania Electric Company v. Pa. Pub. Util. Com'n*, 663 A.2d 281 (Pa.Cmwlth. 1995)("there can be no lawful rate except the last tariff rate published."); 66 Pa. C.S. § 1312.

¹⁵ Vicinity St. 1-SR, 10:13-11:18.

“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.”¹⁶

Mr. Crist also testified that Vicinity has risk management in the form of insurance to protect Vicinity from penalty liability if it is unable to operate and generate electricity when called to do so. In the absence of some curtailment of the four mile line, Vicinity can operate its electric generation at full output using the 35,000 Dth/day capacity that Vicinity owns on TETCO. Vicinity can withstand interruption of ARS, as PGW is permitted to do for up to fifteen days per year, or even if PGW were to interrupt the four mile line. It also is true that in twenty five years PGW has not had to do so. In short, Vicinity has been interruptible and can continue that status.

PGW's specious argument to the contrary is wholly inconsistent with its position in the Complaint Case wherein it insisted that Vicinity be interruptible. Moreover, PGW's argument that Mr. Crist was cavalier or vague in stating clearly that Vicinity has insurance to address its inability to operate its generator when called is ridiculous. Mr. Crist was neither cavalier nor vague and explained under cross examination twice that Vicinity manages its risk with insurance.¹⁷ Short of putting a highly confidential insurance policy into the record while PGW was engaging in cross examination, it is difficult to imagine what, if anything PGW would find sufficient.

PGW clearly has acknowledged that Vicinity is interruptible and now, for no reason other than to oppose Vicinity's request, PGW has completely reversed its position.¹⁸ This violates the Public Utility Code in several ways. First, it is unreasonable service for PGW to demand that a

¹⁶ Tr. at 589.

¹⁷ Tr. at 497, “Grays Ferry manages their risk by having insurance to cover such events.” Tr. at 523, “that has happened to Grays Ferry when TETCO has taken things out of service. They have taken their turbine off line, and managed their business quite satisfactorily. I explained earlier they do that by insuring their electric output using insurance instruments and risk management instruments.”

¹⁸ *Complaint Case*; PGW Main Brief at 4.

customer be interruptible and then, when the customer changes its position thereon based on new information, to take the position that the customer is not interruptible. This violates 66 Pa. Code § 1501's requirement that a utility such as PGW provide reasonable service. More critically, PGW's conduct also violates Section 1303, 66 Pa. C.S. § 1303, that requires that a "public utility having more than one rate applicable to service rendered to a patron, shall after notice of service conditions, compute bills under the rate most advantageous to the patron." PGW has several interruptible rates and obviously can create an interruptible rate for the special rate for Vicinity as it had initially proposed¹⁹, but now refuses to do so on vague accusations that Vicinity has not satisfied PGW's curiosity as to why Vicinity now chooses to be considered interruptible. It is no secret. Vicinity's service has always been interruptible and when considering the prospect of surcharges that dwarf the proposed transportation rate, Vicinity determined that accepting that it has always had interruptible service was far more advantageous than accepting surcharges that would jeopardize Vicinity's existence. PGW has proposed to continue to provide interruptible service (it proposes to be able to interrupt 21,000 Dth/day which is 37% of Vicinity's peak day) while at the same time refusing to acknowledge that service to Vicinity is interruptible and contrary to its practice with any other interruptible customer by imposing surcharges.²⁰

5. PGW's Contention, for the First Time in its Main Brief, That it Can Interrupt Vicinity for Economic Reasons is Contrary to its Own Testimony. (PGW MB at 54).

¹⁹ ALJ Vero also requested the PGW prepare an interruptible rate, "yesterday I asked PGW witness Mr. Teme as to prepare calculations reflecting Vicinity's request for interruptible service." Tr. at 590.

²⁰ Under its Contract, an additional 6,000 Dth/Day of Vicinity's peak need of 56,000 Dth/day was interruptible for any reason PGW chose.

PGW appears to have changed its position, established in its testimony and tariffs, that it will recall capacity only if it needs the capacity to serve other higher priority customers.^{21 22} In Vicinity’s case, the primary means of interruption is likely to be in the refusal to provide ARS which allows PGW to refuse the service for 15 days per year if the temperature is below 25 degrees. None of PGW’s interruptible tariffs presently permit PGW to interrupt for economic reasons, and in fact, are very clear on the circumstances when PGW can interrupt, and economic reasons are not included:

The Company may curtail (reduce) or interrupt deliveries to the Customer whenever, at the Company's sole discretion, *it determines that the available capacity in all or a portion of its system is projected to be insufficient to meet the requirements of all Customers or in the event a NGS fails to meet delivery obligations.*²³

PGW’s main brief is the first time this preposterous proposition regarding economic interruption has appeared. PGW offers no parameters, nor basis for how and under what market conditions it could interrupt customers. Interruption for economic reasons is not a condition in any release capacity contracts. It is obvious that PGW now seeks to create a poison pill for interruptible service for Vicinity by inserting an absurd proposal without any record support whatsoever. This new proposal is particularly heinous for Vicinity, because PGW is a competitor of Vicinity. Allowing one competitor to interrupt another for “economic” reasons is fraught with peril and should be rejected in its entirety.

²¹ Vicinity St. 1-SR, 8:18-9:14; quoting, *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”), Tr. 75-76.

²² Mr. Crist referred to Mr. Reeves’ testimony on interruptions, “Q. Answer my question first, please. Yes or no? Is the debate over interruptibility versus firmness is a debate that’s focused on transportation service. Yes or no? A. No. What I’m saying is that similar to rate IT and those conditions under rate IT, Vicinity is willing to be interruptible to qualify for those conditions. So those would be under the 15-day interruptibility of ARS or interruptibility consistent with how PGW would interrupt rate IT customers, which Mr. Reeves described in earlier testimony of how he evaluates the weather and looks at capacity resources. Tr. 597-598.

²³ PGW Gas Tariff- Pa P.U.C. No. 2, Original Pg. No. 112 (emphasis supplied).

6. PGW's Proposed Transportation Rate Includes Inappropriately Allocated costs. (PGW MB 54-59).

Beginning in 1996, Vicinity reimbursed PGW for the entire \$10.5 million cost of the four mile line and gate station at meter 73060 that connects Vicinity to the Philadelphia lateral. PGW declined to provide any documentation to show that these facilities were installed at its expense or that the maintenance of these facilities was charged to PGW and not recovered through the \$180,000 per year that Vicinity paid for maintenance, claiming that it had no records.²⁴ Therefore, there is no capital cost for the four-mile line on PGW's books (Vicinity itself paid for those) and therefore no associated cost of capital. Accordingly, the proposed rates for Vicinity should not propose recovery of any such costs – to do otherwise would constitute double-dipping. The other costs that Ms. Heppenstall proposed to be recovered did include allocated costs for meters and all other PGW gate stations that are not used to provide service to Vicinity, now PGW suggests, with no evidence, that it is entitled to recover those meter and gate station costs. As Mr. Crist stated under cross-examination, it is not proper to assign costs if you cannot demonstrate that there were indeed costs that were used to serve a customer whose rates are being determined by direct assignment.²⁵ Vicinity asked the question in discovery more than once and the answer was always the same: “PGW does not have any records”.²⁶ If PGW cannot produce records, allowing them to allocate these phantom costs is simply wrong.

Mr. Crist removed \$748,000 of low pressure distribution system cost allocations for gate stations and metering. It is important to note that that on page 57 of its Main Brief, PGW blatantly misrepresents Mr. Knecht's testimony on this point. Both at the hearing and in his on the record data response that PGW cites, Mr. Knecht was very clear to state that “if PGW” can show that it

²⁴ Exhibit JC-4.

²⁵ Tr. at 560-561 (Crist).

²⁶ Exhibit JC-4.

paid for or operates such facilities it would be appropriate to allocate them to GTS-XL. However, Mr. Knecht has stated many times that he has seen no evidence that PGW installed, owns or operates those facilities.²⁷ In fact, Mr. Knecht's response to the on the record request was stated as a hypothetical "*if PGW* purchased, owns, and operates compression and measuring/regulating equipment at TETCO Gate Station 060, PGW's costs associated with that equipment should reasonably be allocated to Rate GS-XLT."²⁸ The corollary also is true, if PGW cannot show that it purchased, owns or operates such facilities, it should not allocate them to GS-XLT. PGW cannot show that it purchased, owns or operates these facilities therefore its allocation is plainly wrong. Accordingly, Vicinity's proposed adjustment was correct and should be retained.

PGW argues that because Vicinity did not propose removing general overheads from the cost allocation, that its proposal to remove \$748,000 for specific costs related to specific facilities is inconsistent. (PGW MB at 59). PGW's argument is specious at best. Mr. Crist made it clear that he removed allocations of Distribution Expenses and not Administrative and General Expenses or Depreciation and Amortization Expenses. PGW produced no evidence of ownership²⁹ or of any costs that it paid for the gate station that serves the high pressure line supplying gas to Vicinity. The other allocated low pressure metering and city gate station costs that he proposed be removed do not provide service or benefit Vicinity. The test Mr. Crist used is not onerous or tedious, it is prudent. Overheads are by definition general costs, the costs Mr. Crist opposed are not. When cross examined regarding the overhead and administrative expenses Mr. Crist explained clearly that he only removed the distribution system allocations:

It's really not my question. My question is, were you - your theory is as we established before any cost placed on Grays Ferry should be those that are provable of direct benefit to Grays Ferry and Vicinity. You did not request

²⁷ OSBA St. No.1, 3:11-18.

²⁸ PGW Hearing Ex. 23.

²⁹ Tr. 564-565 (Crist).

any of the other expenses outside of distribution category go through that kind of a rigorous test. Did you?

A. I did not do that with the overhead and administrative expenses. That's correct.

Q. Okay. If you had, what would - what would the rate for transportation be?

A. I have not done that hypothetical calculation. I'm not prepared to do that right off the top of my head. And I would not recommend that either. And –

Q. If - if you took your methodology and applied it across all categories of expense, the rate would be approaching zero, wouldn't it?

A. You know Mr. Kennard, I'm not following you down this road. I didn't do that calculation. What you are proposing is something I'm not an advocate of.

(Tr. at 565-566).

7. PGW's ARS Proposal Imposes a Market Price for Capacity that does not Provide a Market Price Benefit for Vicinity. (PGW MB 61-65).

ARS is a gas swap arrangement that was initially agreed to in the Contract as a means for PGW to provide Vicinity with the benefit of PGW's Philadelphia Lateral capacity without actually releasing the capacity to Vicinity. As PGW's witness admitted under cross examination – ARS only uses the Philadelphia Lateral portion of the capacity, and testimony from the 1307(f) case makes it clear that PGW segments its capacity assets and releases the other more valuable segments to third parties and thus produces revenue.³⁰ PGW's witness even bragged that PGW received \$3.25 Dth/Day for release of the upstream segment of that capacity, but not including the Philadelphia Lateral, and that revenue accrues to the benefit of PGW's GCR customers.³¹ Vicinity does not argue that there is anything inappropriate with the practice of releasing capacity. Rather, Vicinity does believe that the ARS rate should correlate with the value of the segment of capacity that is used to effectuate it. Said differently, the value (and thus the rate) for capacity that stretches from Philadelphia to the Gulf of Mexico is MUCH higher than the value (and thus the rate) for

³⁰ 1307(f) Case; Tr. 71(Mr. Reeves admitted that the largest payback for Capacity Release was segmented and did not include the Philadelphia Lateral).

³¹ *Id.*

capacity that stretches the 20 miles from Eagle to South Philadelphia. The fair rate is one that is based on the segment that is actually used to serve Vicinity and that traded most recently at \$0.10 per Dth/day.

ARS is not a distribution system issue; it is a gas cost issue. The gas that Vicinity delivers to Skippack is never used by Vicinity and the equivalent amount of gas that PGW delivers to Vicinity flows down the dedicated four mile high pressure line and never travels over PGW's low pressure distribution system. PGW's continued insistence that ARS somehow uses its low pressure distribution system is incorrect and unsupported by the record. PGW and Vicinity agree that the cost of ARS should be a market price, but they differ on which market or which segment should be the basis of the charge. PGW proposes to charge Vicinity the TETCO maximum tariff rate for the full capacity path, from M-1 (Gulf of Mexico) through the Philadelphia Lateral, even though ARS uses only the Philadelphia Lateral portion. If PGW did release the full extent of the capacity to Vicinity on a recallable basis, Vicinity would agree that price would be higher³², but so would the benefit of being able to source less expensive gas in M-1. PGW proposes to keep that benefit for itself so that it can release the valuable part of the capacity to others, and still charge Vicinity as though it got that benefit, when it will not. Stated differently, it is not fair to Vicinity for PGW to charge Vicinity for what it does not receive. If PGW were to release that capacity to Vicinity, it could earn a reliable market based rate for that capacity and thus provide a benefit to PGW's other customers as well. But that is not what it has proposed and should not be the basis for pricing the service.

³² The market price for the full capacity path is \$0.35/Dth/day. (Tr. at 547).

8. Summary of and Responses to Commission Questions

In its main brief, PGW responded to the Commission's four questions. PGW's responses offer a glimpse at the reasoning underpinning its positions.

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.

PGW responded that it had indeed proposed a special rate class for Vicinity, GS-XLT, which is true. However, PGW proposed as part of the tariff for GS-XLT, that Vicinity be subject to a multitude of surcharges, now totaling over \$4 million, which is multiples of the proposed transportation rate and which are not typically charged to interruptible, bypass ready, special rate customers because they tend to negate the economic enhancement that a special rate provides and thus make the utility price uneconomic, as here. Surcharges are not appropriate for rate GS-XLT.

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.

PGW responded that Ms. Heppenstall's CCOSS determined that there are \$10,237,000 of costs attributable to Vicinity even though the direct allocation for the transportation rate proposal was just over \$1 million (\$0.1054/MCF). ARS was allocated \$8,941,824, even though it plainly does not use PGW's low pressure distribution system and PGW has not proposed a rate that is even based on cost of service – which appropriately would not include the nearly \$9 million of low pressure system costs. PGW provided no evidence other than bald assertions for this theory that ARS uses its low pressure system, and it should be rejected. Mr. Crist adjusted the allocated costs, but even at Ms. Heppenstall's inflated rate, it shows that the \$0.08/Dth rate that Vicinity has been charged for twenty-five years, was not too low and in fact may have been in excess of a reasonable rate.

- 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 Works' actual cost of service and the resulting "just and reasonable" rate for Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc.**

PGW responded, as expected, that even though it did not base its ARS rate proposal on the mythical \$8.9 million of costs that it claims are imposed on the low pressure distribution system by ARS, that its \$2.3 million rate for ARS should be viewed as being reasonable. PGW never addresses the absolute absence of any evidence that ARS uses the low pressure system or how it generates nearly \$9 million in costs. Moreover, PGW's ARS proposal is based on a Tariff maximum price for a release of the full extent of capacity when PGW only uses the Philadelphia Lateral segment for ARS, when PGW has not proposed to release the capacity or provide the benefit of that full release price to Vicinity.³³ PGW's ARS arguments must be rejected. Importantly, PGW's witness was adamant that when PGW releases capacity it is done at a market price and yet the rate they propose for Vicinity is not a market price for the Philadelphia lateral capacity, but a tariff maximum for the full extent capacity release.³⁴

- 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 Vicinity Energy Philadelphia, Inc., do not utilize Philadelphia Gas Works' distribution system.**

PGW claims that the issue is moot because it has proposed to base the ARS rate on a market price, albeit, an incorrectly defined market price. PGW completely ignores the fact that its testimony in this case, allocates nearly \$9 million in low pressure distribution system costs to ARS,

³³ Tr. 310-311 (Reeves).

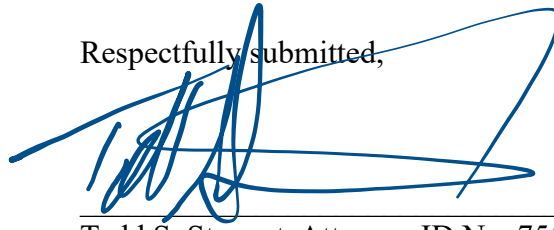
³⁴ Tr. 304(Reeves).

even though ARS does not use the low pressure distribution system and there is no evidence on the record to prove that it does. If the issue were moot as PGW claims, why then did PGW mention the costs at all? The reason is that it serves as a false comparison to PGW's proposed ARS rate in an attempt to justify it as reasonable, when it is not.

III. CONCLUSION

Vicinity agrees that it should be served under a properly conceived special rate; one that does not impose millions of dollars in surcharges whose total amounts are four times the proposed transportation rate, which is itself too large because it includes recovery of costs that should not have been assigned to Vicinity. The transportation (distribution) rate should be \$0.0397/Dth. Vicinity agrees that the rate for ARS should be set on the market price of the capacity that is used to provide the service, which is the Philadelphia Lateral at \$0.10 Dth/day in the last noted release. Or if Vicinity is provided the full capacity path then at \$0.35/Dth/day. Vicinity does not agree that ARS that only uses the Philadelphia Lateral capacity be priced at the full capacity path unless Vicinity is allowed the use of the full capacity path. Vicinity agrees that its special rate should be premised on its interruptibility and its ability to bypass and that, accordingly, should not include surcharges which are contrary to its interruptibility and its ability to bypass. Vicinity has proven both abilities in this case, and PGW has not refuted any of the evidence. Vicinity would prefer to remain a customer of PGW, but PGW's continued insistence on imposing rates that produce a five time increase in Vicinity's overall costs, is the result of PGW's self-perception of its monopoly power. Having Vicinity remain a customer of PGW is a benefit to all other distribution customers and GCR customers. The choice is between setting just and reasonable rates that are based on facts, and that will keep Vicinity as a PGW customer, or setting rates on PGW's contrived positions that ignore reality.

Respectfully submitted,

A handwritten signature in blue ink, consisting of several overlapping loops and strokes, positioned above a horizontal line.

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