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September 15, 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; **EXCEPTIONS OF GRAYS FERRY COGENERATION PARTNERSHIP AND VICINITY ENERGY PHILADELPHIA, INC.**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the Exceptions of Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. ("Vicinity") to the Recommended Decision issued September 5, 2023 in the above-captioned proceedings. Copies of the Exceptions 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: Office of Special Assistants (via electronic mail – ra-OSA@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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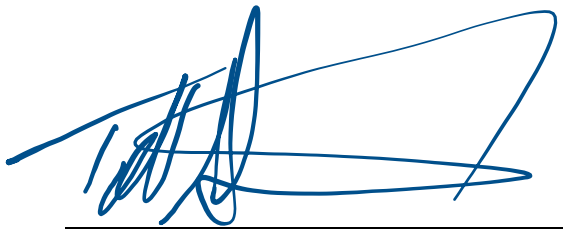

DATED: September 15, 2023

Todd S. Stewart

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	:	

EXCEPTIONS OF GRAYS FERRY COGENERATION PARTNERSHIP AND VICINITY ENERGY PHILADELPHIA, INC.

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DATED: September 15, 2023

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I. INTRODUCTION

At the outset, it is important that certain things are clear. Vicinity's[1] intent throughout both the Complaint[2] proceeding and the instant Rate Case proceeding was – and is – to remain a customer of Philadelphia Gas Works ("PGW"). Vicinity will remain a customer of PGW so long as its rates are just and reasonable. If on the other hand PGW's rates are not just and reasonable – such as those the Administrative Law Judges ("ALJs") have recommended in the Recommended Decision ("RD") -- Vicinity is ready, willing, and able to completely sever its relationship with PGW and construct a bypass pipeline directly connecting with TETCO. If this RD is accepted as recommended by the ALJs, the economics will leave Vicinity no choice but to immediately commence bypass pipeline construction.

How did the RD result in such an unjust and unjustifiable outcome? The answer is as obvious as it is multifaceted.

First, in its April 20, 2023, Order in the Complaint proceeding ("April 20 Order") [3], the Pennsylvania Public Utility Commission ("Commission") directed the ALJs in the instant Rate proceeding to address four questions.[4] Incredibly, the ALJs addressed none of them.

Second, the Commission in the April 20 Order found Vicinity had carried its burden of proof that it was eligible for a special rate, or at least dismissed the Complaint proceeding's ALJ's findings to the contrary. Here, based on the very same facts, the Rate proceeding ALJs inexplicably make the opposite finding, in direct contradiction to the Commission's April 20 Order. [5]

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[1] Grays Ferry Cogeneration Partnership ("Grays Ferry") and Vicinity Energy Philadelphia, Inc. ("VEPI") (collectively "Vicinity").
[2] *Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. v. Philadelphia Gas Works*; Docket No. C-2021-3029259 ("Complaint proceeding").
[3] *Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. v. Philadelphia Gas Works*; Docket No. C-2021-3029259 (Opinion and Order entered April 20, 2023).
[4] Statement JC-1, 6:1-17.
[5] April 20 Order at 42.

Third, the ALJs here adopted PGW's proposed $ 0.11067/Dth transportation rate (currently $ 0.08/Dth) plus – and for the first time ever – added over $4MM in annual surcharges on top of the transportation charges. The ALJs' decision results in annual transportation costs of $5.3MM ($1.3MM in transportation charges PLUS $4 million ("MM") in annual surcharges). By comparison, Vicinity currently remits $1.02MM annually in transportation costs. None of these charges are justifiable at the levels the RD would impose and they should not be imposed. However, imposing increases in charges of this magnitude, at one time, clearly violates the principle of gradualism. The ALJs clearly ignored all the facts that disqualify the application of surcharges to Vicinity.

Fourth, the ALJs assert that if Vicinity's cost-causation principles (that is, Vicinity's rates should be based on PGW's costs to serve it) were accepted, it would produce "an unjustifiable … end result."[6] That an RD outcome would be based on its "end result" instead of the facts of the case is beyond incredible and violates Commission law and precedent.[7] ALJs must base their recommendation on the facts and the law; not on their desired results.

Fifth, the ALJs ignored Vicinity's completed bypass pipeline design documents, bid proposals, permit applications, design/construction, meeting minutes and other materials Vicinity proffered as evidence that bypass was both possible and imminent. This is a fatal failure by the ALJs because bypass capability is but one of the test prongs that prevents the imposition of surcharges. Given this, it is fair to ask what the ALJs would accept as proof that Vicinity's bypass plans are viable, short of requiring Vicinity to have completed bypass construction in order to accept it had met the bypass prong of the surcharge test.

[6] RD at 90.
[7] *Lloyd v. Pa. PUC,* 904 A.2d 1010 (Pa. Cmwlth. 2006), *appeal denied*, 591 Pa. 676, 916 A.2d 1104 (2007)("*Lloyd"*).

Sixth, the ALJs accepted PGW's ARS proposal that charges for capacity on the 20-mile-long Philadelphia lateral be calculated as though that capacity brought gas over 1,200 miles – all the way from the Gulf of Mexico – a much higher rate than one calculated based on the 20 mile Philadelphia lateral. That's akin to using the Pennsylvania Turnpike for one exit yet being charged a toll to transit from the New Jersey state line all the way to the Ohio Gateway. The ALJs' decision hands PGW an incorrect and inappropriate windfall.

These fatal flaws in the RD individually and in total – unless reversed by the Commission – will result in Vicinity being subject to unjust and unreasonable rates. As provided in the evidence in this case, Vicinity is prepared to immediately begin bypass pipeline construction to connect its facilities to TETCO if this RD is allowed to stand. Vicinity's exceptions will address each of these issues in more detail below.

II. HISTORY AND STATEMENT OF THE CASE

The Commission concluded in its April 20 Order in the Complaint proceeding that Rate GTS had not expired and that its terms continued to govern the service under Rate GTS. GTS was based on a contract between PGW and Vicinity executed in 1995 which has defined the relationship between Vicinity and PGW for over 25 years. The April 20 Order required PGW to propose such a new rate in its already in-progress rate case proceeding and that as part of the resolution of the rate case proceeding, the Presiding ALJ[s] were to develop a record which includes" four specific issues.[8]

[8] The four issues 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

In the RD issued September 5, 2023, ALJs Eranda Vero and Arlene Ashton recommended that every rate item proposed by PGW relative to Vicinity should be adopted as proposed. The RD rejects every argument raised by Vicinity with little or no explanation, and remarkably did not address the four questions specified by the Commission's April 20 Order. Indeed, the RD contains no findings of fact on *any* Vicinity related issue and contains only a single conclusion of law related to the transferred issues. Specifically, the ALJs conclude that PGW has carried its burden of proving that Vicinity has not justified the need for a special rate when, paradoxically, PGW itself had proposed a special rate for Vicinity,[9] and the April 20 Order rejected the Complaint proceeding ALJ's conclusion that Vicinity failed to carry its burden of proving its eligibility for a special rate based on the same facts presented in this case.

The contract at the heart of this matter was executed in 1995 resulting from Vicinity's victory at the Federal Energy Regulatory Commission that permitted it to bypass PGW.[10] The contract provides for transportation services over a four-mile high pressure pipeline that is part new construction and part rehabilitated pipeline. Vicinity paid PGW over $10 million for the pipeline. The contract rate for the transportation service is $0.08/Dth. The contract also provides a unique service called Alternative Receipt Service ("ARS") that allows PGW to provide additional deliverability for Vicinity in the coldest months, without releasing any capacity to Vicinity, and for which Vicinity pays $54,000 per year. [11]

Work's actual cost of service and the resulting "just and reasonable" rate for Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc.; and,

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.

[9] RD at 144, Conclusion of Law # 24.

[10] Vicinity has obtained guidance from FERC counsel that additional approval from FERC is not required for the bypass line.

[11] St. JC-1, 4:1-5:26. The Philadelphia Lateral is a 20-mile segment of pipe that runs from the TETCO mainline at Eagle, PA, to South Philadelphia. This segment of pipe presently serves only two customers in addition to PGW, one

In the Complaint proceeding PGW proposed a delivery rate of $ 0.65/Dth or an 800% increase, as compared to the $ 0.11067/Dth rate it proposed in this case. PGW's newest proposal appears to acknowledge reality, and its own testimony in prior cases, that Vicinity does not take service from PGW's integrated distribution system. See April 20 Order, p. 46 citing Pa. PUC v. PGW, Docket No. R-2017-2586783, PGW St. 5-R at 11 (citing PGW St. 6-R at 1-2) ("Because these GTS customers are served on a separate self-financed individual gas main, their distribution mains and supply costs are directly assignable and, thus, they should not be assigned responsibility for distribution system costs in the same way as other customers that receive service via PGW's interconnected distribution system."). However, in this Rate proceeding PGW asserted, for the first time, itemized surcharges of $24,444,895 for transportation costs of only $1,321,441, resulting in a total charge, for transportation alone, of $25,766,336. PGW subsequently reduced its demand for surcharges to $4,065,632 – but again, these are surcharges for transportation costs of only $1,321,441. Phrased another way, PGW sought to impose surcharges in excess of 3 times the underlying costs. Notwithstanding the disparity between actual costs and surcharges, the ALJs concluded in the RD that the proposed surcharges were "reasonable and equitable," as to the USEC surcharge, and provided no rationale for acceptance of other surcharges other than the conclusionary statement "Similarly….".[12] Surcharges were not an issue in the Complaint proceeding because PGW only first proposed surcharges in *this* proceeding. When one factors in the increased costs of ARS, from $54,000 per year to $3,957,158 per year, the overall increase to Vicinity's rates due to the RD is 727.63% (from $1,129,040 to $9,344,231); an over 8-fold

of which is Vicinity. Nonetheless, because PGW owns most of the capacity rights on the Lateral, there is rarely any made available for sale in the market.

[12] RD at 96.

increase.[13] It is legitimate to conclude that PGW's shifting attacks are grounded in the desire to hurt a competitor rather than legitimate rate-making standards.

The ALJs, in accepting PGW's skewed allocation of costs to Vicinity that clearly were not caused by Vicinity, assert that if Mr. Crist's adjustments were made in accordance with standard cost causation principles, it would produce "an unjustifiable . . . end result", i.e., a very low rate.[14] That same "ends justify the means" rationale is rampant throughout the RD – lower the rates for all other customers and place the responsibility on Vicinity because it has a large volume, even though Vicinity causes none of the costs of operating PGW's low pressure distribution system. Indeed, of the $22MM of total increases the RD recommends for PGW as a whole, approximately $7.5MM are from the substantial and sudden increases proposed just for Vicinity; despite Vicinity being a single off-taker from a separate, dedicated high-pressure line. The RD assigning costs to Vicinity, not caused by Vicinity, merely because the end result "appears" too low, violates the holding in *Lloyd*, which makes clear that one customer class cannot be required to subsidize other classes.

The same is true for the surcharges. It is the surcharges among all the rate elements that stand out as the most egregious – although charging ARS volumes at long-haul capacity rates without the benefits of long-haul capacity is a close second place. Vicinity made several arguments, any one of which should have been sufficient justification not to apply the surcharges to Vicinity while[15] PGW argued that "failure to apply the surcharges would cause other customers to continue to bear a disproportionate cost."[16] This contention is false, and the converse is true.

[13] PGW Hearing Exhibit 5.
[14] RD at 90.
[15] RD at 94-96.
[16] RD at 92.

That is, if Vicinity is made to pay the surcharges, it is Vicinity that will bear a disproportionate cost.

Of special importance is the ALJs' sweeping rejection of the evidence in the record that shows that Vicinity is positioned to very quickly bypass PGW. The ALJs' rejection is apparently based upon the testimony of a single PGW witness, Mr. Teme, or a fundamental misunderstanding of Vicinity. The RD concludes that a "bypass line [is not] a physical or financial reality" for Vicinity, for which proposition the RD cites to the testimony of Mr. Teme.[17] But as he testified, Mr. Teme is not authorized to review the trove of documents in the record[18] that clearly demonstrate that Vicinity is poised to bypass.[19] The RD ignores the testimony of Mr. Crist on this matter, a registered Professional Engineer in the Commonwealth who is quite familiar with gas-pipe installations, and who testified that Vicinity is indeed ready and able to bypass. Moreover, the ALJs ignore the very nature of Vicinity and its parent: the largest portfolio of district thermal systems in the United States, which maintains over 138 miles of underground piping nationwide, with approximately 40 miles of pipe in Philadelphia alone, and which replaces several miles of underground pipe every year.[20] Any suggestion that Vicinity is not able to design and construct a bypass gas pipeline of only a few miles in length is simply misinformed or misguided. And despite being fully available to the ALJs, there is no indication that the ALJs reviewed the complete design documents, bid proposals, permit applications, design/construction meeting minutes or other materials Vicinity proffered for the record. The ALJs found that bypass was unrealistic or the

[17] RD at 94-95.
[18] The Highly Confidential response to OCA Set IV-1 were the engineering bid and planning documents from five pipeline construction firms. As an employee of PGW, Mr. Teme was not authorized to view Highly Confidential documents.
[19] St. JC-1, 17:10-18:17; HC Exhibits JC-5 & JC-11.
[20] District thermal piping is far more complicated than natural gas piping as the former must accommodate large temperature swings, internal condensation, thermal insulation, and much greater size and weight.

recipe for the creating of a stranded asset.[21] Contrary to PGW's specious argument adopted in the RD, the surcharges are not "cost-based rate[s]" as they are imposed based solely on throughput. Moreover, Vicinity's obvious bypass ability was cited both as a basis for a special rate, and as a basis for not imposing *any* surcharges.[22] The Commission has held that surcharges are not appropriate in a special rate scenario because the special rate gives rate relief while the surcharges can eliminate the benefit – as here.[23] In fact, in this case, the surcharges alone would be 3 times the annual cost of delivery service, proving the point. It is also worth asking what metric Vicinity would need to meet to prove its ability to bypass – the RD hints that unless the bypass is actually complete, no threat of bypass is "realistic."

III. THE COMMISSION'S FOUR IDENTIFIED ISSUES

In its April 20 Order, the Commission identified four issues that were to be explicitly addressed in the record that is now before the Commission. While the ALJs did require the interested parties to address these specific issues in briefs, Vicinity addressed them at length while PGW provided a mere summary. Despite the extensive input on these issues, the RD fails to even acknowledge the assignment, let alone document the responses or analyze them. The absence of such analysis deprives the Commission of information it requested and deprives the parties of the arguments they made, and facts presented to support their positions on the issues. The total failure to address the four mandated issues is a manifest error.

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[21] RD at 96. Vicinity's bypass of PGW, which will happen if the RD is not substantially reversed, will create a stranded asset. The issue of Vicinity bypassing PGW and creating a stranded asset, however, is not pertinent to this case except as another reason to reject PGW's proposed rates. Further, the ALJs concern of a stranded asset is further proof that the 4-mile line is an asset truly dedicated to Vicinity (i.e., if Vicinity ceases to use the line, the line becomes a stranded asset).

[22] RD at 95-96.

[23] St. JC-1, 27:5-28:13, *citing*: *PA PUC v. Equitable Gas Company*, Docket No. R-00050272 (Opinion and Order entered September 28, 2005, slip. op. at 42); *Pennsylvania Public Utility Commission v. Peoples Natural Gas*, Docket R-00050267 (Opinion and Order entered September 30, 2005, slip op. at 34); and, *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, slip op. at 20-21).

The four issues from the April 20 Order the ALJs failed to address 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.; and,

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

To rectify the ALJs' failure to follow the Commission's specific instructions in the April 20 Order, Vicinity summarizes its positions on those issues as follows:

a) Vicinity agrees with PGW that a special rate class is needed, but not just in name only. Rather, all the typical provisions of such a special rate class should also apply here:

rates set based upon direct assignment of costs, no heaping-on of extra costs, such as PGW's surcharges and no subsidization of rates in either direction;[24]

b) Vicinity agrees with PGW that the cost of service should be determined by direct assignment with no free passes when PGW cannot produce evidence that it actually incurred an expense or for low pressure system costs.

c) Vicinity has not changed its view that ARS service does not use PGW's low pressure distribution system, which is essentially everything but the dedicated four-mile pipeline. ARS is a contractual, not physical gas swap arrangement and a capacity issue. Every molecule of gas consumed by Vicinity is transported by the dedicated, four-mile, high pressure pipe paid for entirely by Vicinity; ARS does not alter that fact. It is not a distribution service issue and not a basis for allocating nearly $10 million of low-pressure distribution system costs to Vicinity as PGW proposes here. It is this bogus allocation that forms the basis for PGW's argument that the surcharges should be assessed on Vicinity, and it is simply wrong; [25] and,

d) PGW has not offered any evidence to oppose the proposal that PGW should be held to its prior position in all its prior rate cases; that because Vicinity paid for the 4-mile pipeline and because its cost of service is associated only with that facility. Vicinity should bear no responsibility for any costs other than those directly associated with providing service to it, i.e., direct allocation. Accordingly, Vicinity suggests that the evidence of record, both in the Complaint proceeding[26] and in this case, [27] is clear that there should be

[24] *Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation*; Docket No. R-2010-2161694 (Opinion and Order entered June 21, 2012).
[25] It is worth noting that PGW's demands in the Complaint Case and PGW's modified demand in the present case continue to seek approximately $10MM from Vicinity despite the facially very different methodologies proposed by PGW.
[26] St. JC-1, 12:10-14:12.
[27] St. JC-1, 14:19-17:2.

no costs included in any cost of service study related to rates for Vicinity that are not directly incurred in serving Vicinity, except – as Mr. Crist testified – certain qualified administrative and general costs.

IV. SUMMARY OF THE EXCEPTIONS

The ALJs accepted PGW's arguments on all matters relevant to Vicinity across the board, without question, and without demonstrating any understanding of the underlying subject matter. Consequently, many of the recommendations or findings in the RD are based upon incorrect assumptions and groundless assertions. As discussed more fully below, the result is a RD that does not correctly or fairly interpret the evidence or the law.

The premise of these exceptions is that Vicinity is entitled to a fair rate that is based on the costs it imposes on the PGW system and the benefits that it derives from the service PGW provides. PGW bears the burden of proving that any rate it proposes is just and reasonable – something it has failed to do here.[28]

> Section 315(a) of the Public Utility Code, 66 Pa. C.S. § 315(a), places the burden of proving the justness and reasonableness of a proposed rate hike squarely on the public utility. *It is well-established that the evidence adduced by a utility to meet this burden must be substantial*.[29]

The Public Utility Code ("Code") also requires that utilities provide reasonable service.[30] The Code defines service as:

> Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them . . .[31]

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[28] 66 Pa. C.S. § 315(a).
[29] *Lower Frederick Twp. Water Co. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980) (emphasis added). *See also*, *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981).
[30] 66 Pa. C.S. § 1501.
[31] 66 Pa. C.S. § 102.

Further, Vicinity's rates should not be established based on its perceived ability to subsidize the other rate classes. The Commonwealth Court has made it clear that one customer or class of customers cannot be required to subsidize the cost of service for another class of customers.[32] In this matter, PGW has consistently sought to have Vicinity subsidize its other customers by charging rates not based on the cost of service as *Lloyd* requires. But that is what PGW proposed and that is what the ALJs parroted in the RD.

The surcharges are a noteworthy example. Vicinity has never been assessed any of PGW's surcharges[33], and it receives no benefits from any of them. Rather, Vicinity's service under the 1996 contract was priced based only on the agreement between PGW and Vicinity on what it costs to provide service to a unique, competitively situated customer, which also happens to be a competitor of PGW.[34] After 25 years, the cost-of-service-based-rate proposed by PGW (even though it contains errors) was a mere 2 cents higher than the rate established by the contract.[35] This consistency demonstrates that the $0.08/Dth rate remains valid and that PGW's service to Vicinity still does not impose costs on the PGW system apart from those embedded in the rates it has paid for over 25 years. While the argument is never expressly adopted in the RD, the only basis for imposing surcharges on Vicinity is to assume that Vicinity imposes some other cost on the PGW system, i.e., that ARS "uses" the low pressure distribution system. Otherwise PGW has offered no evidence, nor carried any burden of proving that there is any basis to impose the surcharges on a competitive customer's service that is delivered through a dedicated, purpose built

[32] *Lloyd v. Pennsylvania Public Utility Commission*, 904 A.2d 1010 (Pa. Cmwlth. 2006), appeal denied, 916 A.2d 1104.
[33] The four surcharges PGW proposes are Universal Service and Energy Conservation, Efficiency Cost Recovery, Other Post Employment Benefit, Distribution System Improvement Charge. None of the surcharges address costs caused by Vicinity or provide benefit to Vicinity.
[34] Vicinity's utility subsidiary VEPI provides district steam service to residential and commercial buildings in Philadelphia.
[35] PGW Hearing Exhibit No. 5.

facility that does not otherwise interact with the PGW system.[36] The fallacy that Vicinity must be required to subsidize other rate classes because it derives benefit from the entire PGW system permeates the RD, but is barely mentioned, and thus not conclusively addressed – despite the Commission's direction in the Complaint proceeding.[37] The consequence of the ALJs' apparent acceptance of that argument, however, is patent. Overt and crushing cross subsidization such as that which would result from the adoption of the RD is not an appropriate basis for setting rates, and yet that is exactly what the RD recommends.[38]

V. SPECIFIC EXCEPTIONS

1. Exception No. 1 – The failure to approve Vicinity's proposed adjustments to PGW's COSS in the RD is error. (RD at 86-87).

The ALJs recommend the adoption of PGW's cost of service study and the allocation of costs for metering stations that serve PGW's low pressure distribution system but are not used by Vicinity, to Vicinity. Those allocations were made on a volumetric basis, so that Vicinity's contribution to the expense of the low pressure distribution system amounts to $784,000 out of the $1,295,000 allocated to Vicinity. As Vicinity's witness Mr. Crist testified, PGW has no evidence of the direct costs for the lone metering station that actually serves Vicinity, because PGW has no records that it paid for the gate station or incurs any cost to operate the gate station, yet the 1996 contract provides evidence that remains undisputed that Vicinity paid for the four mile line

[36] *Lower Frederick Twp. Water Co. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980).
[37] *Joint Petition for Generic Investigation of Rulemaking Regarding "Gas-on-Gas" Competition between Jurisdictional Natural Gas Distribution Companies*, Docket Nos. P-2011-2277868, I-2012-2320323 (Opinion and Order entered May 4, 2017 ("*Gas Wars Order"); PA PUC v. Equitable Gas Company*, Docket No. R-00050272 (Opinion and Order entered September 28, 2005, slip. op. at 42); *Pennsylvania Public Utility Commission v. Peoples Natural Gas*, Docket R-00050267 (Opinion and Order entered September 30, 2005, slip op. at 34).
[38] *Lloyd v. Pa. PUC,* 904 A.2d 1010 (Pa. Cmwlth. 2006), *appeal denied*, 591 Pa. 676, 916 A.2d 1104 (2007). *Lloyd* makes it clear that cost causation is the "polestar" of ratemaking and that cross subsidies of such enormity violate that principle.

including the gate station.[39] Because the costs to serve Vicinity are quite small[40], the rate impact of Mr. Crist's adjustment (removing costs of gate stations for which PGW could produce no documentation of the costs assigned to Vicinity) reduced the rate from over $0.11067/Dth to $0.0397/Dth. PGW's reaction was to attack Mr. Crist's methodology and to falsely claim that Mr. Crist had proposed a direct-allocation-only methodology, which he has not done. Rather, Mr. Crist allowed that administrative and general costs should be allocated to all customers.[41] In this particular instance however, Vicinity had asked PGW in discovery for the property and maintenance records for the gate stations and PGW glibly responded that it had no such records.[42] In the absence of any evidence that PGW had any financial investment or costs for the gate station that serves Vicinity, i.e., that it paid for it or pays to maintain it, Mr. Crist proposed that under the principles of direct assignment, such costs should not be imposed on Vicinity. In its Class Cost of Service Study ("CCOSS"), PGW allocated costs from the gate stations serving the low pressure distribution system, which Vicinity does not use.[43]

The error was the ALJs accepting the outcome derived from PGW's argument that regardless of the lack of records, we should assume that Vicinity receives benefit from the low pressure gate stations and that assumption justifies straying from the direct assignment methodology. Further compounding their error, the ALJs suggested that the rate produced by the correct methodology was too low even if correct, and then used that conclusion as a basis for imposing the entire PGW proposal. In their adoption of PGW's proposed transportation rate the ALJs ignored the appropriate disallowances of allocated low pressure distribution system costs

[39] Exhibit JC-2.
[40] PGW has done no maintenance on the four mile line for 25 years.
[41] Tr. at 553-558.
[42] Id.
[43] Id.

that Mr. Crist determined. No witness provided testimony that supports the ALJ's conclusion. This is illustrative of the ALJs' disregard for the standards of ratemaking in favor of producing more revenue from Vicinity than is legally justified when correctly applying the principles of cost causation.[44]

2. <u>Exception No. 2</u> – The Conclusion that All Surcharges should be Assessed on Vicinity is error. (RD at 91).

Years of Commission precedent and logic have found that imposing surcharges on competitively situated customers is bad policy.[45] The rationale is that if a customer has the option to avoid the utility's service, it will seek the lowest cost option. In this case, Vicinity presented ample evidence that it has completed all of the preparatory work required to bypass PGW, and that pending the outcome of this proceeding, it is prepared to take service directly from TETCO through a facility that it will own and control, making it clear that bypass is no mere threat.[46] PGW's only witness to address Vicinity's ability to bypass was Mr. Teme, who was not authorized and who did not review a single highly confidential document related to Vicinity's bypass plans, which is most of the documents.[47] Nonetheless, the ALJs adopted Mr. Teme's conclusion, characterizing Vicinity's plan to bypass as "fictional." To Mr. Teme, Vicinity's plans likely do look fictional as he has had no access to those plans or their progress. But the ALJs did have access and should have reviewed them rather than rely on foundationless testimony.[48] It was that reliance on this

[44] *Lloyd.*
[45] *Joint Petition for Generic Investigation of Rulemaking Regarding "Gas-on-Gas" Competition between Jurisdictional Natural Gas Distribution Companies*, Docket Nos. P-2011-2277868, I-2012-2320323 (Opinion and Order entered May 4, 2017 ("*Gas Wars Order").*
[46] Exhibits JC-5 & JC-11.
[47] Tr. 338.
[48] PGW boldly asserts that in a bypass situation, Vicinity would still require ARS. That is incorrect. Mr. Crist was merely suggesting that ARS could continue, not that it would be required as PGW falsely claims. The record is clear that Vicinity would have been willing to continue ARS priced at $0.10 Dth/day, but it seems improbable that Vicinity would be willing to pay the price for that service that is being demanded by PGW. Moreover, a Payback period of 20 years for an asset with an indefinite lifespan is financially attractive. (Vicinity St. 1, pp. 28-29).

incorrect and unsupported assertion that weighed heavily on the ALJ's determination to assess the four surcharges on Vicinity. That determination was an error.

Similarly, the ALJs echo PGW's bizarre argument that Vicinity's previously announced goals of achieving zero carbon by 2050 suggest that Vicinity cannot build its own bypass line. While it is certainly true that Vicinity is endeavoring to meet the challenges of climate change and lower the carbon intensity of its district thermal systems, Vicinity's plans must remain flexible to address events beyond its control; events like its primary competitor increasing its rates by 8 - fold and making Vicinity uneconomic. But in this case flexibility is not required as the bypass line could also fit into Vicinity's goals by supplying renewable natural gas, hydrogen, or some fuel source not even currently contemplated. Regardless, Vicinity has a duty to ensure cost effective service to its current customers and if proceeding with construction of the bypass is in the best interests of Vicinity and its customers, Vicinity will proceed with the bypass.

The evidence shows that not only is Vicinity competitively situated, but that it also has been receiving interruptible service, and is prepared to continue receiving such service into the future if it remains a PGW customer. The contract allows PGW to interrupt Vicinity for up to 15 days per year,[49] and the proposed Rate GS-XLT would continue that option for PGW into the future, and yet the ALJs concluded that Vicinity's service is not interruptible.

PGW also suggests that because Vicinity is being responsible (unlike PGW) in addressing climate change and has goals to reduce its carbon footprint, that its throughput will decrease and lower the value of the bypass. This argument like the others, is vitiated by Mr. Teme's inability to review the project documents which make it clear that even at a fraction of its current usage, the return on investment for constructing a bypass pipeline is more than sufficient to move the project

[49] St. JC-1.24:1-10.

to completion. Oddly the ALJs appear to accept PGW's assertion that a bypass line would only avoid transportation costs of $1.3M per year – notwithstanding that the ALJs also recommend imposing an additional $4.0M of surcharges on the transportation costs resulting in a true transportation cost of $5.3M each year.[50] Even with a $30M bypass pipeline cost, the payback for constructing a bypass line would be less than 6 years and would provide Vicinity with stability and reasonableness completely lacking in the unjust and unreasonable rate that would result from accepting the RD. The ALJs nonetheless rely on this false argument unsupported by any evidence and adopt PGW's reasoning in the RD.

PGW's rate structure includes four surcharges: The Universal Service and Energy Conservation Surcharge ("USEC"), the Efficiency Cost Recovery Surcharge ("ECR"), the Other Post Employment Benefits Surcharge ("OPEB") and the Distribution System Improvement Charge ("DSIC"). In its filing, PGW proposed levels for these surcharges that produced the ridiculous total of over $24 million – 18 times the proposed new transportation rate – for surcharges alone. At the hearings, PGW presented an exhibit setting the total of these surcharges plus the underlying transportation charges at $5.38 million[51] – a substantial decrease from the initial proposal but still more than three times the amount of the proposed transportation charge on an annual basis.

None of these surcharges should be applied to Vicinity, even if it were not interruptible, competitively situated or had never before been assessed the surcharges. The most egregious of the surcharges being the $3,287,979 for OPEB[52] which recovers costs for benefits for employees of PGW. PGW incurred these obligations during a time when Vicinity's service was addressed by a contract that fully and completely addressed the costs of serving it. But now, PGW seeks to

[50] Vicinity agrees that it would have little economic motivation to construct the bypass line if the transportation costs were limited to PGW's alleged costs of $0.11/dth and the surcharges were removed.
[51] PGW Hearing Exhibit No. 5.
[52] OPEB is not charged to interruptible customers.

recoup the surcharge for past obligations (which the OPEB definitionally covers) as though Vicinity had no contract in its history, which is not appropriate. Likewise, Vicinity paid the costs of maintaining the four mile pipe, does its own scheduling, has very little interaction with PGW, and when it does it is typically for services Vicinity pays for directly. There is no basis to apply the surcharge to Vicinity on any basis, let alone a volumetric basis, which is premised on the notion that the benefit and therefore the burden should vary based on volume. For Vicinity, even though its volume is large, if there is any benefit, it is infinitesimally small. Accordingly, any assignment of employee costs to Vicinity on a volumetric basis will vastly overcharge, which is what happened here. The OPEB surcharge is not appropriate in the first instance for an interruptible customer that also has a competitive (bypass) option and is neither appropriately charged nor correctly conceived for Vicinity.

Vicinity paid for the entire cost of the facility that serves it and has paid to maintain it for 25 years. Now PGW wants to use the DSIC to charge it for the maintenance of the low-pressure distribution system, a system to which Vicinity is not connected and from which it receives no benefit. Unless the charge is limited to known expenditures for the four-mile pipeline, it would violate direct assignment principles and basic fairness/no cross subsidization to assess Vicinity for low pressure system costs. If DSIC is to be applied to Vicinity, it must be noted that the rate is zero per the PGW tariff.[53] Computation of DSIC should be based on costs related solely to the four-mile line.

Regarding the USEC, assessment of this surcharge to an interruptible customer with a credible bypass alternative is an error. The ALJs errored in their determination that Vicinity is not

[53] "The DSIC will be reset at zero upon application of new base rates to customer billings that provide for prospective recovery of the remaining costs (if any) that had previously been recovered under the DSIC. Thereafter, only the costs of new eligible plant additions that have not previously been reflected in the Utility's rates will be reflected in the quarterly updates of the DSIC."

interruptible, and that Vicinity does not have a credible bypass alternative. Vicinity is "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."[54]

The ECR also applies only to firm rate classes, and tariff language explains the costs of the current energy efficiency programs of PGW are "tracked and will be recovered separately from each of the following firm customer rate classes if the customer class is served by the energy efficiency program, yet PGW's proposed tariff language omits Rate GS-XLT. Any application of the ECR surcharge to Rate GS-XLT must be preceded by a review of energy efficiency programs and development of programs appropriate to Vicinity as the sole customer of rate GS-XLT.

It makes no sense to assess a competitively situated customer, that is already more efficient than PGW, for the costs of PGW surcharges. Such assessment would have the result of making VEPI's rates higher and enable PGW to improve its competitive position in the Philadelphia residential and commercial market where PGW competes directly with Vicinity. Putting aside that these programs are hostile to Vicinity's very existence, Vicinity is not eligible to participate in the programs the surcharges support. Assessing the surcharges would be as blatant a cross subsidy as can be imagined.

3. Exception No. 3 – The RD's approval of the Rate methodology for ARS is error. (RD at 97-102).

ARS is a service that was devised by PGW as part of the original agreement to persuade Vicinity to abandon its bypass plans that had already been approved by the FERC, and to instead take service from PGW. ARS allows PGW to use its TETCO capacity contracts to provide winter deliverability of gas up to 21,000 Dth/day to Vicinity through a contractual, not physical gas swap,

[54] Tr. at 589.

without actually releasing the capacity to Vicinity.[55] As PGW's witness Mr. Reeves testified on cross-examination during the Complaint proceeding, the costs for administering ARS are minimal, essentially the same level of involvement that PGW has with any other delivery of gas to its system.[56] In this matter PGW proposed much the same thing, except that the minimum price would be $0.61/Dth day – set at the tariff price for the long haul TETCO capacity, that includes the short haul Philadelphia Lateral segment that is used to deliver the gas. Vicinity's position is that it should pay the market price for the capacity, either at the lower price of the segmented capacity it uses, or if Vicinity was able to use the full capacity rights, at a market price - up to the full tariff price. That is not what PGW proposes. Instead, PGW proposes that it simply use the short haul Philadelphia Lateral capacity to supply gas to Vicinity at gate station 73060 for the swap, but that PGW retain the full 21,000 Dth/day of capacity all the way back to the Gulf Coast. The long-haul capacity is an asset that PGW can split into parts, i.e., keep the Philadelphia lateral portion to deliver for Vicinity, and sell the other portion which extends all the way to the Gulf of Mexico, and earn extra money for the GCR. The Philadelphia lateral portion has little to no value for any other party, except Vicinity, and the long-haul segment that extends to the Gulf has substantial value, according to Mr. Reese.[57] In short, PGW wants to abuse its monopolistic position to unjustly extract value from Vicinity by requiring Vicinity to *pay* for long-haul capacity but only be entitled to *use* the short-haul capacity. [58] Compounding the impropriety of this scheme, PGW's proposal creates a mechanism for PGW to effectively sell the long-haul capacity twice: once to Vicinity by mandating that it pay for capacity it cannot use under PGW's scheme and again

[55] Again, every molecule of gas consumed by Vicinity in connection with ARS is transported through the dedicated, four-mile, high pressure pipeline paid for entirely by Vicinity.
[56] Complaint proceeding, Tr. 163.
[57] In PGW's 2023 1307(f) case, Mr. Reeves testified (Tr. 71) that PGW release 18708 Dth/Day on TETCO for $3.25 but that the capacity did not include the Philadelphia Lateral – in other words, the capacity had been "segmented."
[58] The last transaction PGW had for Philadelphia Lateral Capacity was at $0.10 Dth/day, Vicinity St. 1-SR, 24:3-17, versus the $3.25 that Mr. Reese gained from releasing the long-haul segment last year. Vicinity St. 1-SR, 27:6-29:14.

on the open market. There are several ways to address this disparity. PGW could either provide the actual product for which ARS is proposed to be priced, that is, release the 21,000 Dth/day to Vicinity (on a recallable basis) and charge Vicinity the market price for that capacity; or, charge Vicinity the actual cost of the product it would receive, access to only the Philadelphia Lateral, which costs, most recently, $0.10 Dth/day. Contrary to PGW's patently false argument, employing either of these options would benefit, not harm PGW's other customers. If PGW released the capacity to Vicinity, it would earn a market price on a guaranteed basis and if it priced ARS at the cost of the capacity on the Philadelphia lateral, it could segment the capacity and sell the valuable long haul section, as it does today, and earn extra revenue for PGW. Either way, customers benefit and are not harmed.

The errors in the RD on this subject are manifest. First, the ALJs appear to have adopted, without explaining how or why, the misguided notion that ARS "uses" PGW's distribution system – despite the fact that every molecule of natural gas consumed by Vicinity through ARS is transported through the dedicated, four-mile, high-pressure pipeline paid for entirely by Vicinity.[59] The ALJs apparently fail to understand that Vicinity does not use ARS in the non-winter months and so the notion that ARS will save it money as discussed on RD at page 101 is meaningless. But if PGW were to actually release the capacity, Vicinity would receive the full value of that capacity. The RD provides no analysis and completely misunderstands the issue. The costs of administering ARS[60] are not significant and the only cost is the capacity used to provide it. PGW's own witness admitted that the only segment of capacity that is actually used for ARS is the Philadelphia Lateral segment and PGW is free to sell the rest – which is the valuable part. Under ARS as recommended in the RD, Vicinity pays the full price for something that it will not receive (capacity release of the

[59] RD at 100.
[60] St. JC-1, 20:13-14.

entire M1 to M3 capacity), while PGW customers will benefit by selling the same asset twice, to different buyers. Such a result is neither fair nor defensible. [61]

4. <u>Exception No. 4</u> – The RD's assertion that Vicinity's service is not and never was interruptible is error. (RD at 83-86).

The ALJs conclude in the RD that Rate GT-XLS is and shall be a firm service. When PGW first proposed a new rate for Vicinity in the Complaint proceeding, it proposed that Vicinity be served at an interruptible rate of $0.76/Dth. In this matter, Rate GS-XLT is proposed as a firm service but continues to include broad, ill-defined interruptibility provisions that appear to be nothing more than PGW's whims; the whim of a competitor to Vicinity. Moreover, Vicinity has proven that it has massive stores of oil and biogenic fuel, the ability to burn oil or biogenic fuel to fuel its boilers in the event that it is interrupted, and that the capacity it owns (which is not subject to PGW interruption) is sufficient to sustain its electricity operations, and that it maintains insurance to protect against any financial loss associated with its inability to generate electricity if for some reason it cannot receive sufficient fuel.[62] Again, Vicinity's capabilities are not fictional – Vicinity consumes significant quantities of oil every year to offset high gas prices or when its gas-fired generation assets are unavailable for whatever reason (e.g. maintenance). The 1995 contract also allowed PGW to interrupt an additional 6,000 Dth/Day for any reason.[63] Despite this trove of evidence that Vicinity always has been interruptible and is willing to continue that level of interruptibility, the RD concludes that Vicinity is forever to be Firm, but never reconciles any

[61] PGW's proposal/RD recommendations also contain practical problems for the ARS service. In particular, despite PGW's glib remarks that Vicinity can simply make a business decision whether to accept ARS or not, PGW continues to insist that Vicinity pay a year-round minimum for ARS that equates to 5,000/dth each day – even in the nine months of the year that Vicinity would not need ARS at all. Further, Vicinity should be permitted to designate ARS volumes a day before they are needed, not on a monthly basis as proposed by PGW. Monthly nominations as proposed by PGW would necessitate that Vicinity pays for large ARS volumes regardless of need. These are yet two additional attempts s by PGW to coerce payment from Vicinity for service that has no value to Vicinity or its customers.
[62] Vicinity St. SR-1, 10:1-9.
[63] Exhibit JC-2.

of these other facts. The RD instead relies only on Vicinity's prior declaration at the beginning of the Complaint case that it did not want to be interruptible – even though it clearly was and is. What Vicinity should have said is that it did not want to be any more interruptible than it already is, which is significant. The RD makes no effort to parse this reasoning and instead declares Vicinity's service forever firm, sort of.

In reviewing the facts regarding interruptible/firm transportation, however, the ALJs reach a conclusion that is defamatory of Vicinity and is not supported by any evidence. The ALJ's claim that because Vicinity advocated for a lower penalty for non-compliance with OFO-OMO's, as proposed by PGW, that proves that Vicinity intends not to comply with OFOs or OMOs, i.e., that it would not interrupt when ordered to do so. There is no evidence in the record to support such a bald accusation, and Vicinity has testified that it would continue to be subject to the interruptability provisions. Vicinity has never failed to comply with any such order. Advocating for lower penalties proves nothing other than expressing an opinion that there were infirmities with the penalty as proposed; specifically, that PGW seeks penalties for Vicinity that are 3 times higher than PGW imposes on any other customer and where Vicinity is already directly subject to TETCO penalties[64]. In fact, Mr. Crist explained his rationale for proposing to change the penalty amounts as follows:

> Reduced the punitive penalty for violating a flow order from $75/Dth to $5/Dth. PGW provided no mention of support for any such penalties, and Vicinity is not subject to such penalties from PGW and is responsible for adherence to TETCO OFOs currently.[65]

It is beyond the pale to extrapolate from the facts that (1) Vicinity already manages flow orders with TETCO and would be subject to any TETCO imposed fines and (2) PGW's proposed

[64] PGW's penalty for non-compliance of an OFO/OMO is $25/Dth for Rate IT.
[65] St. JC-1 p. 31:13-15.

penalty is three times higher than any other proposed PGW penalty for OFO violations and then conclude that Vicinity intends to intentionally violate flow orders. The ALJ's conclusion is supported only by PGW's false accusation and should be rejected. Instead, the Commission should conclude that Vicinity's service is and always has been interruptible and that it should be afforded the same accommodations for being interruptible that are afforded to PGW's other interruptible customers.

VI. CONCLUSION

PGW and Vicinity are competitors, but only PGW is capable of forcing Vicinity to pay higher rates which makes Vicinity less competitive. PGW's intent is clear from the record as are its shifting attempts to charge Vicinity as much as it can get away with. First, in the Complaint Case, PGW attempted to charge Vicinity $0.65/dth for transportation by allocating PGW's low-pressure distribution costs to Vicinity. When it became clear that the Commission would not countenance allocating costs to Vicinity for a system Vicinity does not use, PGW reduced its demand to $0.11067/Dth but then attempted to impose over $24 million of surcharges on transportation costs of only $1.3M. As the absurdity of those surcharges became evident, PGW lowered its demand to $4M of surcharges – an amount still ridiculous in comparison to the underlying costs. Adding to the absurdity, PGW now tries to charge Vicinity long-haul capacity rates to use the ARS mechanism the parties created over 25 years ago but maintains that Vicinity can have none of the benefit of actual long-haul capacity. Further, PGW attempts to require Vicinity to pay for 5,000/dth per day for ARS, year-round, despite knowing that Vicinity does not use ARS for at least nine months of the year.

The RD parrots PGW's positions and sides with PGW on every issue related to Vicinity. The RD should be rejected for failure to follow the law, the direction of the Commission, and the evidence presented by the parties. Specifically, the RD:

1. Fails, without explanation, to address the four questions the Commission mandated in its prior order.

2. Fails to follow the law prohibiting cross-subsidization on the basis that following the law would produce "an unjustifiable . . . end result"; that is, insufficiently high rates imposed on Vicinity.

3. Ignores the substantial evidence of Vicinity's ability to operate its business in the event of an interruption of gas delivery, despite Vicinity's substantial on-site supply of alternative fuels and Vicinity's actual history of using those fuels in lieu of natural gas.

4. Impugns the character of Vicinity by concluding that Vicinity would intentionally violate operational flow orders imposed upon it without any supporting evidence.

5. Impermissibly assigns surcharges totaling three times the underlying costs of transportation for services Vicinity does not use or programs for which Vicinity cannot avail itself.

6. Inexplicably dismisses Vicinity's threat of bypass, notwithstanding the copious volume of data Vicinity provided on its progress and Vicinity's demonstrated history of being capable of installing underground pipe, apparently on the basis that Vicinity – a company specialized in delivering thermal energy through underground pipes – is incapable of installing underground pipes.

7. Allows PGW to charge Vicinity for services PGW does not deliver, including charging Vicinity for long-haul gas transportation capacity while prohibiting Vicinity from the benefits of long-haul gas transportation capacity.

8. Allows PGW to violate the principles of gradualism and impose an eight-fold increase in rates virtually overnight.

These fatal flaws in the RD individually and in total – unless reversed by the Commission – will result in Vicinity being subject to unjust and unreasonable rates.

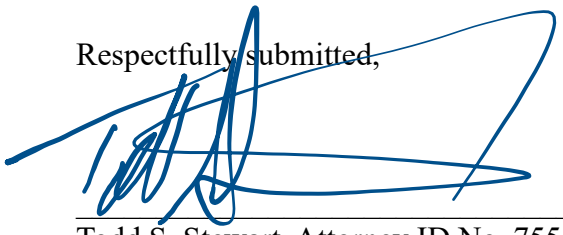
As stated above, the facts of this case are complex and cover a span of more than 25 years, but the overarching principles are constant. Vicinity and PGW entered into what can only be characterized as a special rate contract in 1996 for the delivery of gas over a dedicated high pressure facility that was part new construction and part rehabilitated existing line. Vicinity paid the costs for the construction of the line and pays a substantial annual maintenance fee. The contract set the rate for delivery at $0.08/Dth and that rate is not much different than what PGW proposed in this case. During the life of the contract, PGW never sought to impose any of its array of surcharges on Vicinity, instead arguing in its rate cases (after it became subject to Commission jurisdiction) that Vicinity should only be assessed for those costs that it imposes on the system, i.e., direct assignment. The principle that Vicinity's rates should cover the costs it imposes, but not be considered a source for subsidies for other customers is well grounded in the law and is based on Vicinity's ability to move off the PGW system.

Vicinity has shown that it retains the ability to exit PGW's system, it also has shown that it is interruptible and thus should not be assessed surcharges. Likewise, Vicinity has shown conclusively that ARS does not use PGW's low pressure distribution system and cannot serve as the proverbial camel's nose under the tent to justify imposing massive and crippling surcharges on

Vicinity. There is no basis in law or fact for such a blatant demand for cross-subsidies. The same holds true for PGW's ARS proposal where it seeks to earn a rate that is premised on the full release of capacity, and yet fails to deliver that product, and in fact allows PGW to sell that product twice to two different customers.

The RD adopts PGW's arguments without any recognition of these principles and facts and instead takes the same position, that Vicinity needs to pay drastically more, even if those facts do not support such a result. The fact is that if the result is that Vicinity is required to pay the confiscatory rates that the RD will produce, it will not do so for long, because it will exercise its ability to leave, and once that process begins, it will not be stopped.

Respectfully submitted,



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