

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held January 18, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement	R-2023-3037933
Office of Consumer Advocate	C-2023-3038846
Office of Small Business Advocate	C-2023-3038885
Philadelphia Industrial and Commercial Gas User Group	C-2023-3039059
Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc.	C-2023-3038727
James M. Williford	C-2023-3039130

v.

Philadelphia Gas Works

C-2021-3029259

Grays Ferry Cogeneration Partnership and Vicinity
Energy Philadelphia, Inc.

v.

Philadelphia Gas Works

OPINION AND ORDER

Table of Contents

I.	Consolidation of the Petitions	2
II.	Background.....	3
III.	History of the Proceeding	5
IV.	Legal Standards	10
V.	Discussion.....	12
A.	PGW’s Petition for Reconsideration	12
1.	Whether the Commission erred in its adjustment for IGF/ Capital Spending	12
a.	The <i>November 2023 Order</i>	12
b.	PGW Petition and Answers.....	15
c.	Disposition	22
2.	Whether the Commission Properly Adjusted Certain of the Company’s Expense Claims	26
a.	The <i>November 2023 Order</i>	26
b.	PGW Petition and Answers.....	27
c.	Disposition	30
B.	Vicinity’s Petition for Clarification.....	32
1.	Whether to Clarify That Vicinity is Entitled to Use of Long-Haul Capacity if the Market Rate Charged by PGW is Based Upon Long-Haul Rate	33
a.	The <i>November 2023 Order</i>	33
b.	Vicinity’s Petition and Answers	33
c.	Disposition	36
2.	Whether to Clarify that PGW is Not Authorized Under PGW Rate GS-XLT to Bill Vicinity for ARS During Months Vicinity Has No Need for ARS.....	38
a.	The <i>November 2023 Order</i>	38
b.	Vicinity’s Petition and Answers	38
c.	Disposition	41
3.	Whether to Establish a Mechanism to Ensure the “Market Price” Set by PGW is Fair and Reasonable	45
a.	The <i>November 2023 Order</i>	45
b.	Vicinity’s Petition and Answers	46
c.	Disposition	48
VI.	Conclusion.....	49

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Clarification of Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. (collectively, Vicinity) (Vicinity Petition) filed on November 20, 2023, seeking clarification of the Order entered on November 9, 2023 (*November 2023 Order*), relative to the above-captioned proceeding. Philadelphia Gas Works (PGW or Company) filed an Answer in response to the Vicinity Petition (Answer) on November 30, 2023. Also before the Commission is the Petition for Reconsideration (PGW Petition) filed by PGW on November 27, 2023, seeking reconsideration of the *November 2023 Order*. The Commission's Bureau of Investigation and Enforcement (I&E), and the Office of Consumer Advocate (OCA) each filed an Answer in response to the PGW Petition (Answer) on December 7, 2023, and the Coalition of Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) together with the Tenant Union Representative Network (TURN) (collectively, CAUSE-PA/TURN) filed a joint Answer in response to the PGW Petition (Answer) on December 6, 2023. For the reasons discussed more fully, *infra*, we shall: (1) grant, in part, and deny, in part, the Vicinity Petition seeking clarification; and (2) deny the PGW Petition seeking reconsideration.

I. Consolidation of the Petitions

As a preliminary procedural matter, we shall order the consolidation of our consideration and disposition of both the Vicinity Petition seeking clarification and the PGW Petition seeking reconsideration of the Commission's *November 2023 Order* approving PGW's rate increase.

Section 5.81(a) of the Commission's Regulations provides that "[t]he Commission or presiding officer, *with or without motion, may order proceedings involving a common question of law or fact to be consolidated*. The Commission or

presiding officer may make orders concerning the conduct of the proceeding as *may avoid unnecessary costs or delay.*” 52 Pa. Code § 5.81(a) (emphasis added).

In the present case, both the Vicinity Petition and the PGW Petition pertain to the Commission’s consideration and approval of PGW’s rate increase by the *November 2023 Order*. Because our consideration and disposition of both the Vicinity Petition and the PGW Petition involve a common issue of fact, *i.e.*, the terms governing PGW’s rate increase under the *November 2023 Order*, and both seek a reexamination and/or revision or clarification of that order pursuant to Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision, we shall consolidate our consideration and disposition of both the Vicinity Petition and the PGW Petition, in the interest of judicial and administrative economy.

II. Background

PGW is a municipal public utility company, owned by the City of Philadelphia (City) and managed and operated by the Philadelphia Facilities Management Corporation (PFMC). Further, PGW is a “City Natural Gas Distribution Operation,” as defined in the Pennsylvania Public Utility Code (Code), 66 Pa. C.S. § 102. The Commission’s jurisdiction over PGW, and its tariff rates, arose from the legislature’s adoption of the Natural Gas Choice and Competition Act, 1999, June 22, P.L. 122, No. 21 § 3, effective July 1, 1999 (Chapter 22, Natural Gas Competition) 66 Pa. C.S. § 2201 et seq; 66 Pa. C.S. § 2201(b) (establishing Commission jurisdiction over PGW “with the same force as if the service were rendered by a public utility.”).¹ PGW manages a distribution system of approximately 3,000 miles of gas mains and 476,000 service lines supplying approximately 500,000 customers in Pennsylvania. PGW M.B.

¹ Although the Natural Gas Choice and Competition Act brought all “City Natural Gas Distribution Operations” under the jurisdiction of the Commission, PGW is presently the only City Natural Gas Distribution Operation. PGW M.B. at 1, n.3.

at 1. PGW’s service territory consists of an urban area of 134 square miles, the limits of the City, and is the exclusive distributor of natural gas within the limits of the City. PGW Exh. DKW-2 at 6. PGW represents that it is the largest municipally-owned natural gas utility in the nation. PGW St. 4 at 5.

PGW’s ratemaking process is based on the Cash Flow Ratemaking Method, where its revenue requirement is the sum of operating expenses, debt service, and a “margin” sufficient to maintain the organization’s ability to attract capital on reasonable terms.² PGW has no shareholders and does not pay a dividend or a rate of return (ROR) to its owners. However, the Company does remit a fixed annual payment of \$18 Million (City Payment) to the City, as permitted under 66 Pa. C.S. § 2212(h). Accordingly, all of the funds it needs to run the Company come from its ratepayers or from borrowing, the costs of which must then be paid by ratepayers. PGW M.B. at 1, 11; PGW St. 1 at 2-3. PGW last filed for an increase in natural gas base rates in 2020, which this Commission addressed at *Pa. PUC, et al v. Philadelphia Gas Works*, Docket Nos. R-2020-3017206, *et al.* (Opinion and Order entered November 19, 2020) (*2020 PGW Rate Case*).

In this current base rate proceeding, PGW sought an increase in jurisdictional natural gas revenues of \$85.2 million, or 10.2% on a total revenue basis.³ PGW’s requested increase was based upon the Fully Projected Future Test Year (FPFTY) ending August 31, 2024.⁴ PGW explained that since the *2020 PGW Rate Case*, it has

² Other than PGW and the Pittsburgh Water and Sewer Authority (PWSA), utilities under the jurisdiction of this Commission use the rate base/rate of return methodology to set rates. I&E St. 1 at 2, n.1.

³ PGW’s original request of \$85.8 million was modified for a revision to PGW’s requested COVID-19 expense recovery to credit that claim for a \$10,752,000 Pipeline and Hazardous Materials Safety Administration (PHMSA) grant received by the Company after its original request was prepared. *See*, PGW St. No. 2-R at 2; Exhs. JFG-2-R (Statement of Income); JFG-5 (Statement of Income).

⁴ The future test year (FTY) ended August 31, 2023, and the historical test year (HTY) ended August 31, 2022. PGW M.B. at 13. The statutory definition of

continued to engage in an aggressive capital improvement program and has focused on improving safety, increasing efficiency, and enhancing customer service. The Company represented that it filed its rate increase request because of several factors, including materially increased expenses and capital expenditures, have reduced PGW's projected cash and liquidity. In addition, PGW noted that it will be issuing a \$348 million bond at the end of Fiscal Year (FY) 2024, upon conclusion of the FPFTY, that will impose incremental debt service of approximately \$22.7 million. PGW stated that none of these incremental costs are currently included in the Company's rates. PGW M.B. at 2, 13.

III. History of the Proceeding

On February 27, 2023, PGW filed proposed Supplement No. 159 to PGW's Gas Service Tariff – Pa. P.U.C. No. 2 (Supplement No. 159) and proposed Supplement No. 105 to PGW's Supplier Tariff – Pa. P.U.C. No. 1 (Supplement No. 105) to become effective April 28, 2023. Supplement No. 159 and Supplement No. 105 sought a rate increase calculated to produce approximately \$85.8 million (10.3%) in additional annual revenues.⁵ Also filed on this date was a Petition for Waiver seeking waiver of the application of the statutory definition of the FPFTY to allow PGW to use a fully FPFTY beginning September 1, 2023, in this proceeding. PGW also served the Direct Testimony of its witnesses, in support of its filing.

FPFTY, set forth in 66 Pa. C.S. § 315(e), would have required that the FPFTY commence in November 2023 and to continue for twelve months. However, pursuant to 66 Pa. C.S. § 2212(c), PGW has the authority to request that the Commission suspend or waive this provision of the Code. As previously noted, concurrent with its filing of the instant base rate case, PGW filed a Petition requesting that the Commission waive the application of the statutory definition of FPFTY to permit the Company to use a FPFTY beginning earlier than that which is mandated by Section 315, *i.e.*, on September 1, 2023.

⁵ As explained previously there was a slight reduction to 10.2%. *See*, Footnote 3.

Also on February 27, 2023, I&E filed a Notice of Appearance. Complaints were filed against the proposed rate increase by: Vicinity on March 3, 2023; the OCA on March 7, 2023; the Office of Small Business Advocate (OSBA) on March 9, 2023; James M. Williford (Mr. Williford) on March 17, 2023; and PICGUG on March 17, 2023. PGW served supplemental direct testimony regarding revisions to PGW's Weather Normalization Adjustment (WNA) formula to be used in future heating seasons on April 3, 2023.

On April 12, 2023, CAUSE-PA filed a Petition to Intervene and Answer.

On April 20, 2023, the Commission, by Order (*April 2023 Order*), instituted an investigation to determine the lawfulness, justness, and reasonableness of PGW's proposed rate increase. The *April 2023 Order* suspended proposed Supplement No. 159 and proposed Supplement No. 105 until November 28, 2023, unless permitted by further Order of the Commission to become effective at an earlier date. The *April 2023 Order* also assigned the matter to the Office of Administrative Law Judge (OALJ) for the scheduling of any necessary hearings and the issuance of a Recommended Decision. The matter was assigned to ALJs Vero and Ashton. A Prehearing Conference Order was also issued on April 20, 2023, setting a call-in telephonic prehearing conference for April 28, 2023.

In a corollary matter, the Commission directed on April 20, 2023, that Section 1301 questions of the Code, 66 Pa. C.S. § 1301, regarding the “just and reasonable rate” and rate class applicable to PGW's service to Vicinity be examined utilizing cost of service principles in this base rate case. *See, 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). (*Complaint Proceeding*).

On April 24, 2023, PGW filed a Motion for Protective Order pursuant to our Regulations (Regulations) at 52 Pa. Code § 5.423(a). There was no formal opposition to this request, and the requested Protective Order was granted on May 1, 2023.

TURN filed a Petition to Intervene in this matter on April 24, 2023. On April 25, 2023, POWER Interfaith (POWER) filed its Petition to Intervene.

On April 26, 2023, PGW filed Proposed Tarriff Supplement No. 161 to its Gas Service Tariff – Pa. P.U.C. No. 2 and Proposed Tariff Supplement No. 107 to its Gas Supplier Tariff – Pa. P.U.C. No. 1, suspending the effectiveness of rates proposed in Supplement No. 159 and Supplement No. 105 until November 28, 2023, as ordered by the Commission on April 20, 2023.

Prehearing memoranda were filed by PGW, I&E, the OCA, the OSBA, Vicinity, CAUSE-PA, TURN, POWER, and PICGUG prior to a call-in telephonic prehearing conference held on April 28, 2023.

On May 5, 2023, pursuant to the *April 2023 Order*, PGW submitted supplement direct testimony and exhibits regarding the proposed rates, rules, and regulations governing gas service provided to Vicinity.

By Prehearing Order on May 10, 2023, the Petitions to Intervene by CAUSE-PA, TURN, and POWER were granted, and a procedural schedule and framework established. Additionally, the Petition for Waiver, filed by PGW on February 27, 2023, was granted, as the September 1, 2023 date for the beginning of the FPFTY was consistent with PGW's financial filings.

Four Public Input Hearings were held in this matter. On May 23, 2023, two Public Input in-person hearings were held. On May 24, 2023, two Public Input telephonic hearings were held. During the Public Input Hearings, twenty-two (22) PGW customers provided sworn testimony.

On May 23, 2023, the OCA filed a Motion to Strike (OCA Motion) the supplemental direct testimony submitted by PGW on April 3, 2023, regarding PGW's WNA.⁶ On May 31, 2023, PGW filed a timely answer to the OCA Motion and CAUSE-PA/TURN filed a Joint Answer to the OCA Motion. An Order granting the OCA's Motion to Strike was issued on June 6, 2023, directing that PGW's supplemental direct testimony be stricken and not become part of the record.

On May 31, 2023, I&E, the OCA, the OSBA, CAUSE-PA/TURN, and POWER served their Direct Testimony and associated exhibits.

On June 2, 2023, Vicinity and PICGUG submitted their Direct Testimony and associated exhibits.

On June 26, 2023, Rebuttal Testimony was filed by PGW, the OCA, the OSBA, Vicinity, and PICGUG.

On July 7, 2023, Surrebuttal Testimony was filed by the OCA, Vicinity, I&E, POWER, PGW, and CAUSE-PA/TURN.

On July 10, 2023, PGW submitted a written Rejoinder.

⁶ Per the Opinion and Order in Docket No. R-2022-3034229, PGW's WNA shall be evaluated and fully addressed in PGW's next rate case. *Pa. PUC v. Phil. Gas Works*, Docket No. R-2022-3034229 (Opinion and Order entered September 21, 2023) (*September 2023 Order*).

Evidentiary hearings were held in this matter on July 11 and July 12, 2023. The Parties submitted Main Briefs on July 27, 2023, and Reply Briefs on August 7, 2023. The record in this proceeding closed on or about August 7, 2023, upon the filing of Reply Briefs.

In their Recommended Decision, issued on September 5, 2023, ALJs Vero and Ashton recommended that PGW's proposed Supplement No. 159 to its Gas Service Tariff – Pa. P.U.C. No. 2, and proposed Supplement No. 105 to its Gas Supplier Tariff – Pa. P.U.C. No. 1, and the associated proposed revenue increases, be denied because the Company did not meet its burden of proving by a preponderance of the evidence the justness and reasonableness of every element of its requested increase. Instead, the ALJs recommended the approval of an increase in annual operating revenue in the amount of \$22,306,000, or approximately 2.7% over present rates. The ALJs also recommended that PGW's proposal to create a new tariff class: Rate General Service – Extra Large Transportation (GS-XLT) be approved. Additionally, the ALJs recommended that PGW be directed to undertake multiple measures to improve its customer service. The ALJs further recommended that the Commission reject a proposal by POWER to integrate non-pipeline alternatives (NPAs) investments into PGW planning, finding that the Commission lacks the jurisdiction and authority to do so. R.D. at 1.

As previously noted, PGW, the OCA, PICGUG, Vicinity, CAUSE-PA/TURN, and POWER filed Exceptions to the R.D. on September 15, 2023. Reply Exceptions were submitted by PGW, I&E, the OCA, the OSBA, and CAUSE-PA/TURN on September 22, 2023.

On September 29, 2023, PICGUG filed its Motion.

On October 19, 2023, PGW and the OSBA each filed an Answer to the PICGUG Motion.

On November 9, 2023, the Commission issued its Opinion and Order in which we: (1) granted, in part, and denied, in part, the Exceptions filed by PGW, the OCA and Vicinity; (2) denied the Exceptions filed by PICGUG, CAUSE-PA/TURN and POWER; and (3) granted PICGUG's Motion. Consequently, the Commission approved an annual revenue increase of approximately 3.15%.

As previously noted, on November 20, 2023, Vicinity filed a Petition for Clarification. On November 30, 2023, PGW filed its Answer to the Vicinity Petition.

As previously noted, on November 27, 2023, PGW filed a Petition for Reconsideration. On December 6, 2023, CAUSE-PA/TURN filed an Answer to the PGW Petition for Reconsideration. On December 7, 2023, I&E and the OCA filed their respective Answers to the PGW Petition.

IV. Legal Standards

Initially, we note that any issue we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the Parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The Public Utility Code (Code) establishes a party's right to seek relief including clarification and reconsideration following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. §§ 703(f) and 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision. The standards for

granting a Petition for Clarification and/or Reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Company*, 1982 Pa. PUC Lexis 4, *12-13:

A Petition for Reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part.

In this regard we agree with the court in the Pennsylvania Railroad Company case, wherein it was stated that:

Parties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them . . . what we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked by the Commission.

Under the standards of *Duick*, a petition for reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Id.* at *13.

V. Discussion

A. PGW's Petition for Reconsideration

PGW's Petition centers on two issues. First, PGW argues that the Commission erred in making its adjustment to the Company's claim for Internally Generated Funds (IGF). Second, PGW submits that the Commission improperly adjusted seven of the Company's operating expense claims.⁷ According to PGW reconsideration of these issues is proper such that the Company should be authorized an annual revenue increase of approximately \$47 million rather than the annual increase of \$26.2 million it was authorized under the *November 2023 Order*. PGW Petition at 1-2. We will address each of these matters in detail, below.

1. Whether the Commission erred in its adjustment for IGF/Capital Spending

a. The *November 2023 Order*

In our *November 2023 Order*, we considered PGW's claim of \$53.207 million in IGF to finance capital improvement projects. *November 2023 Order* at 42, n.17. On consideration of the positions of the Parties, the ALJs recommended that the

⁷ As discussed below, PGW argues that the Commission erred in making adjustments to the following expense categories: (1) Gas Processing; (2) Field Operations; (3) Collections; (4) Customer Service; (5) Account Management; (6) Marketing; and (7) Administrative and General. The total of the Commission's adjustments to the seven expense categories is \$4.228 million. PGW Petition at 10, n.38. (citing *November 2023 Order* at Appendix, Table I, lines 18-24, column D).

Company's proposed IGF claim be reduced by \$38,453,000.⁸ We agreed with the ALJs, and each opposing Party that proffered a reply to PGW's Exception No. 3, that the Company's IGF claim must be reduced. However, we explained that the ALJs failed to offer any reasoning for their recommended reduction to the Company's claim. Rather, the ALJs simply summarized each Party's position regarding PGW's use of IGF in establishing the Company's debt to total capital ratio. *November 2023 Order* at 52 (citing R.D. at 15-16, 22, 29-30). Additionally, we explained that the ALJs discussed the OCA's proposed reduction to PGW's claim for net construction expenditures and their associated recommendation that the proposed reduction be denied. *November 2023 Order* at 52 (citing R.D. at 62). However, we also noted the ALJs did not explicitly state, in the body of the Recommended Decision, their recommendation that PGW's IGF be reduced by \$38.453 million; nor did they provide any analysis thereto. Instead, the ALJs recommended reduction of \$38.453 million appeared solely as a line item in the Appendix of the Recommended Decision on Line 29 of Table I(B), and Line 29 of the adjustments to Table I(B), as set forth in Table II. Given that we were unable to determine the specific basis for the ALJs' recommended reduction to the Company's IGF claim, we looked elsewhere in the record to determine the appropriate adjustment to the IGF claim. *November 2023 Order* at 52-53.

Also in our *November 2023 Order*, we considered PGW's claim for net construction expenditures of \$206,959,000. *November 2023 Order* at 97. We agreed with the ALJs that the OCA did not identify any construction projects to be deferred or cancelled. Notwithstanding, we agreed with the OCA that, for ratemaking purposes, we must consider whether the Company's total expense for net construction expenditures is reasonable. To that end, we disagreed with the ALJs' recommendation that the

⁸ PGW's actual IGF claim, as reflected on its rate tables, was \$63,959,000. Therefore, this recommended adjustment would have resulted in an allowance of \$25,506,000 for IGF, which included a Pipeline and Hazardous Materials Safety Administration (PHSMA) grant of \$10,752,000. [$\$63,959,000 - \$38,453,000 = \$25,506,000$]. See, *November 2023 Order* at 45, n.19.

Commission adopt the Company's position that the OCA's proposed reduction of \$17,108,000 to net construction expenditures is arbitrary. To the contrary, we found that the OCA provided substantial evidence to demonstrate that the Company has shown a trend of over-projecting its construction expenditures since PGW's 2020 rate case. *See, 2020 PGW Rate Case.*⁹ Based on that evidence, we concurred with the OCA that the Company has established a trend where its projected construction expenditures significantly exceed its actual construction expenditures. As such, we agreed with the OCA's proposed reduction to PGW's claim for net construction expenditures. *November 2023 Order* at 100-01.

We also agreed with the OCA's method for determining its proposed reduction. Specifically, we noted that the OCA took the difference between PGW's net construction expenditures of \$151,129,000 in the HTY, and \$170,490,000 in the FTY, or \$19,361,000, and added that difference to the net construction expenditures of \$170,490,000 in the FTY, to arrive at its proposed net construction expenditures of \$189,851,000.¹⁰ Accordingly, we found it reasonable to adopt the OCA's proposed reduction to PGW's claim for net construction expenditures and, therefore, granted the OCA's Exception No. 3.¹¹ *November 2023 Order* at 101-02. Consistent with this finding, we also adopted the OCA's proposed reduction to PGW's IGF claim. *Id.* at 53. Therefore, we modified the ALJs' recommendation and reduced PGW's claim for net

⁹ Further, we noted that the OSBA, likewise, presented evidence to indicate that PGW over-forecasted its costs since the *2020 PGW Rate Case*. Accordingly, we found that the OSBA's evidence lended support to the claims made by the OCA regarding PGW's net construction expenditures. *November 2023 Order* at 101, n.36.

¹⁰ [\$170,490,000 + \$19,361,000 = \$189,851,000].

¹¹ We also found the OCA's proposed reduction consistent with the debt service coverage (DSC) ratio that we authorized for PGW. *November 2023 Order* at 102 (citing OCA St. 2-SR at 4).

construction expenditures by \$17,108,000, or from \$206,959,000 to \$189,851,000.¹² *Id.* at 102. Additionally, we applied a corresponding reduction of \$17,108,000 to the Company's IGF claim, reducing it from \$53,207,000 to \$36,099,000.¹³ *Id.* at 53, 102, n.38.

b. PGW Petition and Answers

In its Petition, PGW argues that the Commission erroneously doubled its \$17.108 million downward adjustment to the Company's rate allowance for IGF, thereby reducing the Company's allowed revenue requirement by \$34.16 million, "or twice the \$17.108 million intended." PGW notes that when the ALJs' recommended IGF disallowance of \$38.453 million is combined with adjustments to operating expenses and an adjustment for a lower uncollectible allowance, the ALJs' recommended rate relief amount was \$22.3 million. Further, PGW notes that there are several references in the Recommended Decision accepting that reductions in IGF for construction purposes should be based on reductions in the construction expenditures. PGW Petition at 3. Moreover, PGW notes that neither the OCA nor I&E disputed that a reduction to the Company's net construction expenditures must be demonstrated as a reduction to the IGF allowance in rates. *Id.* (citing PGW Exc. at 12; OCA R. Exc. at 4-5; I&E R. Exc. at 9-11). Therefore, PGW avers that any reduction in net construction expenditures should be reflected only as a reduction to IGF. In short, PGW argues that the Commission's reductions to net construction expenditures and IGF by \$17.108 million and \$34.216

¹² We declined to adopt the OCA's proposed reduction to Customer Information System (CIS) contingency costs and, therefore, our final reduction to PGW's claim for net construction expenditures is \$17,108,000. *November 2023 Order* at 102, fn. 38 (citing OCA M.B. at Exh. 2, Table I(B), Line 29; OCA Sch. DM-SR-18 (Revised)).

¹³ When combined with PGW's PHSMA grant of \$10,752,000, the resulting total IGF claim for the FPFTY is \$46,851,000. [$\$36,099,000 + \$10,752,000 = \$46,851,000$]. *November 2023 Order.* at 53, n.22.

million, respectively, are inconsistent and not supported by the record. PGW Petition at 3-4.

In dispute of the Commission's adjustment to the Company's IGF claim, PGW argues that, with all else being equal and other than minimal changes made by the Commission to the ALJs' revenue requirement recommendations, "the Commission's rate relief should have been \$21.4 million higher than recommended by the ALJs."¹⁴ According to PGW, the annual revenue increase of \$26.2 million that the Commission authorized in the *November 2023 Order* does not correctly reflect the Commission's adjustment to the Company's IGF claim. PGW argues that "[i]mplementation of the Commission's allowed IGF for construction should have resulted in a rate increase of approximately \$44 million, not \$26.2 million." PGW Petition at 5.

PGW included, as Appendix A to its Petition, three tables to correct the errors it alleges the Commission made in calculating its adjustments to: (1) the Company's IGF/Capital Spending Allowance; and (2) seven expense categories, discussed in the next section of this Opinion and Order, below. PGW refers to the second table of Appendix A to posit that the Commission's \$17.108 million adjustment to reduce IGF was "erroneously deducted twice from the Company's overall revenue requirement." Petition at 5 (citing Petition at Appendix A at Table 2; *November 2023 Order* at Tables I, II). In dispute of the Commission's adjustments to IGF and net construction expenditures, PGW states, in pertinent part, as follows:

The amount the Commission reduced revenue by on Table I and Table II, page 1 can only be arrived at by counting both instances of the \$17.1 million listed on Table II, page 2, when the \$17.1 million as a use of cash and revenue requirement is only counted once; the second instance of the \$17.1 million

¹⁴ PGW states that the difference between the ALJs' allowance for IGF and the Commission's allowance for IGF is approximately \$21.4 million. [\$46,851,000 - \$25,506,000 = \$21,345,000]. See, PGW Petition at 5, n.18.

on Table II, page 2, reflects the method of construction funding...and is not in and of itself a separate use of cash-revenue requirement.

PGW Petition at 5-6 (citing *November 2023 Order* at Tables I, II).

Further, PGW contends that the Commission only explained \$22.386 million in operating expenses and \$17.108 million in reduced construction expenses, when compared to the Commission's total net adjustments of \$56.602 million.¹⁵ PGW Petition at 6. Moreover, PGW argues that contrary to the Commission's adjustments to IGF net construction expenditures, an adjustment to the Company's allowed IGF amount would, in effect, reduce construction expenditures. *Id.* (citing *November 2023 Order*, Appendix, Tables I, I(B)).

PGW also argues that because the Company's construction budget shows how money will be spent on planned construction projects and does not directly correspond to a revenue or expense item on a dollar-for-dollar basis, the cost/expense of construction projects is reflected in the Company's revenue requirements based on how the projects will be funded in the FPFTY. Petition at 7 (citing PGW St. 2-RJ at 12). Further, PGW contends that the Company's revenue requirement is generated from either debt service or IGF. Moreover, PGW states that projects shown in the construction budget are funded by: (1) long-term or short-term debt; (2) the Distribution System Improvement Charge (DSIC); and (3) IGF, which forms the basis for separate cash needs over and above PGW's operating expenses and recovered in the Company's rates. PGW Petition at 7 (citing PGW St. 2-RJ at 3; PGW St. 2-R at 10-11, 15-16; PGW Exh. JFG-2 Tables I, IA, IB). Additionally, PGW contends that while construction expenditures are a use of cash, they are not a specific revenue requirement need or claim. Therefore, PGW

¹⁵ [\$(58,961) + \$2,358 = \$56,602]. See *November 2023 Order* at Appendix, Table I, column F.

continues, an adjustment to the level of construction expenditures must be demonstrated by adjusting the level of DSC or IGF. PGW Petition at 7-8.

In addition, PGW argues that the Commission, in its *November 2023 Order* does not explain why a \$34.2 million disallowance of IGF is more appropriate than the ALJs' recommended disallowance of \$38.5 million. Petition at 8. PGW also argues that the other Parties' positions regarding IGF support the Company's Petition. Specifically, PGW contends that I&E recognized that although the ALJs did not provide a detailed analysis of their recommended \$38.5 million reduction to IGF, the available options were to: (1) adopt I&E's recommendation for disallowance of the entire \$53.2 million in IGF, which did not include any reduction in the construction budget, but envisioned PGW borrowing money to complete necessary projects; (2) adopt the OCA's proposed reduction to the construction budget of \$17.1 million; or (3) award the Company the full amount claimed for IGF. Petition at 8 (citing *November 2023 Order* at 48). Moreover, PGW notes that the OCA's witness, Mr. Marlon Griffing, testified that the Company's proposed construction spending should be reduced \$17.108 million and the level of IGF for construction purposes is based on the construction budget. PGW Petition at 9 (citing OCA R.B. at 4, 7; OCA St. 2-SR at 2, 4-5).

In summary, PGW disputes the Commission's conclusion that the Company should spend \$17.108 million less for construction projects in the FPFTY, with a corresponding reduction in the IGF. Petition at 9 (citing *November 2023 Order* at 100-02, Appendix, Tables I, I(B)). PGW, essentially, argues that the Company's allowed rate increase should be further increased by \$17.108 million because, according to PGW, the Commission's downward adjustments to both construction budget expense and IGF are in error. PGW Petition at 9.

In its Answer, I&E refers to the two-step process required by *Duick*: (1) determine whether a party has offered new and novel arguments; and (2) evaluate

those arguments to determine whether modification of the Commission's previous decision is appropriate. I&E Answer at 2-3 (citing *SBG Management Service, Inc./Colonial Garden Realty Co., L.P. v. Philadelphia Gas Works*, Docket No. C-2012-2304183 (Opinion and Order entered May 9, 2019); *Duick* at 559). Here, I&E asserts that PGW failed to satisfy the second step because the Commission determined that \$26.2 million will result in just and reasonable rates. Further, I&E argues that PGW's focus on the Commission's tables obscures the Commission's obligation to develop just and reasonable rates. Moreover, I&E highlights its recommendation that PGW's entire IGF claim be disallowed to posit that no statutory mandate entitles the Company to recover a specific allowance for IGF. Accordingly, I&E avers that based on the Commission's analysis, the Commission determined that the authorized \$26.2 million will ensure that rates are just and reasonable. I&E Answer at 3.

I&E notes that the Commission has broad discretion when reviewing the record and recommendations put forth by the parties in base rate cases, and that there is no single way to arrive at just and reasonable rates. I&E Answer at 3 (citing *Popowsky v. Pa. PUC*, 683 A.2d 958, 961 (Pa. Cmwlth. 1996)). Further, I&E argues that the Commission appropriately used its discretion when it reduced the Company's requested increase to \$26.2 million, resulting in: (1) a DSC ratio of 2.44x; and (2) a days of cash on hand (DOC) balance of 54.1 days. I&E Answer at 3-4 (citing *November 2023 Order* at 41). Moreover, I&E argues that PGW fails to indicate what the resulting DSC ratio and DOC balance will be if its request to increase its allowance by \$17.108 million is granted. Additionally, I&E posits that an upward adjustment will be detrimental to those financial metrics and the Commission's determination regarding those metrics. Accordingly, I&E submits that PGW's Petition must be denied. I&E Answer at 4.

In its Answer, the OCA submits that whether or not the computational errors were made, the \$26.2 million revenue increase granted by the Commission: (1) is supported by the record; (2) complies with the cash flow method of ratemaking; and

(3) results in just and reasonable rates. OCA Answer at 1-2 (citing PGW Petition at 1, 11). The OCA cites to *Pa. PUC v. Pennsylvania Gas and Water Co.*, 424 A.2d 1213, (Pa. 1980) (*Pa. Gas and Water*) to submit that the principle of balancing the interests between customers and their utility applies equally in this proceeding. OCA Answer at 2-3.

The OCA maintains that the Commission properly exercised its judgement and discretion to arrive at a revenue increase of \$26.2 million, which it determined would satisfy the Company's financial needs and set reasonable rates for customers. OCA Answer at 3. Further, the OCA asserts that in the *November 2023 Order*, the Commission's explanation of the impact of a \$26.2 million increase on PGW's financial metrics demonstrates that the Commission "engaged in the type of weighing and balancing of interests contemplated by our Supreme Court in *Pa. Gas and Water*." *Id.* at 3-4 (citing *November 2023 Order* at 41, *Pa. Gas and Water*). Moreover, the OCA contends that the Commission considered the interests of both the Company and its customers in its effort to determine just and reasonable rates. OCA Answer at 4 (citing *November 2023 Order* at 41). Additionally, the OCA notes that the Commission's determination is further supported by the testimony of various witnesses regarding the Company's financial metrics. OCA Answer at 4-5 (citing I&E St. 1-SR-Revised at 21; OCA St. 2 at 10; OSBA St. 1 Revised at 10-11).

According to the OCA, granting PGW the additional increase amount it seeks in its Petition will "skew" upward what the Commission deemed the appropriate financial metrics for the Company. Further, the OCA argues that the just and reasonable rates settled upon by the Commission will, for all intents and purposes, be nullified, to the detriment of the Company's customers. OCA Answer at 5. Moreover, the OCA argues that in the context of ratemaking, if revised calculations produce a result that is in tension with just and reasonable rates (the statutory standard), the former must give way to the latter." OCA Answer at 5 (citing *Pa. Gas and Water*). Additionally, the OCA opposes a

significant departure from what the Commission determined to be a just and reasonable annual revenue increase of \$26.2 million, contending that a correction of PGW's alleged computational errors must not take precedence over a just and reasonable result.

Id. at 5-6 (citing *FPC v. Hope Natural Gas*, 320 U.S. 591 (1944) at 602). Accordingly, the OCA submits that in order to maintain the careful balancing of interests between the Company and its customers, PGW's request for reconsideration on this matter must be denied. OCA Answer at 6.

CAUSE-PA/TURN likewise submits that the Commission should deny PGW's request for reconsideration. CAUSE-PA/TURN Answer at 2. In dispute of PGW's assertion that "Table I clearly shows a reduction in revenue requirement and rate increase of \$34.2 million," CAUSE-PA/TURN counters that Table I shows a downward adjustment of \$58,961,000 to "Revenue Enhancement," and an upward adjustment of \$2,358,000 to "Appropriation for Uncollectible Reserve." *Id.* at 6 (citing *November 2023 Order* at Appendix, Table I, Lines 4, 7). Further, CAUSE-PA/TURN contends that the \$34.2 million reduction associated with IGF is presented only in the calculations and estimations that PGW provided in its Petition. CAUSE-PA/TURN Answer at 6 (citing PGW Petition at Appendix A).

CAUSE-PA/TURN also disagrees with PGW's argument that the Commission's \$17.108 million adjustment reduced the Company's allowable revenues by "\$17[.108] million too much," asserting that revenue adjustments, like expense adjustments, are "used to determine the financial performance PGW can be expected to attain based on the overall revenues allowed." Further, CAUSE-PA/TURN avers that PGW has failed to address whether its claimed increase in overall allowable annual revenues would produce just and reasonable rates. To that end, CAUSE-PA/TURN asserts that given the large size of Philadelphia's low-income population, such an increase would not produce just and reasonable rates. CAUSE-PA/TURN Answer at 6-7.

CAUSE-PA/TURN also defends the impact of the adjustments on Table I in the *November 2023 Order*, arguing that if the Commission were to include an additional \$17.108 million in the Company's allowable revenues, PGW would over-perform on its financial metrics at the expense of its customers. CAUSE-PA/TURN Answer at 7 (citing *November 2023 Order* at Appendix, Table I). Further, CAUSE-PA/TURN argues that more revenues in forecasted rates would project more advantageous financial metrics for the Company. Moreover, CAUSE-PA/TURN avers that PGW has presented no new or novel arguments for why the Company should be entitled to higher revenues and the associated higher financial performance metrics. CAUSE-PA/TURN Answer at 7-8 (citing *Duick*). Accordingly, CAUSE-PA/TURN submits that the Commission's approved allowable revenues for PGW are reasonable, and the Company has not demonstrated that the Commission erred in arriving at the total allowable revenues. CAUSE-PA/TURN Answer at 8.

c. Disposition

As previously noted, Petitions for Reconsideration are governed by *Duick*, which essentially requires a two-step analysis. First, we determine whether a party has offered new and novel arguments or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous order. The Commission will not reconsider its previous decision based on arguments that have already been made. The second step is to evaluate the new or novel argument, or overlooked consideration, in order to determine whether to modify our previous decision. However, we will not necessarily modify our prior decision just because a party offers a new and novel argument or identifies a consideration that was overlooked or not addressed by the Commission in its previous order. Based upon our evaluation of the record and the Parties' positions in each particular case, we will determine if there is a sufficient basis for us to exercise our discretion to amend or rescind a prior Order, in whole or in part.

Presently at issue is PGW's request that we correct an alleged error in tabulating the downward adjustment we made to the Company's IGF claim in our *November 2023 Order*. According to the Company, we have erroneously "double counted" our downward adjustment of \$17.108 million. PGW's contention represents a new argument that was not previously made. Therefore, it satisfies the first prong of *Duick, supra*. However, on consideration of the record evidence, PGW's Petition, and the Answers thereto, we shall decline to grant the Company reconsideration on this issue.

In our *November 2023 Order*, in addressing PGW's Exception No. 3 regarding the Company's objection to the ALJs' recommendation to reduce the Company's IGF claim by \$38,453,000, we explicitly stated, as follows:

[T]he OCA has proposed a reduction of \$17.108 million to the Company's claim for net construction expenditures. **In making this proposed reduction, the OCA also proposed a corresponding reduction of \$17.108 million to the Company's IGF claim in the tables attached to its Main Briefs.** OCA M.B. at Exh. 2, Table I(B), Line 29. As will be discussed in Section V.B.14, *infra*, we find sufficient evidence in the record to support the OCA's proposed reduction to the Company's claim for net construction expenditures. Consistent with this finding, we shall also adopt the OCA's proposed reduction to the Company's IGF claim. We are of the opinion that this is a more appropriate reduction than that which was recommended by the ALJs.

November 2023 Order at 53 (emphasis added). Additionally, in addressing the OCA's Exception No. 3, regarding the OCA's objection to the ALJs' recommendation on the Company's net construction expenditure amount, we noted, in pertinent part, as follows:

[W]e also concur with the OCA that, for ratemaking purposes, we must consider whether PGW's *total* expense claim for net construction expenditures is reasonable. On review of the record developed in this proceeding, we disagree with PGW's position, as adopted by the ALJs, that

the OCA's proposed reduction of \$17,108,000 to the Company's claim is arbitrary. **Rather, we find that the OCA provided substantial evidence to demonstrate that the Company has shown a trend of over-projecting its construction expenditures.**

November 2023 Order at 100 (emphasis added). *See also, Id.* at Table 7.

Based upon these findings, we made *two separate* adjustments:

(1) a downward adjustment of \$17.108 million to net construction expenditures, given our finding that the record demonstrated that the Company has a history of over projecting these expenditures; and (2) a separate downward adjustment of \$17.108 million to the Company's claim for IGF. We note that, as we adopted the position of the OCA, these adjustments are consistent with the adjustments the OCA made in the rate tables attached to its Main Briefs in this proceeding. As set forth in Exhibit 2, Table I(B) to the OCA's Main Briefs, the OCA made a downward adjustment of \$24,227,000 to the Company's claim for net construction expenditures, which consisted of a specific downward adjustment of \$17,108,000 to the Company's claim to net construction expenditures and a \$7,119,000 downward adjustment to the Company's claim for CIS contingency costs.¹⁶ Additionally, the OCA made a downward adjustment of \$17,108,000 to the Company's claim for IGF. Therefore, in our *November 2023 Order*, we only made a reduction of \$17,108,000 to the Company's IGF claim, and not the \$34,216,000 reduction alleged by the Company.

We further stress that, as each of the opposing parties note in their Answers, this Commission specifically found that an annual increase of \$26.2 million would produce just and reasonable rates. In discussing this annual revenue increase in our

¹⁶ As previously noted, we declined to adopt the OCA's proposed reduction to the Company's claim for CIS Contingency Costs.

November 2023 Order, we noted the following with regard to the associated financial metrics.

This results in a DSC ratio for PGW of 2.44x before the \$18 million City Payment, and 2.28x after the City Payment. We are of the opinion that this DSC ratio will not only meet PGW's legal requirements under its bond covenant but will also exceed the required bond covenant DSC ratio of 1.5x by a sufficiently large margin that will keep PGW financially stable throughout future events; **while also producing just and reasonable rates for PGW's ratepayers.**

Additionally, this revenue increase and revenue requirement result in a year-end cash balance of \$96,661,000 and a DOC balance of approximately 54.1 days for the Company in the FPFTY. **In our view, this DOC balance is more appropriate than that proposed by the Company, as it will be less burdensome for the Company's ratepayers, while still allowing PGW sufficient funds to address any financial difficulties that may arise;** and to maintain its current credit ratings.

November 2023 Order at 41 (emphasis added). Thus, we specifically determined that a DSC ratio of 2.44x before the City Payment, and 2.28x after the City Payment; and a DOC balance of 54.1 days would produce just and reasonable rates. In our view, if we made PGW's above requested upward adjustment at this stage of this proceeding, this would result in a higher DSC, DOC balance, and a resulting higher revenue increase and associated rates that are too burdensome for PGW's ratepayers. *See*, I&E Answer at 4; OCA Answer at 5; CAUSE-PA/TURN Answer at 8.

For all of the above-mentioned reasons, we shall decline to exercise our discretion to disturb the *November 2023 Order* with regard to the issue of IGF and Capital Spending. Accordingly, PGW's request for reconsideration of this issue is denied.

2. Whether the Commission Properly Adjusted Certain of the Company's Expense Claims

a. The *November 2023 Order*

In our *November 2023 Order*, we addressed PGW's opposition to the OCA's proposed three-year normalization adjustment to the Company's claims for the following seven expense categories: Gas Processing Expense, Field Operations, Collections, Customer Service, Account Management, Marketing, and certain Administrative and General Expenses. We adopted the ALJs' recommendation, and the associated recommendation of the OCA, to apply these normalization adjustments, finding that normalizing such costs would prevent the burden of overcollection of expense costs on ratepayers. This resulted in a downward adjustment of \$4,229,339 to the Company's expense claims. *November 2023 Order* at 89-95.

Additionally, we considered PGW's proposed blanket inflation adjustment of 4.63% to certain of its operating and maintenance (O&M) expense claims. I&E submitted that the application of this adjustment should be denied because the Company's claim was not known and measurable. Similarly, the OCA observed that PGW applied this inflation adjustment to only \$62.5 million of its projected FPFTY operating expenses. However, the OCA submitted that the full amount of that adjustment, or approximately \$2.89 million,¹⁷ must be denied because, *inter alia*, inflationary costs cannot be precisely determined, and it is difficult to pinpoint if a particular cost will be subject to inflation. On review, we adopted the ALJs' recommendation to deny PGW's claim in its entirety. We concurred with the ALJs, I&E, and the OCA that PGW's proposed 4.63% inflation adjustment was not reasonable. We noted that consistent with prior Commission precedent, an inflation adjustment cannot be

¹⁷ [\$62,500,000 x 4.63% = \$2,893,750].

applied broadly and does not meet the “known and reasonable” standard for increasing each FTY expense claim in the FPFTY. *November 2023 Order* at 69-72.

b. PGW Petition and Answers

In its Petition, PGW disagrees with the Commission’s adjustments to seven of the Company’s operating expense categories, arguing that the Commission’s three-year normalization adjustment and an adjustment for inflation result in an additional \$2.8 million reduction to the Company’s revenue requirement claim. PGW Petition at 10 (citing *November 2023 Order* at 91-93, 95, Appendix, Table I; PGW Exh. JFG-5). According to PGW, the combined effect of the Commission’s adjustments for normalization and inflation to the seven operating expense categories reduces the Company’s expense claims twice for the same purpose. PGW explains that the seven expense categories, which total \$62.5 million, are reduced by the normalization adjustment of \$4.229 million, to arrive at the normalized amount of \$58.272 million.¹⁸ PGW Petition at 11 (citing *November 2023 Order* at 70, 72, 95; PGW Exh. JFG-5). PGW continues that the inflation adjustment removes an additional \$2.89 million from the normalized amount, reducing the total of the seven expense categories to \$55.378 million.¹⁹ Moreover, PGW contends that the inflation adjustment was not removed from the Company’s expense claim before the three-year average was determined. PGW Petition at 11.

PGW is of the opinion that if the purpose of the normalization adjustment was to determine a normal level of expenses, then a further adjustment by an inflation factor which the Company only applied to its FPFTY projections will reduce the allowed levels below the determined, or normal, level. As such, PGW argues that the combined

¹⁸ [\$62.5 million - \$4.229 million = \$58.272 million].

¹⁹ [\$58.272 million - \$2.89 million = \$55.378 million].

impact of the normalization adjustment and the inflation adjustment denies the Company the opportunity to recover the normalization expense amount. Accordingly, PGW requests that the Commission revise its allowed revenue requirement and rate increase. PGW Petition at 11.

Regarding PGW's argument that the Commission improperly "double adjust[ed]" seven expense categories, I&E counters that the Company misconstrues the ratemaking process and fails to satisfy *Duick*, as PGW restates its request for its inflation factor. I&E Answer at 4-5 (citing PGW Petition at 10-11, Appendix A). I&E argues that the Commission, in its evaluation of the prudence of the Company's claims for operating expenses, appropriately determined that the claims were artificially high. I&E Answer at 5 (citing *UGI Corporation v. Pa. PUC*, 410 A.2d 923, 932 (Pa. Cmwlth. 1980); *Pa. PUC v. Wellsboro Electric Company*, Docket No. R-2019-3008208 (Opinion and Order entered April 29, 2020) at 12; *Western Pa. Water Co. v. Pa. PUC*, 422 A.2d 906 (Pa. Cmwlth. 1980); *Popowsky v. Pa. PUC*, 674 A.2d 1149, 1153-54 (Pa. Cmwlth. 1996)). Further, I&E argues that the Commission correctly found the Company's inflation adjustment "cannot be applied broadly and does not meet the 'known and reasonable' standard for increasing each FTY expense claim in the FPFTY." I&E Answer at 5 (citing *November 2023 Order* at 72). As such, I&E submits that the Commission properly dismissed the Company's \$2.89 million claim. I&E Answer at 5.

I&E also argues that the level of expense recovery and the time period over which it is recovered are two different adjustments that must be reasonable to be included in rates. To that end, I&E disputes PGW's argument that these adjustments unreasonably reduce the Company's claims "twice for the same purpose," countering that this argument mischaracterizes the ratemaking process. I&E Answer at 6 (citing PGW Petition at 11). I&E notes that the Commission first adjusted the Company's expense claims by removing the inflation adjustment, then adjusted the normalization period to three years. I&E

maintains that these adjustments are not duplicative but are necessary to ensure that the level of expense recovery in rates is reasonable and prudent. I&E Answer at 6.

I&E also contends that PGW's Petition fails the *Duick* standard because the Company raised its "double adjustment" argument in its Exceptions to the Recommended Decision. I&E stresses that the Commission rejected PGW's argument, finding that the Company's requested inflation adjustment was unreasonable and normalizing the expenses was proper. I&E Answer at 6 (citing *November 2023 Order* at 94-95; PGW Exc. at 24-25). In short, I&E contends that PGW has not presented any new or novel arguments that warrant reconsideration, and therefore, the Company's request for reconsideration of the ratemaking treatment must be denied. I&E Answer at 6-7.

The OCA also opposes PGW's arguments regarding alleged computational errors associated with the expense normalization adjustments and the denial of an inflation factor for those expense categories. Similar to the position of I&E, *supra*, the OCA submits that these arguments were raised by the Company in its Exceptions to the Recommended Decision and, therefore, have already been considered and disposed of by the Commission in the *November 2023 Order*. Further, the OCA maintains that PGW, in its Petition, does not present new or novel arguments, new evidence, or changed circumstances. OCA Answer at 6-7 (citing *November 2023 Order* at 94; PGW Exc. at 24-25; *Duick* at 559). Accordingly, the OCA submits that there is nothing under the *Duick* standards for reconsideration (*i.e.*, new and novel arguments not previously heard, or considerations that have been overlooked or not addressed by the Commission) to warrant that the Commission grant the Company's request to adjust its revenue increase based on what PGW terms a "double adjustment" to seven expense categories. OCA Answer at 7 (citing *Duick*).

CAUSE-PA/TURN also disagrees with the basis of PGW's argument that the elimination of the Company's inflation adjustment of 4.63%, in connection with the

normalization adjustment, deprives the Company of sufficient revenues to cover projected expenses. CAUSE-PA/TURN asserts that this argument is identical to PGW’s “double-counting” argument and, therefore, fails to meet the new or novel requirement. CAUSE-PA/TURN notes that both the normalization adjustments and the inflation adjustment were recommended for approval by the ALJs and depicted as stand-alone adjustments in the Recommended Decision. CAUSE-PA/TURN Answer at 9 (citing R.D. at Table I, Lines 18-24, 34). CAUSE-PA/TURN continues that the Commission, consistent with its ruling on PGW’s Exceptions to the Recommended Decision, adopted the expense and inflation adjustments separately. CAUSE-PA/TURN Answer at 9 (citing *November 2023 Order* at Table I, Lines 18-24, 34). CAUSE-PA/TURN avers that because PGW’s attempt to connect these two adjustments “simply preferences one of the adjustments over the other,” it does not constitute a new and novel argument and, therefore, must be denied. CAUSE-PA/TURN Answer at 10 (citing *Duick*).

c. Disposition

On review, we find that PGW has failed to proffer any new and novel arguments with respect to this issue. To the contrary, we find that the Company has simply restated arguments that we have already considered and disposed of in our *November 2023 Order*. In its Petition, PGW claims “[t]he Commission’s double adjustment to the seven expenses categories is an error because the combined effect of the adjustments unreasonably reduces PGW’s expense claims twice for the same purpose.” According to PGW, “the combined impact of the two adjustments denies PGW the opportunity to recover the normalized amount of the seven categories.” PGW Petition at 11.

However, in its Exception No. 7, in objecting to the ALJs’ recommendation that the Commission apply the OCA’s proposed normalization adjustments, PGW made a similar argument when it stated, as follows:

Finally, the RD combined the normalization adjustment with an inflation adjustment (below) which unreasonably and unfairly reduces the same PGW expense claims. By applying both normalization adjustments and inflation adjustments to the same expense categories the RD clearly double counts. The combined impact of those adjustments will deny PGW the opportunity to recover its anticipated costs in the FPFTY.

PGW Exc. at 24-25.

In our *November 2023 Order*, we summarized PGW’s Exception No.7, noting that “PGW also maintains that the ALJs applied both a normalization adjustment and removed the inflation adjustment which unreasonably and unfairly reduces the same PGW expense claims.” *November 2023 Order* at 94 (citing PGW Exc. at 24-25). As previously noted, we rejected the Company’s proposed inflation adjustment, finding that based upon prior Commission precedent, an inflation adjustment cannot be applied broadly and does not meet the “known and reasonable” standard for increasing each FTY expense claim in the FPFTY. Additionally, we adopted the ALJs’ recommendation to apply a three-year normalization adjustment to the seven expenses outlined above, finding that the rationale for normalizing costs is to prevent overcollection of expenses in future periods in the event the costs are not realized by a utility. In making these findings, we considered and rejected PGW’s claim that eliminating the inflation factor and applying a normalization adjustment resulted in “double counting.” *November 2023 Order* at 72, 95.

We remain of the opinion that PGW’s requested inflation adjustment was unreasonable and that normalizing the above seven expenses over a three-year period was proper. As observed by I&E, in our *November 2023 Order*, we first adjusted PGW’s claimed expenses to a reasonable level by removing the Company’s proposed inflation adjustment and then adjusted the time period over which the expenses were recovered by normalizing the cost over three years. We are not persuaded by PGW’s arguments in its

Petition that such adjustments are duplicative. Rather, both adjustments are necessary to ensure a reasonable and prudent level of expense recovery in rates. *See*, I&E Answer at 6. On review of the above, we find that PGW’s arguments in its Petition are not new or novel, nor do they demonstrate a consideration that has not previously been heard or has been overlooked by this Commission. Thus, we shall decline to reconsider our *November 2023 Order* on this basis.

B. Vicinity’s Petition for Clarification

Vicinity’s Petition seeks clarification of the portion of the *November 2023 Order* which approved the rates and conditions associated with the Alternative Receipt Service (ARS) provisions of PGW’s proposed tariff class Rate General Service- Extra Large Transportation (GS-XLT). Vicinity Petition at 2. In the Order, the Commission addressed several elements of the rate increase proposed by PGW for its service to Vicinity, including the appropriate distribution charge, the interruptible character of service that is provided and to be provided to Vicinity, the applicability of surcharges and the appropriate rates and conditions for ARS. It is the latter, the appropriate ARS terms and rates, which are the subject of the Vicinity Petition.

Specifically, the Vicinity Petition seeks express rulings to clarify that the Commission’s *November 2023 Order*’s approval of PGW Rate GS-XLT intended that: (1) if pricing of ARS is based upon PGW sales receipts for long-haul capacity, Vicinity should receive full use of the long-haul capacity; (2) Vicinity is not required to purchase ARS during periods it has no need of ARS; and, (3) there be a mechanism/s put in place to ensure the “market” set by PGW is fair and reasonable. Vicinity Petition at 2-5.

Finally, as we turn to the substance of the Vicinity Petition, we are mindful that this proceeding represents the first time PGW’s provision of service to Vicinity was brought under cost of service-based analysis. *See, November 2023 Order* at 170. It is

relevant to our review that the terms of service at issue in the Vicinity Petition are those which were proposed under PGW’s Tariff Rate GS-XLT *for the first time* in this proceeding. *See, Complaint Proceeding.* Our review is informed by our understanding that PGW’s provision of service to and billing of Vicinity is unique to Vicinity, not only in the complex technical aspects, but also in its history.

1. Whether to Clarify That Vicinity is Entitled to Use of Long-Haul Capacity if the Market Rate Charged by PGW is Based Upon Long-Haul Rate

a. The November 2023 Order

In our *November 2023 Order*, by adoption of the PGW proposed rate GS-XLT ²⁰ we stated, in relevant part:

[W]e agree that it is reasonable for Vicinity to pay, at minimum, PGW’s cost to obtain the TETCO capacity it needs at the pipeline’s tariffed rate based upon the volumes that Vicinity uses.

November 2023 Order at p. 191.

b. Vicinity’s Petition and Answers

The Vicinity Petition requests that the Commission clarify the *November 2023 Order* to establish that Vicinity is entitled to the use of capacity based upon the market rate charged by PGW for ARS. Specifically, Vicinity asserts that if PGW charges

²⁰ PGW’s compliance tariff filing submitted on November 21, 2023, relabeled the service class from GS-XLT to “Interruptible Service Extra Large Transportation” (IT-XLT) based upon the *November 2023 Order* granting Vicinity’s Exception asserting that the type of service provided by PGW to Vicinity is interruptible. *See*, PGW Tariff Compliance Filing, November 21, 2023. For purposes of this disposition, we shall refer to Rate GS-XLT.

a market rate for ARS based upon PGW's purchase of long-haul capacity, Vicinity should be entitled to the benefit of the use of the long-haul capacity upon which PGW based the market rate charged to Vicinity. Vicinity further asserts that the appropriate rate for ARS could be based upon a permanent release with a market value of such release capacity of \$0.345/Dth/day, or in the alternative, the price should be based on the only segment of the capacity that provides any benefit to Vicinity: the Philadelphia lateral section, which has a market value of \$0.10/Dth/day. Vicinity Petition at 2-3.

Vicinity reasons that:

Charging Vicinity at PGW's alleged long-haul market rate of \$1.05/dth would result in profits for PGW of 165% and that does not include any other revenue PGW obtains by releasing other parts of the long-haul capacity (i.e., if PGW releases only the last leg of the run to Vicinity, that leaves PGW the ability to release the other legs to other parties).

Vicinity Petition at 2-3

In its Answer PGW generally asserts that granting "clarification" of any of the issues raised by Vicinity will increase other customers rates and would be grossly unreasonable and contrary to the public interest. PGW Answer at 1. With respect to the issue of Vicinity's entitlement to use of capacity underlying the ARS, PGW asserts that Vicinity's request should be denied as an improper request for clarification, where the issue was raised by Vicinity in the proceeding and rejected by the Commission, and where Vicinity fails under *Duick* to raise any new or novel argument of fact or law. PGW Answer at 4-5.

PGW asserts that the issue of capacity release based upon ARS was expressly raised by Vicinity's Exception No. 3. PGW argues that Vicinity specifically asserted that the ARS pricing language in the now-approved Rate GS-XLT requires

Vicinity “to pay for the long-haul capacity but only be entitled to use the short-haul capacity.” PGW notes that Vicinity further claimed in their Exceptions that “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 on the open market.” PGW Answer at 5.

Thus, PGW argues that the Vinity Petition raises the exact same arguments considered and rejected by the Commission in denying Vicinity’s Exception No. 3. *Id.* PGW asserts that Vicinity has raised no new, overlooked facts or law presented. Therefore, PGW argues that Vicinity’s arguments that it should receive the long-haul capacity under ARS are not new or novel and do not satisfy the standard in *Duick*. PGW Answer at 4-6 (citing GFCP/VEPI Exceptions at 20 (emphasis added) (“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.”)).

PGW further argues that important technical reasons related to PGW’s gas supply should preclude the release of PGW’s capacity to Vicinity under ARS, based upon the testimony of its witness, Mr. Reeves, who testified:

PGW cannot permanently release capacity to [Vicinity] on the Philadelphia Lateral is because, based on PGW’s design day and design season analysis, permanent release of capacity at that level could result in system failures that would require PGW to curtail firm customer load (as well as interrupting all IT customers that receive pipeline deliveries on the Philadelphia Lateral)

PGW Answer at 7 (citing PGW St. No. 8-R, Exh. RER-2 at 2–3)(Allowing [Vicinity] to monthly order the full release of 21,000 Dth of daily TETCO capacity is tantamount to a “permanent release.”).

In summary, as a technical matter, PGW argues that Vicinity’s request for “clarification” should be rejected because it in fact seeks a significant change in the *November 2023 Order*, which would alter the nature of the ARS from a retail service to a capacity release transaction. PGW argues that, as a practical matter Vicinity’s request should be rejected because:

The fact that the ARS service will be priced with reference to certain capacity purchases used by PGW does not transform this retail service into a capacity release.

PGW Answer at 8.

c. Disposition

At the outset we note that, as argued by PGW, while Vicinity characterizes its petition as seeking clarification of the *November 2023 Order*, the first question raised by the petition in fact seeks an affirmative ruling on matters which were considered and rejected by the *November 2023 Order*’s adoption of the ALJ’s Recommended Decision (R.D.). *See*, R.D. a 103; *November 2023 Order* at 191.

Turning again to the standard for reconsideration/clarification, our review of the Vicinity Petition is governed by the two-step analysis in *Duick*. First, we are to determine whether a party has offered new and novel arguments or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous order. As noted, the Commission will not reconsider its previous decision based on arguments that have already been made. The second step is to evaluate the new or novel argument, or overlooked consideration, in order to determine whether to modify our previous decision. However, we will not necessarily modify our prior decision just because a party offers a new and novel argument or identifies a consideration that was overlooked or not addressed by the Commission in its previous order. Based upon our

evaluation of the record and the Parties' positions in each particular case, we will determine if there is a sufficient basis for us to exercise our discretion to clarify, amend or rescind a prior Order, in whole or in part.

Upon consideration of Vicinity's request to clarify the *November 2023 Order* to establish that if pricing of ARS is based upon PGW purchase of long-haul capacity, Vicinity should receive full use of the long-haul capacity, we shall deny the request.

On review, we find that Vicinity has failed to offer any new and novel arguments with respect to this issue. To the contrary, we find that Vicinity has simply restated arguments that we have already considered and disposed of in our *November 2023 Order*. We agree with PGW's position, that the issue of what capacity Vicinity was entitled to under ARS was raised in the rate proceeding and rejected by the ALJ's disposition, which was subsequently adopted by the *November 2023 Order*. We find that, as to the first issue raised, the Vicinity Petition raises the exact same arguments considered and rejected by the Commission in denying Vicinity's Exception No. 3. *November 2023 Order* at 191. As there are no new or overlooked facts or law presented by Vicinity, the arguments raised in the Vicinity Petition regarding Vicinity's right to receive capacity do not satisfy the standard in *Duick*, and are therefore, denied.

2. Whether to Clarify that PGW is Not Authorized Under PGW Rate GS-XLT to Bill Vicinity for ARS During Months Vicinity Has No Need for ARS

a. The November 2023 Order

In the proceeding underlying our *November 2023 Order*, PGW's proposed Rate GS-XLT tariff established a minimum daily and monthly billing for ARS, as follows:

The Minimum ARS Quantity provided by the Company shall be 5,000 Dth per day. The minimum monthly charge shall be the above rate times 5,000 Dth times the number of days in the month regardless of whether the Customer uses less. The Maximum ARS Quantity provided by the Company shall be 21,000 Dth/day

PGW Rate GS-XLT.

b. Vicinity's Petition and Answers

Vicinity's position is simply stated and can be summarized as follows: the approved tariff language of PGW Rate GS-XLT should not be read to authorize PGW to charge minimum daily/monthly billing of Vicinity for ARS in periods in which Vicinity has no need for ARS. Vicinity should only be required to purchase ARS in the periods Vicinity elects to receive ARS. Vicinity Petition at 3-4.

Vicinity's position is premised upon the historic provision of ARS by PGW to Vicinity where ARS has exclusively been used by Vicinity only during the winter months. Vicinity notes that, historically, during the summer months the parties used a different mechanism called "Capacity Release" that had its own terms and pricing. However, because Vicinity no longer needed Capacity Release, due to acquiring

sufficient capacity on its own, Vicinity and PGW agreed to cease Capacity Release. Vicinity Petition at 4 (citing statement of Mr. Reeves in connection with PGW’s 2023-2024 Annual Gas Cost Rate Adjustment (Docket No. R-2023-3038069): “Both parties to the Complaint Proceeding have agreed that this service is unnecessary and can be discontinued.” Rebuttal Testimony of Ryan E. Reeves (Docket No. R2023-3038069) at p. 4)).

Vicinity asserts that clarification of the *November 2023 Order* is necessary to preclude the misreading of Rate GS-XLT to authorize PGW to bill Vicinity for purchase of ARS during periods Vicinity has no need for ARS, which Vicinity asserts would be an absurd result, especially if PGW were to require Vicinity to purchase ARS in the periods during which Vicinity historically purchased Capacity Release. Vicinity Petition at 4.

In its Answer, PGW asserts that the Vicinity Petition seeks to remove “the minimum take provisions” pertaining to ARS. Without addressing the issue of whether ARS was intended to be utilized in only specific months, PGW relies upon the plain language of PGW Rate GS-XLT as establishing a rate under which PGW stands ready “year-round” to provide Vicinity with ARS. PGW also argues that Vicinity waived its argument that the provision of ARS service was “elective” because Vicinity never challenged the daily minimum bill language related to ARS prior to Vicinity’s current Petition. PGW Answer at 8-9.

PGW argues that, even if the Vicinity Petition may be construed as a valid request for clarification, the request should be denied based upon the Commission precedent under which the Commission has denied petitions for clarification or reconsideration where the party seeking reconsideration/clarification had failed to

previously raise the issue (if they could raise them previously). As a result, PGW argues that Vicinity waived this argument. PGW Answer at 9.²¹

PGW's arguments are restricted to a "four corners" reading of the tariff language. PGW reasons that, under a plain reading, Rate GS-XLT sets billing minimum and maximums applicable to every month. The language, according to PGW's reading, authorizes a billing minimum of 5,000 Dth per day, every day of the year. Per PGW, the language can only be read to require the Minimum ARS Quantity provided by the Company shall be 5,000 Dth per day, *every day*. Further, the minimum monthly charge shall be the above rate times 5,000 Dth times the number of days in the month, regardless of whether the Customer uses less, *or has no need for ARS at all in a specific month*. PGW also avers that the Maximum ARS Quantity to be provided by the Company shall be 21,000 Dth/day, regardless of need.²² PGW argues that a plain reading of Rate GS-XLT, the ARS minimum monthly rate is applicable to every month, regardless of Vicinity's need for ARS in each month. PGW Answer at 9-10.

PGW concludes that Minimum daily quantity billing is a common industry convention and there is nothing unusual or unfair about the practice. *Id.*

²¹ (citing *See, Merritt v. Duquesne Light Co.*, Docket No. F-2009-2122659, 2011 Pa. PUC LEXIS 1197, at *9–10 (Order entered Mar. 31, 2011) (quoting *Generic Investigation Regarding Transportation Assessments*, Docket No. I-2008-2022003 (Order entered August 26, 2008)); *Maslar v. PPL Elec. Util. Corp.*, Docket No. C-2018-3003075, 2020 Pa. PUC LEXIS 439, at *13–14 (Order entered Aug. 27, 2020); *In re: Merger Savings Remand Proceeding*, Docket No. R-00061366, et al., 2006 Pa. PUC LEXIS 727, at *245–46 (Order entered Oct. 31, 2006) ("When parties have been ordered to file briefs and fail to include all the issues they wish to have reviewed, the issues not briefed have been waived." (quoting *Jackson v. Kassab*, 812 A.2d 1233 (Pa. Super. 2002), *appeal denied*, 825 A.2d 1261 (2003); *Brown v. PA Dep't of Transportation*, 843 A.2d 429 (Pa. Cmwlth. 2004), *appeal denied*, 863 A.2d 1149 (2004))).

²² PGW Answer at 9, fn. 35 (citing Rate GS-XLT at 118 (Proposed) and Supplement No. 167 to Gas Service Tariff – Pa P.U.C. No. 2 (Compliance Tariff), Original Page No. 158).

c. Disposition

Upon consideration of Vicinity's request to clarify the *November 2023 Order* to establish that Vicinity is not required to purchase ARS during a period where it has no need for ARS, we shall grant the request.

First, we disagree with PGW's characterization that the issue raised by Vicinity seeks to "remove the minimum take" requirements of the ARS tariff language. To the contrary, Vicinity expressly seeks to have the minimum take provisions *apply, as approved*, to only those months in which Vicinity elects to receive ARS. Based upon the record in this proceeding, Vicinity raises the question whether the language of PGW Rate GS-XLT regarding ARS establishes PGW's right to charge for ARS year-round, regardless of whether Vicinity has any need for ARS service in each month, or whether the language pertains only to those months in which ARS service is necessary for Vicinity.

The question raised by Vicinity poses a new or novel issue where the billing authorized by the proposed tariff language was neither raised nor addressed at any point in the proceeding below. Contrary to PGW's assertion Vicinity "waived" the issue by failing to raise it, the issue, as a matter of interpretation of the Tariff, is not waived.²³ For example, if at a future date, PGW charged Vicinity for ARS service during a month in which Vicinity did not require ARS service, Vicinity would be entitled to raise a claim under Section 1501 of the Code for unreasonable provision of service, on the grounds that the Tariff language did not expressly authorize PGW to charge for ARS during a month in which Vicinity neither needed nor elected the service. In this regard, by

²³ Vicinity's issue is distinguishable from the cases cited by PGW in which matters not raised in the proceeding are waived and will not be the subject of the Commission review for clarification/reconsideration, where the issue raised does not challenge the existing tariff language, but rather seeks a clarification on its interpretation.

seeking clarification to prevent PGW from a future “misreading” of the tariff language, Vicinity may seek clarification from the Commission.

The string citation of cases offered by PGW in support of the waiver argument are distinguishable from the present case on both factual and legal grounds. *See* PGW Answer at 9, fn. 34. First and foremost, to the extent PGW relies upon cases which are not rate cases, the factual and legal premise of those cases are not directly on point with the present rate case. Where the Commission’s review of a request for clarification/reconsideration pertains to the Commission’s interpretation of approved tariff language in a rate case, such review is not comparable to complaint cases in which the parties’ failure to raise every factual and legal issue for which they seek review is found to be waiver of that issue. Further, in the one rate case cited by PGW in which a party was found to have waived an issue, the finding of waiver was based upon the Company’s failure to brief a proposal to *redesign generation rates* to introduce seasonal rate elements to the rate design. In that case, the Companies’ failure to pursue their own proposed fundamental change in rate design was deemed a waiver of the request to alter the rate design. *In Re: Merger Savings Remand Proceeding*, Docket No. R-00061366, et al., 2006 Pa. PUC LEXIS 727, at *245-46 (order entered October 31, 2006)(citations omitted) (“Additionally, the Companies proposed to redesign their generation rates to introduce seasonal rate elements to the rate design. However, the Companies did not Brief this issue. Consequently, it is waived.”)

In the present case, with respect to the meaning of the ARS tariff provision governing minimum billing, Vicinity’s is a true request for clarification. Vicinity does not seek to *alter* or redesign the tariff language, but to clarify a point on which the tariff language is silent, *i.e.*, whether the minimum daily bill per month described, is intended to be for every month – even if ARS is not needed by Vicinity in each month, and where the historic provision of and billing for ARS by PGW to Vicinity was only elected by Vicinity in winter months.

Since we conclude that Vicinity has raised a novel issue, we turn to the second step in *Duick*, to evaluate the new or novel argument, or overlooked consideration, to determine whether to clarify the *November 2023 Order*. However, as noted previously, we will not necessarily modify our prior decision just because a party offers a new and novel argument or identifies a consideration that was overlooked or not addressed by the Commission in its previous order. Rather, based upon our evaluation of the record and the Parties' positions, we will determine if there is a sufficient basis for us to exercise our discretion to clarify, amend or rescind a prior Order, in whole or in part. *Duick*.

In the present case, the relevant tariff language provides:

The Minimum ARS Quantity provided by the Company shall be 5,000 Dth per day. The minimum monthly charge shall be the above rate times 5,000 Dth times the number of days in the month regardless of whether the Customer uses less. The Maximum ARS Quantity provided by the Company shall be 21,000 Dth/day.

PGW Rate GS-XLT.

Upon review of the relevant tariff language, we conclude the ARS language references the daily minimum billing applicable in each month in which ARS is provided, while the language is silent on *what months* ARS service is to be provided. With respect to the issue of minimum per day billing for ARS during the month in which ARS is utilized, we agree with PGW's reading that the language of the Rate GS-XLT is plain and unambiguous as to the minimum daily charge. However, the tariff language's clear statement of the daily minimum in a month does not establish that ARS is a permanent, year-round service.

As asserted by Vicinity, from the historical provision of and billing for ARS service by PGW to Vicinity, it is clear that the ARS service was only provided and billed for during certain months.²⁴ We note that in its Answer, PGW did not dispute the historic provision of and billing for ARS service during only certain months. Even PGW's reference to its witness' statement "that minimum volumes are appropriate and should be retained for PGW gas planning purposes" as the "sole evidence of record" regarding the minimums²⁵ does nothing to establish that the minimum volumes were intended to be applicable year-round, rather than monthly during months ARS was provided by PGW to Vicinity. PGW's witness' statement could also be read to support Vicinity's position that there is a need for minimums for ARS as a "stand by" elective service.

Given the tariff language and the history of the provision of ARS service and billing by PGW to Vicinity, we conclude that the approved tariff language authorizes PGW to bill the daily and monthly minimum rate for ARS (and provide the maximum) during the month when ARS is elected by Vicinity.

We agree with PGW that there is nothing unusual or unreasonable about the daily minimum usage charge, so long as it falls in a month in which the ARS is reasonable and necessary to provision of service for Vicinity, and reflective of the historic provision of such service and billing by PGW to Vicinity. We note that nothing in PGW's Answer asserts any basis to conclude that what was historically an elective service provided and billed for by PGW to Vicinity in the months when Vicinity elected, was somehow converted to a permanent year-round service, which requires PGW to charge the daily minimum in every calendar month.

²⁴ See, PGW Answer at fn. 25, citing as support to Vicinity's description of ARS to provide "winter deliverability of gas."

²⁵ PGW Answer at 8-9, fn.33 (citing PGW St. No. 6-R at 29).

Given that ARS service was historically only used by Vicinity during the winter months, it would be unreasonable and unnecessary for PGW to charge the ARS daily minimum during a month in which the ARS service is not elected by Vicinity. Further, if the proposed Rate GS-XLT was intended by PGW to be a *change* from the historic provision of service- *i.e.*, from an historically elective service charged in certain months to a permanent service with a year-round charge, PGW bore the burden of expressly stating the change in the proposed tariff language. *See*, 66 Pa. C.S. § 1308.

Accordingly, we shall grant Vicinity’s request for clarification, and shall clarify that the approval of the ARS provisions of Rate GS-XLT apply to those months in which Vicinity elects to receive ARS service from PGW, consistent with the historic provision of ARS by PGW to Vicinity.

3. Whether to Establish a Mechanism to Ensure the “Market Price” Set by PGW is Fair and Reasonable

a. The November 2023 Order

In the proceeding underlying our *November 2023 Order*, PGW’s proposed Rate GS-XLT tariff established a minimum and maximum rate for ARS, as follows:

Rate GS-XLT Customers shall pay PGW a rate per Dth equal to the greater of (1) **average revenue per Dth received by the Company from all releases**, excluding choice capacity releases and asset management agreement associated release, **of recallable capacity on Texas Eastern Transmission (“TETCO”) during PGW’s prior fiscal year**, which shall be annually updated by PGW with the Commission by September 15 of each year following; or (2) the max TETCO tariff rate

Rate GS-XLT (emphasis added).

The ALJs, after a thorough review of the evidence and parties' positions, recommended that PGW's proposed Rate GS-XLT should be approved, including the calculation of the ceiling, stating:

We recommend that the Commission approve the ARS provision of Rate GS-XLT as proposed by PGW... On one hand, GFCP/VEPI will pay, at minimum, PGW's cost to obtain the TETCO capacity they need at the pipeline's tariffed rate but only for the volumes that they use. GFCP/VEPI can continue to avoid the secondary market and do not have to burn more expensive oil to fire Vicinity's boilers. They do not have to pursue demand management or other techniques to control their natural gas usage. The price is substantially less than GFCP/VEPI was prepared to pay in the GCR case [of \$0.80]. On the other hand, **PGW's other customers** are assured that PGW will recover the cost of the TETCO capacity required for the ARS without subsidizing the cost of gas supplied to GFCP/VEPI via the ARS. In addition, they **have the advantage of potentially receiving more if the competitive markets are willing to pay a higher price.**

R.D. at 103 (emphasis added).

In the *November 2023 Order*, the Commission accepted the ALJs' recommendation stating, "We agree with the ALJs' recommendation to adopt the ARS provision of Rate GS-XLT, as proposed by PGW" because it "is **fair to all Parties.**" *November 2023 Order* at 191 (emphasis added).

b. Vicinity's Petition and Answers

In its Petition, Vicinity asserts that PGW's draft tariff effectively and unreasonably defines the relevant "market" as whatever sales PGW consummates. Vicinity argues that the *November 2023 Order* should be clarified to establish

mechanisms within the tariff to ensure that the “market” set by PGW is fair and reasonable. Vicinity Petition at 4.

Vicinity asserts that because under the draft tariff the “market” price is the greater of: (1) the maximum [Texas Eastern Transmissions (“TETCO”)] tariff rate; or (2) the “average revenue per Dth received” by PGW “from all releases ... of recallable capacity on [TETCO] during PGW’s prior fiscal year” PGW would be free to manipulate the price of ARS. To illustrate, Vicinity argues:

while the TETCO maximum tariff rate is transparent, there is no mechanism in the draft PGW tariff to ensure transparency or fairness. For example, in a fiscal year where PGW elects to utilize all of its available capacity (apart from ARS capacity) to produce liquified natural gas (LNG), or any other reason, except for a single dekatherm which it sells for one-million dollars, there should be mechanisms in place to ensure that the price of ARS does not get set at \$1,000,000/dth.

Vicinity Petition at 4-5.

Vicinity requests that the Commission clarify the *November 2023 Order* to include additional requirements for PGW to set a market price for ARS. Specifically, Vicinity asserts that the issue can be corrected by: (a) referencing published TETCO release information (e.g., the TETCO Link system) during the year rather than PGW’s receipts; and (b) limiting the comparison sales to those that are substantially similar to Vicinity’s usages (i.e., similar quantum and similar point of release). Lastly, Vicinity suggests that the nomination process for ARS should mirror the nomination process for any other market transaction for release capacity. Vicinity Petition at 5.

c. Disposition

Upon consideration of Vicinity’s request to clarify the *November 2023 Order* to establish a mechanism to ensure that the “market price” set by PGW is fair and reasonable, we shall deny the request.

By asking the Commission to put in place *new* mechanisms to ensure the market price set by PGW is fair and reasonable the Vicinity Petition appears to seek preemptive rulings on the way PGW is permitted to implement its approved tariff provisions governing ARS. In this regard, Vicinity is seeking more than clarification on the meaning of the tariff language and asks that the Commission *alter the tariff* language to impose additional duties upon PGW. As a general matter, to the extent Vicinity raises arguments based on Vicinity’s predictions of PGW’s future alleged unreasonable conduct in implementing its approved tariff, we find that Vicinity’s arguments are speculative and fail to raise any matter which would be the proper subject of reconsideration/clarification.

Further, as noted by PGW, the “mechanisms” proposed by Vicinity are self-serving. The location method proposed by Vicinity would set the price of ARS at \$.10/Dth. The resulting ARS revenues would be approximately \$0.4 million per year, well below the cost borne by GCR customers of \$2,298,920 for the capacity that underlies ARS.²⁶

Based upon the present proceeding, and the tariff language establishing a reasonable method for PGW’s determination of the market rate for ARS, we find that the

²⁶ PGW Answer at 13 (citing PGW MB at 64–65)(The \$.10/Dth claim comes from a rate paid by Paulsboro Refinery for a single winter release last year; it was not a competitively determined rate, since [Vicinity] do not bid on capacity, but chose to rely upon ARS instead. One customer’s bid does not set the market. “By refusing to bid, [Vicinity] [] prevented a competitive market price from emerging.” PGW St. No. 8-R at 13. For this reason, setting the rate on this single bid would be grossly unreasonable.)

Vicinity Petition fails to satisfy the *Duick* standard for clarification and see no reason to exercise our discretion to clarify our *November 2023 Order*. We note that PGW's future practice of setting a market price for ARS remains subject to examination under Section 1501 of the Code for reasonable provision of service. 66 Pa. C.S. § 1501.

VI. Conclusion

Based on our review of the record, the Parties' positions, and the applicable law, we shall deny PGW's Petition for Reconsideration and grant, in part, and deny, in part, Vicinity's Petition for Clarification; **THEREFORE,**

IT IS ORDERED:

1. That the consideration and disposition of both the Petition for Clarification filed by Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc., on November 20, 2023, and the Petition for Reconsideration filed by Philadelphia Gas Works on November 27, 2023, pertaining to the Commission's Opinion and Order at the above-captioned docket, are consolidated in accordance with Section 5.81(a) of the Commission's Regulations, 52 Pa. Code § 5.81(a), consistent with the discussion in this Opinion and Order.

2. That the Petition for Clarification filed by Grays Ferry Cogeneration Partnership and Vicinity Energy Philadelphia, Inc. on November 20, 2023, is granted, in part, and denied, in part, consistent with the discussion in this Opinion and Order.

3. That the Petition for Reconsideration filed by Philadelphia Gas Works on November 27, 2023, is denied, consistent with the discussion in this Opinion and Order.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: January 18, 2024

ORDER ENTERED: January 18, 2024