

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Vicinity Energy Kansas) **File No. HT-2021-0245**
City, Inc.'s Adjustment to Its PACC Tariff)

**STIPULATION AND AGREEMENT RESOLVING ISSUES ARISING FROM GAS
PRICE SPIKES OF FEBRUARY 2021**

COME NOW Vicinity Energy Kansas City, Inc. (“Vicinity”) and the Staff of the Missouri Public Service Commission (“Staff”) (collectively “Signatories”), and present to the Missouri Public Service Commission (“Commission”) for approval this Stipulation and Agreement (“*Stipulation*”) commemorating an agreement between the Signatories resolving the issues in this case related to Vicinity’s 2021 Production Adjustment Cost Clause (“PACC”) filing and issues arising from the natural gas price spikes that occurred in February 2021. In support of this *Stipulation*, the Signatories respectfully state as follows:

I. BACKGROUND

1. On February 1, 2021, Vicinity filed revised tariff sheets along with supporting testimony and workpapers to implement an annual change in Vicinity’s PACC Tariff. Those tariffs bear an effective date of April 1. The proposed PACC factor is (\$1.2651)/mlb, before rounding. The factor is negative (that is, customers’ bills would be reduced by implementation of this factor), because the production costs related to calendar year 2020 and included in the calculation of the factor declined relative to the base level established in the 2018 rate case (HR-2018-0341). As noted in the Direct Testimony of Vicinity witness Scott Stordahl, the main driver of the reduction in costs in 2020 was the cost of natural gas in 2020 versus the cost of natural gas in the base PACC cost.

The Direct Testimony of Mr. Stordahl also discusses an additional refund proposed for the benefit of tariff customers attributable to a correction to its 2019 PACC filing. The 2020 PACC filing (Schedule 1) supported annual customer credits of \$579,806 while the correction of the 2019 PACC filing (Schedule 2) resulted in additional customer credits of \$152,132 to eligible customers.

2. The currently effective PACC factor is (\$0.2901)/mlb. Like the proposed factor, it is negative and so reduces customers' bills. In fact, the proposed factor is significantly more negative than the current PACC factor, and would therefore lead to a larger reduction in customers' bills. Under normal circumstances, a larger reduction would be a positive development. But these are not normal circumstances, and because of recent events, implementing a larger reduction now will result in even larger increases in the next PACC filing.

3. After the February 1 PACC filing, for more than a week in the middle of February, much of the mid-continent was hit with record-setting cold, which negatively affected the production and transmission of natural gas, and also greatly increased demand. The combination of these factors sent prices skyrocketing across the region. Although the exact cost to Vicinity for the mid-February gas price spikes is not yet known, it could easily meet or exceed Vicinity's average annual gas cost.

4. Vicinity's natural gas cost is the largest component in the calculation of the PACC. Because of this, the February spike in Vicinity's gas costs will switch the PACC factor from the current negative number to a significantly positive number in the next PACC filing. Current estimate is that the excess costs will at least double Vicinity's 2021 gas cost compared to 2020 gas cost, depending on a number of factors being resolved by gas suppliers and transportation companies. Because the precise cost increase is not now known (other than the

general magnitude), nor is the exact timing of when the costs will be determined, the Company is unable to offer any reasonable estimate of that future PACC factor at this time. However, Vicinity anticipates that it may begin receiving bills reflecting the February price spikes as early as the end of March and could commence payment of the undisputed portions of those bills in April.

5. Vicinity's PACC tariffs allow for changes to the PACC to be filed annually by February 1, or semi-annually by August 1 and February 1. The tariffs provide that PACC changes filed on August 1 will become effective on October 1, and that changes filed on February 1 will become effective April 1. Vicinity's cost increases from the February 2021 gas price spikes are significant enough that Vicinity plans to incorporate the related gas costs in the PACC as soon as possible, likely in an August 1 (or earlier) filing. If that is the case, those changes would increase customers' bills only six (or fewer) months after the currently pending PACC changes would reduce those bills, if implemented.

6. Because the PACC factor proposed in the February 1 filing is significantly more negative than the current PACC factor¹ and because the next PACC filing is known to result in a positive PACC factor, implementation of the proposed PACC factor as filed at this time would cause extreme volatility in customer bills. Those bills would go from a modest reduction under the currently effective factor, to a more significant reduction under the as-filed factor (i.e., customer credits discussed by Mr. Stordahl), only to be followed in a relatively short time by what is expected to be a significant increase under the "next" factor. The provisions of this

¹ The customer credits associated with the calculated 2020 PACC factor are further increase by the correction of the 2019 PACC filing.

Agreement are designed to both eliminate the up and down swings, and to mitigate the impact of the February gas price spikes on customers' bills.

7. In general terms, the Signatories propose that, rather than implementing the larger reduction to customers' bills through the currently pending PACC factor, the Commission instead approve a PACC factor that results in a current change of \$0 to customer bills.² Doing so will create a much smoother transition to the coming PACC factor that will increase customers' bills. The amounts that would have been refunded to customers will be captured as a regulatory liability and used to directly offset a portion of the PACC increase driven by the February gas price spikes.

II. SPECIFIC TERMS AND CONDITIONS OF THE AGREEMENT

8. The Signatories request that the Commission issue an order that authorizes Vicinity to defer into a regulatory liability the amount of \$731,938, representing \$579,806 for the amount that otherwise would flow as credits to customers through the PACC from April 1, 2021 through March 31, 2022, plus \$152,132 for the one-time refund for the error in the 2019 filing described in Section V. of the Direct Testimony of Scott Stordahl.

9. The Signatories request that the Commission reject the tariffs filed by Vicinity on February 1, 2021, and order Vicinity to file tariffs in compliance with its order approving this Stipulation that are substantially similar to the exemplar tariffs attached to this Stipulation.

10. Vicinity agrees to submit a PACC filing no later than August 1, 2021, or as soon thereafter as allowed by the PACC tariffs once the cost of the gas price spikes are reasonably known and to the extent payment has been remitted. The next PACC filing will reflect only the

² This change would be achieved by the rejection or disapproval of the PACC changes sponsored in the Direct Testimony of Mr. Stordahl.

additional costs resulting from the gas price spike, net of the aforementioned customer credits to be recorded in a regulatory liability account. The Signatories may jointly or separately seek an approval by the Commission in that filing to flow the gas costs through a Reconciling Adjustment that would recover the costs over a Recovery Period of greater than one year in order to avoid unnecessarily significant impacts on customers. The regulatory liability established pursuant to Paragraph 8 herein will be amortized or relieved over a period consistent with the Recovery Period established by the Commission in the next PACC filing.

11. Pursuant to generally accepted accounting principles, Vicinity anticipates that it may be required to record greater purchased gas expense in 2021 to recognize the full estimated cost of the extraordinary spike in gas costs (under accrual basis accounting), than the total amount the Company may remit as payment to its suppliers in 2021 (cash or paid basis proposed for cost inclusion in PACC). Under the PACC Tariff Sheet Nos. 32 and 34, the PACC factor is based on actual production costs incurred during the accumulation period (e.g., calendar year 2021) which would include any accrued purchased gas expense in excess of any amounts paid associated with the gas price spikes.

In order to avoid the possibility of including any accrued but unpaid gas costs in the next PACC filing, the Signatories request that the Commission issue an order that authorizes Vicinity to defer into a regulatory asset account any accrued but unpaid extraordinary gas costs that would otherwise be charged to purchased gas expense in 2021. This regulatory asset account would be relieved or reduced concurrent with payments to Vicinity's suppliers. Those additional payments would then increase purchased gas expense and be eligible for PACC inclusion in 2021 or any future period. Approval of this regulatory asset accounting would not limit the

Commission's ability to consider and review recovery of these costs in one or more future PACC filings.

V. GENERAL PROVISIONS

12. This *Stipulation* is being entered into solely for the purpose of settling the issues set forth above, and unless otherwise specifically set forth herein represents a settlement on a mutually-agreeable outcome without resolution of specific issues of law or fact. This *Stipulation* is intended to relate *only* to the specific matters referred to herein; no Signatory waives any claim or right which it may otherwise have with respect to any matter not expressly provided for herein. No Signatory will be deemed to have approved, accepted, agreed, consented, or acquiesced to any substantive or procedural principle, treatment, calculation, or other determinative issue underlying the provisions of this *Stipulation* except as otherwise specifically set forth herein. Except as specifically provided herein, no Signatory shall be prejudiced or bound in any manner by the terms of this *Stipulation* in any other proceeding, regardless of whether this *Stipulation* is approved.

13. This *Stipulation* has resulted from extensive negotiations among the Signatories and the terms hereof are interdependent. In the event the Commission does not approve this *Stipulation*, or approves it with modifications or conditions to which a Signatory objects, then this *Stipulation* shall be null and void, and no Signatory shall be bound by any of its provisions.

14. If the Commission does not approve this *Stipulation* unconditionally and without modification, and notwithstanding its provision that it shall become void, neither this *Stipulation*, nor any matters associated with its consideration by the Commission, shall be considered or argued to be a waiver of the rights that any Signatory has for a decision in accordance with Section 536.090, RSMo 2000 or Article V, Section 18 of the Missouri Constitution, and the

Signatories shall retain all procedural and due process rights as fully as though this *Stipulation* had not been presented for approval, and any suggestions or memoranda, testimony or exhibits that have been offered or received in support of this *Stipulation* shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever.

15. If the Commission unconditionally accepts the specific terms of this *Stipulation* without modification, the Signatories waive, with respect only to the issues resolved herein: their respective rights (1) to call, examine and cross-examine witnesses pursuant to Section 536.070(2), RSMo 2000; (2) their respective rights to present oral argument and/or written briefs pursuant to Section 536.080.1, RSMo 2000; (3) their respective rights to the reading of the transcript by the Commission pursuant to Section 386.080.2, RSMo 2000; (4) their respective rights to seek rehearing pursuant to Section 386.500, RSMo 2000; and (5) their respective rights to judicial review pursuant to Section 386.510, RSMo Supp. 2011. These waivers apply only to a Commission order respecting this *Stipulation* issued in this above-captioned proceeding, and do not apply to any matters raised in any prior or subsequent Commission proceeding, or any matters not explicitly addressed by this *Stipulation*.

16. The Staff and Vicinity shall also have the right to provide, at any agenda meeting at which this *Stipulation* is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that Staff and Vicinity shall, to the extent reasonably practicable, provide the other parties with advance notice of the agenda meeting for which the response is requested. Staff's and Vicinity's oral explanations shall be subject to

public disclosure, except to the extent they refer to matters that are privileged or protected from disclosure pursuant to the Commission's rules on confidential information.

17. This *Stipulation* contains the entire agreement of the Signatories concerning the issues addressed herein.

18. This *Stipulation* does not constitute a contract with the Commission and is not intended to impinge upon any Commission claim, right, or argument by virtue of the *Stipulation's* approval. Acceptance of this *Stipulation* by the Commission shall not be deemed as constituting an agreement on the part of the Commission to forego the use of any discovery, investigative or other power which the Commission presently has or as an acquiescence of any underlying issue. Thus, nothing in this *Stipulation* is intended to impinge or restrict in any manner the exercise by the Commission of any statutory right, including the right to access information, or any statutory obligation.

19. The Signatories agree that this *Stipulation*, except as specifically noted herein, resolves all issues related to these topics, and that the agreement and its exhibits should be received into the record without the necessity of any witness taking the stand for examination. Further, contingent upon Commission approval of this *Stipulation* without modification, the Signatories hereby stipulate to the admission into the evidentiary record of the pre-filed written testimony of their witnesses, if any, except for those witnesses testifying on any issues that may be set for evidentiary hearing.

Respectfully submitted,

/s/ Casi Aslin

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered, transmitted by e-mail or mailed, First Class, postage prepaid, this 12th day of March, 2021, to counsel for all parties on the Commission's service list in this case.

/s/ Lewis Mills _____