

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held by telephone
and internet audio conference on
the 30th day of December, 2020.

In the Matter of Veolia Energy Kansas City) **File No. HT-2020-0223**
Inc.'s Adjustment to its PACC Tariff)

**ORDER APPROVING STIPULATION AND AGREEMENT
RESOLVING ISSUES ARISING FROM THE CITY OF KANSAS CITY'S
CHANGE IN SEWER BILLING**

Issue Date: December 30, 2020

Effective Date: January 29, 2021

I. History

On November 4, 2020, Vicinity Energy Kansas City, Inc. (Vicinity)¹ and the Staff of the Missouri Public Service Commission (Staff) (collectively "Signatories"), presented to the Missouri Public Service Commission (Commission) for approval a Stipulation and Agreement ("Stipulation"), attached hereto as Appendix A, resolving issues arising from the City of Kansas City's (the City's) recent change in sewer billing. Under the terms of the Stipulation, the Signatories have agreed to a method for determining sewer charges for the 2020, 2021 and 2022 Production Adjustment Cost Clause (PACC) filings. The PACC was established in File No. HR-2014-0066.

On December 1, 2020, the Commission issued its Order Directing Notice and Setting Date of Intervention. This order directed the Commission's Data Center to provide a copy of the order and the Stipulation to all parties of record in File No. HR-2014-0066 and to The Grain and Oilseed Supply Chain – North America Business

¹ F/k/a Veolia Energy Kansas City, Inc.

Unit of Cargill, Incorporated. On December 7, 2020, the Commission issued its Order Directing Filing, requiring Vicinity to answer three questions to clarify and provide additional information about the Stipulation. Vicinity answered those questions December 11. No requests to intervene have been filed. More than seven days have passed since the Stipulation was filed and no party has opposed it.

The PACC tracks the difference between the actual variable costs of producing steam (i.e., fuel costs, water and sewer costs, purchased electricity, chemical costs, etc.) relative to those costs included in base rates. Costs passed through the PACC rider reflect ninety-five percent of the difference between actual fuel, purchased power, and consumable costs and the costs as included in base rates. The PACC includes the cost of waste water and storm water service charges from the City for condensate associated with steam delivered to the ultimate customer located within the City, and the PACC provides that the cost of water and sewer, representing the largest consumable cost elements, will encompass all invoiced costs from the City.

The PACC tariff provisions apply only to Vicinity's commercial tariff customers (i.e., Standard Commercial Service, Large Commercial Service, and Interruptible Heating Service) representing about 30% of annual steam sales. Vicinity's two process steam customers (Ingredion and Cargill) have separately entered into private contract arrangements with Vicinity for steam delivery that include stand-alone provisions for fuel and consumable cost recovery. However, because Vicinity incurred all fuel and consumable costs on behalf of all customers, the PACC tariff was designed to recognize all steam sales in quantifying the PACC base and actual unit cost rates, thereby passing

on the efficiencies gained by serving the process steam customers to the benefit of tariff customers.

Historically, the City has submitted monthly invoices to Vicinity for total water purchases and sewer charges for the related condensate sinking into the City's sewer system. Vicinity would pay the City directly for those billed costs. A portion of the water and sewer costs would be separately billed by Vicinity to Ingredion and Cargill pursuant to the terms of their private contracts. Essentially, Vicinity billed the process steam customers for the portion of fuel, water and sewer costs incurred to support the metered steam delivered to them.

Changes leading to the Stipulation occurred in 2019, when the City installed a condensate meter on Cargill's premises and began billing Cargill directly (effective August 1, 2019) for sewer charges on that metered condensate sinking into the City's sewer system. Although the City began billing Cargill directly, the City also continued billing Vicinity for Cargill-related sewer charges through April 2020 – effectively resulting in Cargill's being double-billed for sewer costs—once directly by the City and again through Vicinity's pass-through billing of a portion of the City's sewer charges. The City expressed its intent to refund the overcharges billed to Vicinity, who would then return or refund the double-billed amounts to Cargill. The Stipulation states that Vicinity has received from the City a credit for the overbillings in the months of August-September 2019 (about \$261,211), which was recorded as a reduction in revenues and sewer expenses in 2019; and passed that credit through to Cargill in 2019.

Per the Stipulation, the Signatories have agreed the City's change in sewer billing has undermined a purpose of the PACC: an unintended consequence of recording the

Cargill credit in 2019 as a reduction to sewer expense was a larger credit to tariff customers in the 2019 PACC filing. In 2020 and possibly 2021, Vicinity expects to receive a check or credits of approximately \$815,000 from the City for the remaining overcharges to be returned to Cargill – which will again reduce Vicinity’s booked sewer expenses without reducing the actual underlying sewer cost per mlb of steam charged by the City for sales to tariff customers. The City’s meter installation and direct charging of Cargill for sewer costs, thus, has resulted in two challenges in the administration of the PACC in 2020, 2021 and 2022.

A. The City’s sewer billing change will result in lower recurring booked sewer expenses that, unless addressed, will translate into higher credits to tariff customers in the future PACC filings as if the actual sewer rates had themselves decreased; but the financial benefit of those reduced sewer costs will not be retained by Vicinity due to the required pass-through to Cargill.

B. The refund (or bill credits) expected in 2020 (and possibly 2021) will cover sewer overcharges specifically related to Cargill from the City spanning multiple months in both 2019-2020 and will cause a one-time transitional issue (if by check) for the 2020 PACC filing or a recurring issue (if by bill credit) for both the 2020 and 2021 PACC filings.

The PACC was designed as a simple mechanism to track increases and decreases in fuel and consumables expense with 95% of the variance passed through to tariff customers as charges or bill credits over a prospective twelve-month period. One assumption that was key to keeping the PACC simple to administer was that all fuel and consumable costs would beneficially support the production of steam delivered to all customers. In quantifying the base and actual costs per mlb, allowable expenses (the numerator) were divided by total mlb sales (the denominator). But because of the City’s

decision to change the way that it bills Cargill, a portion of the City refunds (or credits) will inappropriately reduce costs otherwise due to/from tariff customers through the PACC. The City's billing change lowers the overall sewer expenses recorded by Vicinity for PACC purposes (the numerator) by the City's bill credit (or check) for amounts directly billed to Cargill, without lowering the rates charged for sewer discharge. In effect, Vicinity will be required to give a portion of the bill credit from the City to tariffed customers via the PACC and then give the full amount of the credit to Cargill. This result is inconsistent with the way the PACC was designed to function.

II. The Stipulation

Addressing these issues, the Signatories have agreed that for the 2020, 2021, and 2022 PACC filings, sewer charges will be determined as follows:

- A. Actual sewer expense will be determined from the books and records.
- B. Any sewer refunds or credits that may be recorded as a reduction to sewer expense on the income statement due to City payments/credits received by the Company that are forwarded to the benefit of Cargill will be reversed.
- C. If, as expected, the sewer expenses billed to Vicinity for Cargill in the 2020, 2021, and 2022 PACC periods are \$0, additional sewer expenses will be imputed, as if incurred and recorded by the Company, by multiplying a \$1.49/mlb base unit cost rate to that year's actual Cargill sales.
- D. The above-referenced \$1.49 base sewer cost unit rate will be increased or decreased based on the actual percentage increase or decrease in sewer rates that may be imposed by the City in 2021-2022, if any. As further described below, the percentage increase/decrease in sewer rates is

intended to effectively escalate the \$1.49 base sewer cost unit rate by the actual published sewer rates in effect in each calendar year.

1. In 2020, the City has not changed the published sewer rate. As a result, the PACC filing in 2021 for calendar 2020 will quantify the Cargill sewer cost imputation adjustment by applying the \$1.49 base sewer cost unit rate to all Cargill steam sales in 2020.
2. For 2021, any change to the base sewer cost unit rate will be calculated by dividing the new sewer rate first published and effective in 2021 by the current published sewer rate for 2020. The resulting percentage change will be used to increase/decrease the \$1.49 base sewer cost unit rate for purposes of calculating the sewer cost imputation adjustment in 2021. The Cargill total sewer cost imputation adjustment will be the sum of the \$1.49 sewer cost unit rate times all Cargill steam sales prior to the 2021 change in the sewer rate plus the adjusted sewer cost unit rate (i.e., \$1.49 adjusted to reflect the percentage change in rate) times all Cargill steam sales on and after the change in the sewer rate.
3. For 2022, the base sewer cost unit rate will be calculated and applied in a manner similar to 2021. Any new sewer rate published and effective in 2022 will be divided by the current published sewer rate for 2020. The resulting percentage change will be used to increase/decrease the \$1.49 base unit cost rate for purposes of calculating the sewer cost imputation adjustment in 2022. The Cargill

total sewer cost imputation adjustment will be the sum of the \$1.49 sewer cost unit rate, as escalated to 2022, times the Cargill steam sales during periods each escalated rate was in effect during 2022.

E. The “adjusted actual” sewer expense (the result of the process described in A through D above) will be recognized as allowable sewer expense in each PACC filing prior to a final order in the next Vicinity rate case.

III. Decision

Section 536.010(4),² RSMo defines “contested case” as “a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing.” Section 536.063(1) states:

In any contested case:

(1) The contested case shall be commenced by the filing of a writing by which the party or agency instituting the proceeding seeks such action as by law can be taken by the agency only after opportunity for hearing, or seeks a hearing for the purposes of obtaining a decision reviewable upon the record of the proceedings and evidence at such hearing, or upon such record and additional evidence, either by a court or by another agency. . . .

Section 536.060 states “[c]ontested cases . . . may be informally resolved by consent agreement or agreed settlement or may be resolved by stipulation, consent order, or default, or by agreed settlement where such settlement is permitted by law.” Rule 20 CSR 4240.2.115(1)(A) provides “parties may at any time file a stipulation and agreement as a proposed resolution of all or any part of a contested case.” The rule states that “[a] stipulation and agreement shall be filed as a pleading.” Rule 20 CSR 4240.2.115(2)(E) states “[a] party may indicate that it does not oppose all or part of a nonunanimous stipulation and agreement.” The Stipulation here presented to the Commission was filed

² All references to the Revised Statutes of Missouri will be to 2016 unless otherwise indicated.

in File HT-2020-0223, an existing case, with no motion or other pleading initiating a new contested case.

The City has taken unilateral billing action with respect to a customer such that the established PACC formula no longer works. The Stipulation makes adjustments to how the sewer charges relating to that customer are determined so as to reverse the effect of the City's action upon the PACC, realign and restore its function to its purposes. An order approving the Stipulation will approve nothing new, will be an order restoring *status quo ante*, and will be an order entered in an existing contested case. Accordingly, no new contested case need be initiated, and the Commission has jurisdiction.

The Stipulation states that the Office of the Public Counsel, while not a party to the Stipulation, has affirmatively stated that it does not oppose the Stipulation and will not oppose its implementation in the 2020 and 2021 PACC filings. Additionally, because more than seven days have passed since the Stipulation was filed and no party has opposed it, it may be treated as unanimous.³ The Stipulation waives any procedural requirements that would otherwise be necessary before final decision.⁴ Also, because the Stipulation disposes of all issues therein identified and there is no other matter before the Commission in this case, the Commission need not separately state its findings of fact.⁵ Based on the Commission's review of the Stipulation, and Vicinity's responses to the Commission's additional questions, the Commission finds that the Stipulation adjusts PACC calculations so as to bring them into accord with the PACC's design and purposes,

³ Commission Rule 20 CSR 4240-2.115(2)(C).

⁴ Section 536.060, RSMo 2016.

⁵ Section 536.090, RSMo 2016.

is reasonable, and is consistent with the public interest. The Commission will approve the Stipulation and will incorporate its terms into this order.

THE COMMISSION ORDERS THAT:

1. The provisions of the Stipulation and Agreement Resolving Issues Arising from the City of Kansas City Change in Sewer Billing filed on November 4, 2020, are approved and incorporated into this order as if fully set forth herein. The signatories shall comply with the terms of the Stipulation. A copy of the Stipulation is attached to this order as Appendix A.

2. No later than ten days after the effective date of this Order, Vicinity shall file any tariff sheets necessitated by this Order; or otherwise file pleadings explaining the resulting tariff sheet status.

3. This order shall become effective on January 29, 2021.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris Woodruff
Secretary

Silvey, Chm., Kenney, Rupp, Coleman, and
Holsman CC., concur.

Graham, Regulatory Law Judge