

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

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

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

COME NOW Vicinity Energy Kansas City, Inc. (“Vicinity”)¹ 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 issues arising from the city of Kansas City’s recent change in sewer billing. In support of this *Stipulation*, the Signatories respectfully state as follows:

I. HISTORICAL OPERATION OF THE PACC

1. The PACC was established in Case No. HR-2014-0066. That case resulted in a Stipulation and Agreement that resolved all of the issues in the case, including the PACC. Although the agreement in that case was not signed by all parties, no party opposed it, and the Commission treated it as a unanimous agreement pursuant to the Commission’s rules on non-unanimous agreements.

¹ At the time this matter was filed and the style of the case determined, the Commission had not yet approved the change of name from “Veolia Energy Kansas City, Inc.” to “Vicinity Energy Kansas City, Inc.” That change was approved in an order issued on February 10 in Case No. HT-2020-0205.

2. 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 base unit cost set in the 2014 case was \$7.69/mlb (thousand pounds of steam), and in the 2018 rate case (HR-2018-0341), it was reduced to \$7.18/mlb.

3. An important distinction between Vicinity's PACC and the fuel adjustment clauses of electric utilities is the inclusion of specific consumable costs in the PACC. Of particular importance to this agreement, the PACC includes the cost of waste water and storm water service charges from the City of Kansas City ("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.

4. The PACC treats all customers receiving steam service as beneficiaries of the related costs of production (specifically, fuel and consumable costs). Since implementation, the calculation of the PACC base unit cost rate and actual unit cost rate were determined on a comparable basis (i.e., total fuel and consumable costs divided by total delivered steam sales).

5. The PACC tariff provisions only apply 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.

6. 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 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.

II. RECENT CHANGE IN SEWER BILLING AND ITS EFFECT ON THE PACC

7. In 2019, 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. However, the City continued to bill Vicinity for Cargill-related sewer charges through April 2020 – effectively resulting in Cargill being double billed for sewer costs (once 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 which would then return or refund the double-billed amounts to Cargill. So far, Vicinity 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. An unintended consequence of recording this 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.

8. The City’s meter installation and direct charging of Cargill for sewer costs results in two challenges in the administration of the PACC in 2020, 2021 and 2022.

a) This sewer billing change implemented by the City will result in lower recurring booked sewer expenses that, unless addressed, would 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.²

9. 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). Because of the City’s unilateral decision to change the way that it bills Cargill, a

² Because of the way the PACC operates, the 2020 PACC filing will be made in the first quarter of 2021, and the 2021 PACC filing will be made in the first quarter of 2022.

portion of the City refunds (or credits) would 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 would 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 situation is inconsistent with the way the PACC is designed to function.

III. SPECIFIC TERMS AND CONDITIONS OF THE AGREEMENT

10. Upon learning of the City's change in billing to Cargill and determining the impact of the change on the operation of the PACC, Vicinity began discussions with Staff and Public Counsel. Although the City's change in Cargill billing caused the 2019 PACC refund (as filed and approved in HT-2020-0223) to be overstated, Vicinity is not seeking any changes to the 2019 PACC refunds currently flowing to tariff customers. Rather the discussion has been about finding a way to equitably address the situation in the three future PACC filings (2020, 2021 and 2022) that may precede the next rate case mandated by the PACC terms.³

11. The Parties have agreed that for the 2020, 2021 and 2022 PACC filings, sewer charges will be determined as follows:

- a) Actual sewer expense would be determined from the books and records.

³ The PACC provides that "The PACC rate was originally effective on January 1, 2015. From the effective date, as long as the PACC is in place, the Company shall file a general rate case no later than every four (4) years." The most recent rate case was filed on May 10, 2018, and thus the next rate case filing may be as late as May 10, 2022 with an operation of law date in April 2023. The annual PACC filings are to be made by February 1 of each year. This agreement applies to the filings to be made on or before February 1, 2021 and February 1, 2022. It will also apply to the filing to be made on or before February 1, 2023 if the 2022 rate case has not been resolved by that date.

- 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 would 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.⁴ 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.
 - i. 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.
 - ii. 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

⁴ Historically, the City has implemented new sewer rates that become effective on May 1 and remain in effect until the following April 30.

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.

- iii. 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) would be recognized as allowable sewer expense in each PACC filing prior to a final order in the next Vicinity rate case.

V. GENERAL PROVISIONS

12. The Office of the Public Counsel (“Public Counsel”), while not a party to the *Stipulation*, has affirmatively stated that it does not oppose the *Stipulation* and will not oppose the implementation of the *Stipulation* in the 2020 and 2021 Production Adjustment Cost Clause (“PACC”) filings.

13. 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.

14. 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.

15. 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.

16. 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*.

17. 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.

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

19. 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.

20. 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/ Robert S. Berlin

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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 4th day of November, 2020, to counsel for all parties on the Commission's service list in this case.

/s/ _____