

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

In the Matter of Vicinity Energy Kansas) **File No. HT-2022-0212**
City, Inc.'s Adjustment to its PACC Tariff) Tariff No. YH-2022-0218

STAFF RECOMMENDATION TO REJECT TARIFF SHEETS

COMES NOW the Staff of the Missouri Public Service Commission (Staff), through counsel, and submits this *Staff Recommendation to Reject Tariff Sheets*.

1. On February 1, 2022, Vicinity Energy Kansas City, Inc. (Vicinity) filed two tariff sheets, each bearing an effective date of April 1, 2022, and supporting workpapers to revise its Production Adjustment Cost Clause (PACC). The proposed tariff sheets are P.S.C. MO. No. 1, 8th Revised SHEET No. 36 Cancelling P.S.C. MO. No. 1, 7th Revised SHEET No. 36 and P.S.C. MO. No. 1, 8th Revised SHEET No. 37 Cancelling P.S.C. MO. No. 1, 7th Revised SHEET No. 37. The Commission assigned this Tariff No. YH-2022-0218.

2. In this filing, Vicinity proposes a PACC surcharge of \$2.10 per mlb, which is an increase of \$2.10 over the current PACC surcharge of \$0 per mlb.

3. On February 2, 2022, the Commission directed Staff to file a recommendation regarding the proposed tariff sheets by March 4, 2022. Staff received an extension to March 11, 2022, in order to facilitate discussion between Staff and Vicinity.

4. In its prior PACC filing, which was Case No. HT-2021-0245, Vicinity originally proposed a negative PACC surcharge of (\$1.2651) per mlb to be refunded to its customers during the period of April 1, 2021, through March 31, 2022. It proposed to return to customers \$731,938, which consists of (a) \$579,806 that would have normally flown through the PACC as credits between April 1, 2021, and March 31, 2022, and (b) \$152,132 due to Vicinity's calculation error in its 2019 PACC filing that should have been returned to customers between April 1, 2020, and March 31, 2021.

5. Vicinity stated in its 2021 PACC filing (Case No. HT-2021-0245) that the calculation error resulted in refunds to customer being understated.¹ Vicinity also stated in its original 2021 PACC filing that it would refund the difference to its customers who were on the system in 2019 and 2020 by bill credit, or for those no longer on the system, a check.²

6. Shortly after making its 2021 PACC filing, Winter Storm Uri occurred, and Vicinity states that it experienced extraordinary high gas costs. Symmetry Energy Solutions, LLC (Symmetry) submitted a February 2021 invoice to Vicinity for \$18.6 million.³

7. To minimize future rate shock, Vicinity and Staff requested that the Commission reject Vicinity's February 1, 2021, tariff sheets and approve a stipulation setting the PACC surcharge at \$0 per mlb, defer into a regulatory liability account the amount that would otherwise be refunded to customers, and defer into a regulatory asset account accrued but unpaid extraordinary gas costs that would otherwise be charged to purchased gas expense in 2021.⁴

8. The Commission approved this stipulation on March 24, 2021. Paragraph 10 of the stipulation states:

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 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

¹ *Direct Testimony of Scott Stordahl*, HT-2021-0245, 4:4-7 (Feb 1, 2021).

² *Id.* at 9:9-16.

³ *Direct Testimony of Scott Stordahl*, HT-2022-0212, 9:12-13 (Feb 1, 2022).

⁴ *Stipulation and Agreement Resolving Issues Arising from Gas Price Spikes of February 2021*, HT-2021-0245 (March 12, 2021).

Paragraph 8 of the 6 Stipulation will be amortized or relieved over a period consistent with the Recovery Period established by the Commission in the next PACC filing.

9. Vicinity stated in this case (Case No. HT-2022-0212) that at the time the stipulation was filed in March 2021, it expected that the full amount of gas it used during Winter Storm Uri “would be known and paid within months.” However, because the final full amount was neither known nor paid in time to make an August 2021 filing, it did not make one.⁵

10. Vicinity and Symmetry are litigating this matter in state court in Jackson County, Missouri. Vicinity states that this matter may not be resolved until 2023, or later.⁶

11. Vicinity proposes not returning the credits that belong to its customers at this time, because “[t]he purpose of the deferral was to allow the deferred amounts to be flowed back to customers concurrently with the full amounts billed and paid for gas used during Winter Storm Uri.”⁷ Vicinity proposes to return these funds to customers in a future PACC filing after the litigation with Symmetry is resolved.⁸

12. However, Staff, in conjunction with its legal counsel, states that consistent with Vicinity’s tariff and the terms of the parties’ 2021 stipulation, Vicinity must include these deferred amounts in this filing. Vicinity’s tariff requires it to refund over-collections over the twelve month recovery period. The relevant section states:

At the end of the twelve (12) month recovery period for each accumulation period variance, the sum collected from all tariff Customers will be compared to the revenues intended to be collected from all tariff Customers. Any over-collection of intended revenues will be applied to Customer bills through a Reconciling Adjustment. The Company shall use an amortization period of twelve (12) months to refund/credit or Charge any remaining over-collection or under-collection through the Reconciling Adjustment to Customers. Other fuel

⁵ *Direct Testimony of Scott Stordahl*, HT-2022-0212, 10:5-13 (Feb 1, 2022).

⁶ *Id.* at 9:19-21.

⁷ *Id.* at 10:19-21.

⁸ *Id.* at 11:1-4.

and consumable cost refunds or credits that arise through the operation of the PACC may flow through as a Reconciling Adjustment, as approved by the Commission.⁹

13. Additionally, paragraph 10 of the 2021 stipulation states that this PACC filing “will reflect only the additional costs resulting from the gas price spike, net of the aforementioned customer credits to be recorded in a regulatory liability account.” Vicinity’s final gas costs for Winter Storm Uri are unknown at this time, but according to the stipulation’s terms, Vicinity should include the \$731,938 regulatory liability in this filing.

14. Also supporting returning the regulatory liability to customers in this case is that due to the potentially large gas costs at issue, compared to the relatively small amount of the regulatory liability, the refund may not make an appreciable difference in the amount of the PACC surcharge after Winter Storm Uri gas costs are included. Assuming the same amount of sales, Staff calculated that if Vicinity is ordered to pay the full amount of the February 2021 invoice of approximately \$18.6 million, less the approximately \$1 million Vicinity has already paid toward this invoice, the PACC surcharge would be \$11.79 per mlb. Adding the \$731,938 deferred regulatory liability decreases the PACC surcharge by \$0.40 to \$11.39 per mlb. Another consideration is that the Symmetry litigation may not be resolved through the trial and any appellate stages in the near future and during this time, several PACC filings will have been filed.

15. Specifically as to the amount due to Vicinity’s 2019 error, customers were entitled to receive this refund between April 20, 2020, and March 31, 2021, and should not continue to be penalized for Vicinity’s error. Vicinity stated that at the time of its 2021 PACC filing, two entities were Vicinity customers in 2019 but no longer are customers. At that time,

⁹ P.S.C. MO. No. 1, 1st Revised SHEET No. 32 Cancelling P.S.C. MO. No 1, (Original) SHEET No. 32 and P.S.C. MO. No. 1, 1st Revised SHEET No. 33 Cancelling P.S.C. MO. No. 1, (Original) SHEET No. 33.

Vicinity proposed to refund the difference by check.¹⁰ As more time passes, other entities will likely drop off Vicinity's system, and Vicinity may have difficulty locating them in order to send them a check. These entities should receive their refunds as soon as possible.

16. In the attached *Memorandum*, Staff recommends that the Commission reject Vicinity's proposed tariff sheets and direct Vicinity to file substitute tariff sheets that include the \$731,938 regulatory liability, to be returned to customers between April 1, 2022, and March 31, 2023, subject to further reconciliation and prudence review. Staff further recommends that the Commission suspend the timeline of this filing, set a prehearing conference date, and order the parties to propose a procedural schedule.

WHEREFORE, Staff recommends that the Commission issue an order rejecting the following tariff sheets and ordering Vicinity to file substitute PACC tariff sheets returning the \$731,938 regulatory liability:

P.S.C. MO. No. 1

8th Revised Sheet No. 36 Cancelling 7th Revised Sheet No. 36

8th Revised Sheet No. 37 Cancelling 7th Revised Sheet No. 37

Respectfully submitted,

/s/ Karen E. Bretz

Karen E. Bretz

Deputy Counsel

Missouri Bar No. 70632

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¹⁰ *Direct Testimony of Scott Stordahl*, HT-2021-0245, 9:12-14 (Feb 1, 2021).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been electronically mailed to all parties and/or counsel of record on this 11th day of March, 2022.

/s/ Karen E. Bretz

MEMORANDUM

TO: Missouri Public Service Commission Official File No. HT-2022-0212 and
Tariff Tracking No. YH-2022-0218

FROM: Keri Roth, Senior Research/Data Analyst, Water, Sewer, & Steam Department
Krishna L. Poudel, PhD, Economist, Energy Resources Department

/s/ Keri Roth 03/11/2022 /s/ Krishna L. Poudel 03/11/2022
Senior Research/Data Analyst / Date Economist / Date

/s/ Karen Bretz 03/11/2022
Staff Counsel Division / Date

SUBJECT: Staff Recommendation to Reject the Tariff Sheets Filed to Change Vicinity
Energy Kansas City, Inc.'s Production Adjustment Cost Clause Rate.

DATE: March 11, 2022

On February 1, 2022, Vicinity Energy Kansas City, Inc. ("Vicinity") filed with the Missouri Public Service Commission ("Commission") the following tariff sheets, each bearing an effective date of April 1, 2022:

P.S.C. MO. No. 1

8th Revised Sheet No. 36 Cancelling 7th Revised Sheet No. 36

8th Revised Sheet No. 37 Cancelling 7th Revised Sheet No. 37

This tariff filing would revise Vicinity's Production Adjustment Cost Clause ("PACC") for the twelve (12) months starting April 1, 2022 through March 31, 2023. The Commission approved Vicinity's PACC base rate in Case No. HR-2014-0066 and modified it in Case No. HR-2018-0341. Vicinity is obligated to file annual, with an option of semi-annual, rate adjustments to reflect changes to fuel and production costs.¹ The last two rate adjustments are as follows:

- On March 18, 2020, in Case No. HT-2020-0223, the Commission approved a PACC filing decreasing (refunding) rates \$0.2901/mlb, effective April 1, 2020; and
- On March 30, 2021, in Case No. HT-2021-0245, the Commission approved a PACC filing setting the rate at \$0.00, effective April 1, 2021.

In Case No. HT-2021-0245, Vicinity originally proposed a rate decrease (refund) of \$1.2651/mlb; however, in February 2021, Vicinity stated that it faced extraordinarily high gas bills due to

¹ P.S.C.MO. No. 1 1st Revised SHEET No. 31 Cancelling P,S,C,MO. No. 1 (Original) SHEET No. 31.

Winter Storm Uri. Symmetry Energy Solutions, LLC (“Symmetry”) submitted an invoice to Vicinity for February 2021 for \$18,599,733.90, which is currently in litigation. On January 18, 2022, Vicinity filed its Second Amended Petition in the Circuit Court of Jackson County, Missouri. Included in the petition, as Exhibit E, is a letter from Vicinity to Symmetry conceding to \$999,776 of the total \$18.6 million invoice to be accurate and agreed to remit payment for this portion. Through email correspondence, Staff has learned that Vicinity has included the \$999,776 payment for the February 2021 gas costs in this filing.

In Case No. HT-2021-0245 the Commission issued an *Order Approving Stipulation and Rejecting Production Adjustment Cost Clause (PACC) Tariff*, ordering Vicinity to set its PACC rate to \$0.00 and authorizing Vicinity to defer into a regulatory liability \$731,938 that otherwise would be returned to customers to help offset gas costs reasonably known and actually paid. This regulatory liability consists of (a) \$579,806 that would normally flow through the PACC as credits between April 1, 2021 and March 31, 2022 and (b) \$152,132 due to Vicinity’s calculation error in the 2019 PACC filing that should have been returned to customers between April 1, 2020 and March 31, 2021. In its order approving the stipulation, the Commission also authorized 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. Vicinity has not included the deferred liability in this filing, as Vicinity proposes to maintain the liability on its books and return it to customers once a PACC filing is made that includes the fully paid actual paid gas costs from Winter Storm Uri in February 2021.

Vicinity’s filing included the proposed tariff sheets and supporting workpapers consisting of electronic worksheets showing Vicinity’s calculation of the PACC for inclusion in customers’ bills beginning April 1, 2022 through March 31, 2023.

On February 2, 2022, the Commission directed Staff to file a recommendation on the pending tariff sheets no later than March 4, 2022. Staff received an extension and the current due date is March 11, 2022. The procedure for the calculation of the PACC is set out in Vicinity’s Tariff Sheet Nos. 31 through 37, titled “Production Adjustment Cost Clause (“PACC”). The PACC calculation components as described in Tariff Sheet Nos. 36 and 37 include the Current PACC and the Reconciliation Rate or “R factor” plus any applicable reconciling adjustments.

The table below shows the calculation of the proposed PACC Adjustment Rate for the accumulation period January through December 2021, effective for the billing period of April 1, 2022 through March 31, 2023:

Line No.	Description	Reference	Calculation of PACC Rate
	(A)	(B)	(C)
1	Actual PACC Allowable Cost	Sch. A	\$ 16,219,846
2	Accumulation Period Sales (Mlb including process steam)	Sch. C	1,726,574
3	Base PACC Rate (\$/Mlb)	Sch. A	\$ 7.17993
4	PACC Base Costs (\$)	Line 2 * Line 3	\$ 12,396,672
5	Total Company PACC Variance from PACC Base Cost (\$)	Line 1 - Line 4	\$ 3,823,174
6	Customer Responsibility	Note (a)	95%
7	PACC Amount for Calculation of Adjustment Rate (\$)	Line 5 * Line 6	\$ 3,632,016
8	Recovery Period Sales for Calculation of Adjustment (Mlb including process steam)	Sch. C	\$ 1,726,574
9	Current Period PACC Adjustment Rate (\$/Mlb)	Line 7 / Line 8	\$ 2.10
		Steam Sales (Mlb) @ Meter	
Note (a):	The customer responsibility percentage is specified in the settlement agreement in Case No. HR-2018-0341.		

Vicinity's proposed PACC for this 7th revision of Tariff Sheet No. 36 reflects a positive charge of \$2.10/mlb, which is a \$2.10 per mlb of steam used increase from the previous rate of \$0.00. Customers' total monthly PACC bill charge would be \$2.10 for every mlb of steam used. The PACC positive charge would be an increase to customer bills to reflect the customer share of the variation in fuel cost for the calendar year that ended in 2021. The PACC rate factor is designed to reflect each customer's share of the variation in production costs for the 2021 accumulation period compared to the actual production costs in Case No. HR-2018-0341. The difference between the actual production costs and the amount of production costs covered by base rates (both on a dollar basis) is multiplied by 95% and then divided by the total metered sales during the accumulation period to determine the PACC adjustment factor. To determine the amount of an individual customer's responsibility, the PACC adjustment factor is multiplied by the actual steam sales to that individual customer during the accumulation period, with the resulting dollar amount charged or credited to the customer in twelve (12) equal installments.

Hedging

Vicinity has taken steps to hedge a significant portion of its gas supply this winter. Staff has communicated with Vicinity through email correspondence and a virtual meeting regarding its

hedging arrangements. Through that communication, Staff has learned the following about Vicinity's hedging arrangements. The hedging contract for the 2021-2022 winter was entered into by Vicinity and Symmetry on December 8, 2021, at a fixed price of \$6.17/MMBtu. Vicinity hedged 40% of customer load across all sites company-wide. This is done as a risk mitigation measure to avoid spot market pricing exposure and to provide budget consistency for forecasting purposes. Vicinity hedged the months of December 2021 through April 2022. Vicinity hedged April to lower the weighted average cost of the winter period. Vicinity claims the 40% level was determined to be reasonably prudent, and is consistent with the level of hedging at Vicinity's other operations. The \$6.17/MMBtu price was determined based on an analysis of available market data at the time of execution.

In addition, Vicinity has made the following hedging arrangement on behalf of Cargill. During December 2021 through March 2022, Cargill's first 100,000 MMBTU/month will be priced on the monthly IFERC Southern Star settlement. All volumes over the 100,000 MMBTU/month will be priced on the Southern Star (SSC) GDD index. Starting April 1, 2022, Cargill's pricing will go back to all Cargill volumes priced on the SSC GDD index. This pricing adjustment is included in the calculation of this 2021 PACC filing made on February 1, 2022.

Based on the above provided information and the discussion with Vicinity, Staff does not currently have any concerns regarding Vicinity's hedging arrangements for the given period of time.

Staff Recommendation

Staff has reviewed the filed tariff sheets and recommends the Commission reject the tariff sheets Vicinity filed on February 1, 2022, and order Vicinity to file substitute tariff sheets which include the regulatory liability of \$731,938 the Commission approved in the *Order Approving Stipulation and Rejecting Production Adjustment Cost Clause (PACC) Tariff*, in Case No. HT-2021-0245. When the Commission authorized Vicinity to record this regulatory liability, it intended to return this as a credit to customers to help offset gas costs from February 2021 once known and actually paid. However, the gas costs are still not known at the time of this filing and will likely not be resolved for some time.

Including the regulatory liability in this filing will decrease the PACC Adjusted Rate to \$0.38/mlb, which remains an increase from the previous rate of \$0.00, but a decrease of \$1.72/mlb compared to Vicinity's proposed PACC. Staff is concerned that if it is not refunded to customers in this filing, the regulatory liability may remain on Vicinity's books past Vicinity's next PACC filing as well, based on the possibility of future court proceedings and appeals.

Further, there is no justification to continue deferring this credit because it may minimally offset Vicinity's Winter Storm Uri gas costs, once they are known. Assuming sales remain the same, if Vicinity is ordered to pay the entire February 2021 invoiced amount of \$18,599,733.90, less the approximately \$1 million Vicinity has paid toward this invoice, the PACC Adjusted Rate would be \$11.79/mlb. Adding the regulatory liability to offset the allowable costs would decrease the PACC Adjusted Rate by \$0.40 to \$11.39/mlb. Because the credit would have a minimal impact on customers' bills after the Symmetry litigation is resolved, combined with Vicinity seeking Commission approval to recover the regulatory asset over a period greater than one year,² it is unreasonable for Vicinity to continue to carry this regulatory liability on its books and hinder customers from receiving credits, some of which they should have received between April 2020 and March 2021.

For these reasons, Staff recommends that the Commission reject Vicinity's proposed tariff sheets and order it to file substitute tariff sheets that include the \$731,938 due to its customers, subject to further reconciliation and prudence review.

Staff has verified that Vicinity is not delinquent on any assessment and is current with annual report filings. Vicinity is current on its submission of its Surveillance Monitoring reports as required in the *Non-Unanimous Stipulation and Agreement* approved by the Commission in Case No. HR-2014-0066. Staff is not aware of any other matter pending before the Commission that affects this tariff filing. Staff's recommendation for approval of the PACC change in this case is solely based on the accuracy of Vicinity's calculations and is not indicative of the prudence of the fuel and production costs included in Vicinity's PACC filing.

² Stipulation and Agreement Resolving Issues Arising from Gas Price Spikes of February 2021, Case No. HT-2021-0245, paragraph 10.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of Vicinity Energy Kansas City, Inc.'s Adjustment to its PACC Tariff)

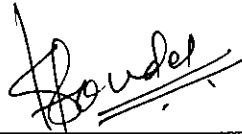
) File No. HT-2022-0212
) Tracking No. YH-2022-0218

AFFIDAVIT OF KRISHNA L. POUDEL, PhD

STATE OF MISSOURI)
)) ss.
COUNTY OF COLE)

COMES NOW Krishna L. Poudel, PhD, and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Staff Recommendation in memorandum form*; and that the same is true and correct according to his best knowledge and belief, under penalty of perjury.

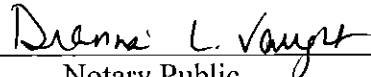
Further the Affiant sayeth not.



Krishna L. Poudel, PhD

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 1st day of March, 2022.



Notary Public

<p>DIANNA L. VAUGHT Notary Public - Notary Seal State of Missouri Commissioned for Cole County My Commission Expires: July 18, 2023 Commission Number: 15207377</p>

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

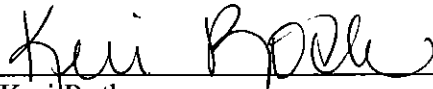
In the Matter of Vicinity Energy Kansas)
City, Inc.'s Adjustment to its PACC Tariff)
File No. HT-2022-0212
Tracking No. YH-2022-0218

AFFIDAVIT OF KERI ROTH

STATE OF MISSOURI)
)
COUNTY OF COLE) ss.

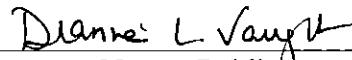
COMES NOW Keri Roth, and on her oath declares that she is of sound mind and lawful age; that she contributed to the foregoing *Staff Recommendation in memorandum form*; and that the same is true and correct according to her best knowledge and belief, under penalty of perjury.

Further the Affiant sayeth not.


_____ Keri Roth

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 15 day of March, 2022.


_____ Notary Public

