

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held by telephone
and internet audio conference on
the 24th day of March, 2021.

In the Matter of Vicinity Energy Kansas) **File No. HT-2021-0245**
City's Adjustment of Its PACC Tariff) Tracking No.: YH-2021-0156

**ORDER APPROVING STIPULATION AND REJECTING PRODUCTION
ADJUSTMENT COST CLAUSE (PACC) TARIFF**

Issue Date: March 24, 2021

Effective Date: April 1, 2021

INTRODUCTION

On February 1, 2021,¹ Vicinity Energy Kansas City, Inc. filed tariff sheets (Tracking No. YH-2021-0156) and supporting testimony of Scott Stordahl, General Manager of Vicinity, to revise its Production Adjustment Cost Clause (PACC) rates for steam service for the twelve month recovery period beginning April 1, 2021, through March 31, 2022. The tariff sheets have a proposed effective date of April 1, 2021. The Commission issued notice of the filing, set an intervention deadline, and directed the Commission's Staff (Staff) to submit a recommendation. On March 2, Staff and Vicinity filed a Joint Motion for Extension of Time, asking the Commission to extend the deadline for Staff's recommendation until March 12. The request explained that after the February 1 filing, Vicinity experienced a period of extraordinarily high gas costs which might have a dramatic impact on future PACC adjustments. Vicinity and Staff sought to extend the deadline to investigate. The Commission set March 12 as a deadline for Staff's recommendation on revised tariff sheets, and March 15 as a deadline for comments on

¹ All date references will be to 2021 unless otherwise indicated.

revised tariff sheets or Staff's recommendation. On March 12, in lieu of a recommendation, Staff and Vicinity filed a Stipulation and Agreement Resolving Issues Arising from Gas Price Spikes of February 2021 (Stipulation). The Stipulation contained exemplar tariff sheets reflecting the agreements set out in the Stipulation. On March 12, Vicinity also filed a Motion for Expedited Treatment, requesting that the Commission approve the Stipulation in time to allow compliance tariffs to be approved to go into effect by April 1.

More than seven days have passed since the parties filed the Stipulation on March 12 with neither the Office of Public Counsel nor any other person objecting thereto. The Stipulation will, therefore, be treated as a unanimous stipulation.²

Vicinity's PACC adjustment is required under the terms of a stipulation and agreement approved by the Commission in File No. HR-2014-0066. The procedure for the calculation of the PACC for steam service sales is set out in Vicinity's Tariff Sheets Nos. 31 through 37, which are titled "Production Adjustment Cost Clause." The Stipulation states that per the revised tariff sheets which were filed on February 1, 2021 the proposed PACC factor was (\$1.2651)/mlb, before rounding. The factor was negative (that is, customers' bills would be reduced by the implementation of this factor) because the production costs related to calendar year 2020 and included in the calculation of the factor had declined relative to the base level established in the 2018 rate case (HR-2018-0341). The main driver of the reduction in costs in 2020 was the cost of natural gas in 2020

² 20 CSR 4240-2.115 (2)(B) provides: Each party shall have seven (7) days from the filing of a non-unanimous stipulation and agreement to file an objection to the non-unanimous stipulation and agreement. Failure to file a timely objection shall constitute a full waiver of that party's right to a hearing. Subsection (C) then provides that if no party timely objects to a non-unanimous stipulation and agreement, the commission may treat the non-unanimous stipulation and agreement as a unanimous stipulation and agreement.

versus the cost of natural gas in the base PACC cost. The February 1 tariff sheets also accommodated an additional refund for the benefit of tariff customers attributable to a correction to the company's 2019 PACC filing.³

The Stipulation states that the currently effective PACC factor is (\$0.2901)/mlb. Like the factor proposed in the February 1 tariff sheets, this factor is negative and, thus, reduces customers' bills. The Stipulation states that the proposed factor is significantly more negative than the current PACC factor, and would, therefore, lead to a larger reduction in customers' bills.

The Stipulation states that 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 production and transmission of natural gas and greatly increased demand (Weather Event). It states that these factors sent gas prices "skyrocketing across the region." The Stipulation states that Vicinity's natural gas cost is the largest component in the calculation of its PACC and predicts that because of the weather event, the PACC factor will be switched from the current negative number to a significantly positive number in the next PACC filing. The Stipulation states that the current estimate is that the excess costs will at least double Vicinity's 2021 gas cost as compared to its 2020 gas cost, depending on a number of factors being resolved by gas suppliers and transportation companies; and that because of these factors, neither the precise cost nor when it will be determinable is now known. The Stipulation states the Company is unable to offer any reasonable estimate of the future PACC factor at this time.

³ The Stipulation cites the Direct Testimony of Mr. Stordahl concerning an additional refund proposed for the benefit of tariff customers attributable to a correction to its 2019 PACC filing. The 2020 PACC filing supported annual customer credits of \$579,806 while the correction of the 2019 PACC filing resulted in additional customer credits of \$152,132 to eligible customers.

The Stipulation states 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. The Stipulation states that 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. The Stipulation states that because the PACC factor proposed in the February 1 tariffs is significantly more negative than the current PACC factor and because the next PACC filing is known to result in a positive PACC factor, implementation of the February 1 tariff's proposed PACC factor will cause extreme volatility in customer bills.

The Stipulation states that its provisions are designed to both eliminate the up and down swings and to mitigate the impact of the February weather event and gas price spikes on customers' bills. It states that in general terms, the Signatories propose that rather than implementing the larger reduction to customers' bills proposed in the pending February 1 tariffs, the Commission instead approve a PACC factor that results in a current change of \$0 to customers' bills.⁴ It states that doing so will create a much smoother transition to the coming PACC factor that will increase customers' bills. It states that the amounts that would have been refunded to customers will be captured as a regulatory

⁴ This change would be achieved by the rejection or disapproval of the PACC changes sponsored in the Direct Testimony of Mr. Stordahl.

liability and used to directly offset a portion of the PACC increase driven by the February gas price spikes.

TERMS AND CONDITIONS OF THE STIPULATION AGREEMENT

The parties propose the following terms and conditions:

1. 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 the Stipulation and the Introduction of this order.

2. 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 the Stipulation.

3. 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 Paragraph 8 of the

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

4. 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.

5. 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.

DECISION

The Commission finds that because of the February weather event, the implementation of the PACC factor set out in the pending tariffs, which decreases

customers' bills, is likely to result in significant rate volatility and "rate shock" for Vicinity's customers with the next PACC adjustment proceeding. The Commission finds that the Stipulation provides a reasonable way both to accommodate and meet the requirements of the PACC tariff and to mitigate the effect of the weather event on rates. The Commission finds that the Stipulation achieves just and reasonable rates under all the circumstances and is in the best interests of Vicinity and Vicinity's customers. The Commission will approve the Stipulation, reject the tariffs filed by Vicinity on February 1, 2021, order Vicinity to file tariffs in conformity with the Stipulation with an effective date of April 1, 2021, and issue orders as requested by the parties. Because the Commission will order Vicinity to file tariffs with an effective date of April 1, 2021, the Commission will grant Vicinity's Motion for Expedited Treatment and make this order effective on April 1, 2021.

THE COMMISSION ORDERS THAT:

1. Vicinity's Motion for Expedited Treatment is granted.
2. The Stipulation and Agreement Resolving Issues Arising from the Gas Price Spikes of February 2021 filed March 12, 2021 is approved, and Vicinity Energy Kansas City, Inc. is ordered to perform and comply with all of its terms and conditions. The Stipulation and Agreement is attached as Exhibit A to this order, and its terms and conditions are incorporated herein by reference.
3. The pending tariff sheets, assigned Tracking No. YH-2021-0156, are rejected.
4. No later than March 25, 2021, Vicinity shall file tariff sheets in conformity with the Stipulation with an effective date of April 1, 2021. Any party objecting thereto

shall do so no later than March 26, 2021. The Commission delegates its authority to the presiding officer to approve the compliance tariff after it is filed.

5. The Commission 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 the body of this order.

6. The Commission authorizes Vicinity to defer into a regulatory asset account any accrued but unpaid extraordinary gas costs that would otherwise be charged to purchase gas expense in 2021.

7. This order shall be effective on April 1, 2021.



BY THE COMMISSION

A handwritten signature in dark ink, reading "Morris L. Woodruff".

Morris L. Woodruff
Secretary

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

Graham, Regulatory Law Judge

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

Casi Aslin

Senior Counsel

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Attorney for Vicinity Energy Kansas City,
Inc.

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** _____

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 24th day of March, 2021.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

March 24, 2021

File/Case No. HT-2021-0245

**Missouri Public Service
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Inc.**

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.