

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

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

**VICINITY ENERGY KANSAS CITY, INC.'S RESPONSE**  
**TO ORDER DIRECTING FILING**

COMES NOW Vicinity Energy Kansas City, Inc. (“Vicinity” or the “Company”) and for its Response to Order Directing Filing states as follows:

**INTRODUCTION**

1. On November 4, 2020, Vicinity and the Staff of the Commission filed a Stipulation and Agreement Resolving Issues Arising from the City of Kansas City Change in Sewer Billing (the “Stipulation”). The Office of the Public Counsel, although not a signatory, affirmatively stated that it did not oppose the Stipulation.

2. The Stipulation is intended to address a change in circumstances that was unforeseen and could not have been reasonably anticipated at the time the Production Adjustment Cost Clause (“PACC”) was approved by the Commission. That change in circumstances (a change in billing practices by the City of Kansas City) has caused the PACC to no longer operate as intended.

3. The remedy proposed in the Stipulation is not intended to allow the Company to take advantage of this change in circumstances. In fact, it will cause Vicinity to receive lower revenues and cause customers to receive larger refunds through the PACC than would be the case if the City had not changed its billing. In other words, the remedy proposed in the Stipulation will not make the Company whole, but will mitigate some of the harm that would accrue if nothing were done to address the issues that arose from the City’s change in billing.

The Stipulation is merely an attempt to craft an administratively and conceptually simple way to prevent some of the significant financial harm to the Company that would otherwise result from the City's unilateral decision to change how it bills one of the Company's largest customers for sewer service.

4. The Stipulation works in customers' favor in two ways. First, because the Company recorded as a reduction in 2019 revenues and sewer expenses the \$216,211 credit from the City, customers received a larger credit (approximately \$69,000) in the 2019 PACC filing than they would have had the City not changed its billing practices. Second, customers will continue to receive larger refunds through the PACC in 2020-2022 because the \$1.49/mlb imputed sewer expense is lower than the current sewer expense, which means that sewer expense flowing through the PACC will be lower than actual sewer expense incurred by the Company.

5. The remedy proposed in the Stipulation is intended to be administratively and conceptually simple, mitigate damage to the company, and still provide a benefit to the customers. The Company hopes that this brief introduction and the following specific answers to the Commission's questions will answer any questions and resolve any concerns that the Commission may have with the Stipulation.

## RESPONSES TO QUESTIONS

### QUESTION 1.

*Tariff Sheet No. 38 at VI, Contracts, requires publishing the case number, approval date and approximate expiration date for each Special Contract.*

*Stipulation, page 2 at 5 states Vicinity's two process steam customers (Ingredion and Cargill) have separately entered into private contract arrangements that include stand-alone provisions for fuel and consumable cost recovery.*

*Question-Are the Ingredion and Cargill contracts considered Special Contracts per the tariff? If yes, why is the information for each contract not included on Tariff Sheet No. 38? If the answer is no, are the stand-alone provisions of the private contract arrangements for fuel and consumable cost recovery different from the PACC recovery of those costs as stated in Tariff Sheet Nos. 31-37?*

**RESPONSE:**

The contract arrangements between Vicinity and the two non-tariff process steam customers are not "Special Contracts" as provided for by the referenced tariff. Tariff Sheet No. 38 at sections I-II identify the availability of the SCSS tariff as limited to Large Commercial customers eligible to receive service (i.e., primarily space heating) under the LCS tariff (i.e., Tariff Sheet No. 10). As a result, the disclosure requirements of Tariff Sheet No. 38 at VI do not apply to the process steam customer contracts. In addition, both the Ingredion and the Cargill contracts pre-date the effective date of Tariff Sheet 38. Since the contracts were already in place when the tariff became effective, the filing requirements of Tariff Sheet 38 do not apply to them. Nonetheless, both contracts have been submitted to the Staff of the Commission as Highly Confidential non-case submissions, and any amendments, renewals or modifications are also submitted to the Staff.

While not "Special Contracts," the contracts between Vicinity and the two process steam customers do contain fuel and consumable cost recovery terms that are similar to but not identical to the PACC Tariff Sheet Nos. 31-37. These contracts are the result of separate arms-

length negotiations between the Company and knowledgeable unaffiliated representatives of Cargill and Ingredion. It is important to note that all customers benefit from having Ingredion and Cargill on the system because the revenues received from these two process steam customers cover all the variable costs associated with serving them plus a contribution to the fixed costs of the system. Thus the amounts that other customers need to pay to cover fixed costs are lower than they would otherwise be because of the revenues received from the process steam customers.

QUESTION 2.

*Tariff Sheet No. 35, which includes definitions of PACC production costs at B. Consumable costs, recorded in regulatory account 5022 Consumable expense – sewer states: This account includes the cost of waste water and storm water service charges from the City of Kansas City for condensate associated with steam delivered to the ultimate customers located within the City. Stipulation, page 6, III. Specific Terms and Conditions of the Agreement at 11, c states that if the sewer expenses billed to Vicinity for Cargill in 2020-2022 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 the year’s actual Cargill sales.*

*Question-How does this provision of the stipulation comply with the PACC Tariff Sheet No. 35? If not, does Vicinity/Veolia plan to file a compliance tariff for terms and conditions agreed to in the stipulation?*

RESPONSE:

As noted in the Stipulation, page 2 at paragraph 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).” From the Company’s perspective, this statement summarizes the concepts underlying the PACC formulae calculations set forth beginning at Tariff Sheet No. 31, II. Calculations and detailed within Paragraph A.

When the PACC was first established in Case No. HR-2014-0066, it was anticipated that all customers (whether tariff or process steam) would mutually benefit from all allowable fuel and consumable costs incurred by the Company. Hence, the referenced PACC algorithms developed unit costs under a simplifying premise that total allowable costs (the numerator) would be divided by total sales (the denominator), both terms consistently reflecting a full twelve month period. At that time, there was no reason to believe or anticipate that any entity (e.g., the City of Kansas City or “City”) providing fuel or consumable cost services (e.g., sewer services) to the Company would choose to step around Vicinity in order to directly provide those services to a single specific Vicinity customer (e.g., Cargill). Once this unilateral decision was made and implemented by the City without adequate notice to or sufficient opportunity by Vicinity to modify the PACC tariff accordingly, the original simplifying premise was nullified with regard to sewer costs and would result in adverse financial consequences to Vicinity absent some interim administrative modification of the PACC .

The negotiated imputation of sewer expenses noted in the question above is only one of several remedies considered by the Company. Assuming the Company incurred \$0 of sewer costs for Cargill, one prospective alternative approach evaluated by Vicinity included the separate calculation of actual sewer unit costs where total sewer costs (numerator) would be divided by total non-Cargill customer sales. This option would incorporate current costs,

account for the City's direct billing of sewer costs to Cargill and recognize that the original simplifying "all customers benefit" premise no longer applied to sewer costs.

The action by the City has artificially lowered the numerator (without tangible benefit to the Company) and continued use of inconsistent values for the denominator will irreparably alter the balanced premise of the PACC. Consistent balance or synchronization of both the numerator and denominator are critically important.

The \$1.49/mlb base unit cost rate specified in the Stipulation does not fully represent the current unit cost of sewer charges from the City associated with Vicinity's sales to its non-Cargill customers. For simplification and to the benefit of tariff customers, the negotiated \$1.49/mlb used for imputation purposes represents the base sewer unit cost rate set in the 2018 rate case (HR-2018-0341), which relied upon sewer cost data from calendar years 2016-2017. Even though the \$1.49/mlb imputation rate is below the current actual sewer unit cost incurred by Vicinity for non-Cargill customers, the Company was agreeable to this approach as an interim measure until the next rate case is processed (because the PACC tariff requires a rate case filing at least every four years, the Company will be filing a general rate case no later than 2022).

Staff and Vicinity agreed to the imputation process in the Stipulation as an interim measure to avoid the otherwise dire financial effects of this sewer billing change.

Tariff Sheet No. 33, in the continuation of paragraph B., provides: "Other fuel 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." Further: "The Reconciling Adjustment shall be calculated and applied in a manner similar to the PACC<sub>t</sub> and PACC<sub>i</sub>." The provisions of the stipulation comply with the provisions of the tariff, because the adjustment proposed in the stipulation, if approved by the Commission, would be a "Reconciling

Adjustment” as provided for in the tariff. However, if directed by the Commission, the Company will prepare and collaborate with Staff and OPC representatives on revisions to PACC tariff language to incorporate the terms and conditions agreed to in the stipulation or otherwise ordered by the Commission.

QUESTION 3.

*Were the 2019 Cargill sewer charges billed to Vicinity by the City of Kansas City included in the PACC calculation? If yes, why is it not appropriate to refund all customers that pay the PACC a portion of the City of Kansas City refunds for Cargill sewer charges previously collected from all PACC customers?*

RESPONSE:

Yes. The 2019 PACC filing included Cargill-related sewer costs for the months of January-December 2019 reduced by the \$261,211 City credit (refunding August and September charges). See, in part, the response to Question 2. Since PACC implementation, the actual fuel and consumable unit cost rate (i.e., calendar year costs divided by sales to all customers) have been compared to the base unit cost rate to determine the amount of any surcharges or credits due tariff customers. In all years through 2019, the PACC has produced credits to customers.

In 2019, Vicinity was billed for Cargill sewer costs for the months of January-December. As noted in paragraph 7 of the Stipulation, the City installed a condensate meter on Cargill’s premises and began billing Cargill directly for sewer charges on that condensate sinking into the City’s sewer system, effective August 1, 2019. Unfortunately, the City did not simultaneously discontinue billing Vicinity for Cargill related sewer charges but continued to bill Vicinity through April 2020. Consistent with the Company’s contract with Cargill, Vicinity continued to bill Cargill for actual billed sewer costs in August 2019 through April 2020 – resulting in the

double billing to Cargill (once by the City and again through Vicinity's pass-through billing of a portion of the City's sewer charges).

As noted above, the Company's 2019 consumable expense included Cargill-related sewer costs for each month of January through December, reduced by the City credit (\$261,211) – recognition of this credit resulted in a benefit to tariff customers of about \$69,055. This credit was also fully passed through to Cargill and resulted in PACC recognition of only ten months of Cargill sewer costs (numerator) in 2019. The Cargill sales (denominator) were not similarly limited to ten months in calculating the actual sewer cost unit rate, causing a mismatch in the calculation of the PACC actual unit cost rate to the benefit of the tariff customers. Even though Vicinity did not retain any economic value from receipt of that City credit, the credit reduced sewer expenses and resulted in additional credits to tariff customers in the 2019 PACC filing, Vicinity has not proposed to reverse this credit from 2019 expense both as a statement of good will to its customers and due to the complexity of making alterations to the 2019 PACC filing that would result in a retroactive decrease in refunds currently flowing to customers.

If sewer costs recorded in 2019 were further reduced by a portion of the refund received in 2020 that relates to the months of October-December 2019 (i.e., limiting Cargill 2019 sewer costs to the seven months of January-July), tariff customers would improperly receive additional PACC credits (which they did not pay for or earn) unless the actual sewer unit cost calculation consistently limited Cargill sales to the months of January-July 2019. As noted in response to Question 2, the PACC tariff base unit cost rate and actual unit cost rate are determined on a comparable basis (i.e., total fuel and consumable costs divided by total delivered steam sales) – the PACC formulae calculations are set forth beginning at Tariff Sheet No. 31, II. Calculations and detailed within Paragraph A. If the 2019 PACC sewer cost unit rate was recalculated and



limited Cargill related sewer expenses and Cargill sales to the months of January-July, the impact on the filed 2019 PACC results would increase the cost to tariff customers by \$93,410. While this would benefit the Company, the Company is not requesting this remedy for the same reasons stated above.

However, for the PACC to operate properly, it is critically important for the numerator and denominator to be presented on a consistent basis. In other words, if 2019 consumable costs (numerator) were limited to include Cargill sewer charges for the months of January-July, fairness and consistency would require that Cargill sales (denominator) also be limited to January-July in quantifying the sewer cost unit rate.

While it would be inappropriate to calculate additional refunds to tariff customers based on an inconsistent application of the PACC, it would be consistent with the operation of the PACC to recalculate the 2019 PACC based on Cargill-related sewer costs and Cargill sales to January-July 2019 with inclusion of a full year of expenses and sales for all non-Cargill customers. However, as stated above, the increased costs to customers of \$93,410, while justified, could confuse customers and create ill will that the Company prefers to avoid.

QUESTION 4.

*Has the Cargill contract been modified since the discovery of the City of Kansas City sewer charge error that was billed to Vicinity/Veolia between August 2019 through April 2020?*

RESPONSE:

No. Vicinity and Cargill are engaged in discussions regarding a planned routine renewal of the current contract without significant alteration, but the City's sewer billing change and billing credits/refunds in 2019-2020 due to the double billing error was not a factor contributing to those discussions. Neither the Company nor Cargill were directly benefited or directly

harmful by the City's actions. Nevertheless, how the ongoing impact of the City billing change and resulting credits/refunds are handled in administration of the PACC could have a significant negative impact on Vicinity's financial condition.

**WHEREFORE**, Vicinity respectfully submits this Response to the Commission's Order Directing Filing.

Respectfully Submitted,

By: /s/ Lewis Mills  
Lewis Mills, MO Bar No. 35275  
BRYAN CAVE LEIGHTON PAISNER LLP  
221 Bolivar Street, Suite 101  
Jefferson City, Missouri 65101  
573-556-6627 - Telephone  
573-556-7447 - Facsimile  
[lewis.mills@bryancave.com](mailto:lewis.mills@bryancave.com)

**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 emailed to all parties of record this 11th day of December, 2020.

/s/ Lewis Mills  
Lewis Mills