

STEVENS & LEE
LAWYERS & CONSULTANTS

17 North Second Street
16th Floor
Harrisburg, PA 17101
(717) 234-1090 Fax (717) 234-1099
www.stevenslee.com

Direct Dial: (717) 255-7365
Email: mag@stevenslee.com

September 9, 2016

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor
Harrisburg, PA 17120

**Re: Proceeding to Evaluate Transition to Corrected Non-Solar Tier 1 Calculation
Methodology; Docket No. M-2009-2093383**

Dear Secretary Chiavetta:

Enclosed for filing are the Reply Comments of WGL Energy Services, Inc. in response to the August 11, 2016 Tentative Order issued in the above-captioned matter.

If you have any questions, please do not hesitate to contact me. Thank you.

Best Regards,

STEVENS & LEE



Michael A. Grum

Encl.

cc: Scott Gebhart and Kriss Brown (via email)

Philadelphia • Reading • Valley Forge • Allentown • Harrisburg • Lancaster • Scranton
• Wilkes-Barre • Princeton • Charleston • New York • Wilmington

A PROFESSIONAL CORPORATION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proceeding to Evaluate Transition to Corrected : Docket No. M-2009-2093383
Non-Solar Tier I Calculation Methodology :

REPLY COMMENTS OF WGL ENERGY SERVICES, INC.

Pursuant to the Tentative Order entered by the Pennsylvania Public Utility Commission on August 11, 2016, WGL Energy Services, Inc. (“WGL Energy”) hereby submits these Reply Comments on potential remedial actions to address the unanticipated increase in the non-solar Tier 1 AEC obligations that resulted from the corrected 2016 quarterly adjustment.

Summary of Reply Comments

WGL Energy is concerned with the EDC suggestion that while the overall costs of acquiring additional AECs as a result of the adjustment will be significant, the costs should be borne entirely by the EGSs, regardless of the EGSs’ limited ability to recover the costs from customers. Comments filed by the EDCs¹ uniformly ignore the fact that it will be difficult, if not impossible for EGSs to recover such retroactive costs, which simply were not known or foreseeable at the time that EGSs contracted with their customers. It is thus fundamentally unfair that EGSs would be required to bear the full cost of the AEC Program’s Administrator’s error.

As WGL Energy expressed in its Initial Comments, and as reinforced by the Comments of RESA,² the significant fact is that many customers that were served by EGSs during the 2016 Compliance Year may have since switched suppliers. This reality, coupled with contract

¹ See generally, Comments of PPL, PECO Energy Company, Duquesne Light Company, Met-Ed/Penelec/Penn Power /West Penn Power, and the Energy Association of Pennsylvania

² See RESA Comments, at p. 5

language that precludes imposition of new charges on customers for retroactively Commission-imposed costs, will make it difficult, if not impossible, for EGSs to recover the unforeseen costs of acquiring additional AECs for the 2016 compliance year. Based on prior period volumes, WGL Energy estimates that it would incur an additional cost of \$110,000 - \$120,000 to purchase the 9,136 AECs attributed to the 0.371836% increase. Additionally, WGL Energy has contracted with customers for future supply based on the current rates. As PPL notes in its Comments (at p. 14), EGSs were unable to add the costs of the unanticipated AECs into the pricing of their current contracts. WGL Energy estimates that the MWHs to be served under contracts will result in an additional \$275,000 - \$300,000 in costs to purchase approximately 21,000 Tier I AECs as a result of the proposed AEC adjustment. WGL Energy assumes that other EGSs would be in a similar position, and the proposed adjustment would require suppliers to determine whether to seek a surcharge to pass the additional costs on to customers in the upcoming months, in the unlikely event that contract language contemplates or otherwise would permit such a pass-through. PECO estimates that the total cost for both EDCs and EGSs to correct the Program Administrator's error is in the range of \$6 million to \$7 million (PECO Comments, page 4). While EDCs have a regulated mechanism to recover retroactive costs imposed by the Commission, EGSs do not have such options in the competitive market.

As the Comments of the Industrial Customer Groups acknowledge, EGS customer contract language may not allow EGSs to pass surcharges through to customers without a Commission order that imposes the increase. WGL Energy's contracts include "change in law" language that address changes to an existing law, however, a multi-year error in the implementation of an existing law on the part of a third party AEPS Program Administrator may not qualify as a change in law event. WGL Energy expects that its commercial customers will

push back on efforts to pass through additional charges, even if the Commission issues an order purporting to authorize such a surcharge. Put another way, even if such a Commission order did exist, WGL Energy doubts that Pennsylvania customers would accept the additional charges as routine pricing adjustments. Attempting to impose such charges could result in customer complaints and even more additional costs to suppliers to resolve such complaints.

Reply to EDC Comments

The EDCs' objections to the Commission's Option No. 1 generally fall into 2 categories: 1) EGSs should not be "excused" from AEPS compliance as a result of the administrative error; and 2) the EDCs lack an appropriate tariff mechanism to impose a non-bypassable surcharge related to the acquisition of additional AECs. WGL Energy submits that these objections do not justify rejection of Option 1. WGL Energy maintains the position expressed in its Initial Comments, that Commission Option 1 is the optimal choice for remedying this unfortunate situation. WGL Energy fully supports AEC procurement and non-bypassable cost recovery by the EDCs as the best way to fairly and equitably recover the unanticipated costs of correcting the Program Administrator's miscalculation. Option 1 eliminates the need for EGSs to attempt to assess a surcharge on past and present retail customers in order to recover costs associated with a past compliance period. It also would prevent customer confusion in the marketplace and would avoid complaints that would result from an attempted imposition of an unforeseen surcharge stemming from a prior billing period.

With respect to the EDCs' concern that Option 1 would "excuse" AEPS compliance by EGSs, WGL Energy respectfully disagrees, and submits that proposed Option 1 would not excuse compliance by EGSs. To the contrary, EGSs will still be subject to all relevant compliance obligations for Compliance Year 2016 and beyond. The adoption of Option 1

would simply provide a fair and reasonable methodology to ensure that the full amount of AECs required by the AEPS statute are acquired by both EGSs and EDCs, without imposing an unjust and unforeseen added expense on EGSs. The additional costs flowing from the past Program Administrator's error should not be one of the risks that suppliers should be expected to manage when pricing their supply. Those additional costs are not the result of market forces, energy price movements or normal adjustments in costs at PJM, which EGS are fully capable of managing. Rather, the additional 7% Tier I requirement is the result of a past error in the AEPS administration process. Now that the error has been identified, the adjustment should be focused on implementing the necessary adjustments for future periods only, and not applied retroactively.

With respect to the second category of EDC concerns (lack of an appropriate tariff mechanism to implement a non-bypassable charge), WGL Energy understands that the EDCs may not have an existing rider that is appropriate for implementing a new non-bypassable charge related to the AEC adjustment. However, the Commission's Tentative Order did not limit EDCs to choosing from an existing rider. The Tentative Order suggested that the EDCs could propose "other tariff mechanisms as deemed optimal by individual EDCs, so long as the charge is applicable to all rate classes." This option provides each EDC with flexibility to develop a mechanism that best suits their needs and minimizes their challenges.

PPL Proposed Alternative Option

WGL Energy agrees with PPL's position that the Act 129 Adjustment should only be imposed prospectively. As PPL notes, section 2814(c) of the Public Utility Code does not authorize the Commission to make a retroactive adjustment for a compliance quarter or year. WGL Energy submits that the optimal solution to the situation is for 1) the Commission to make the adjustment prospective only, starting with the 2016-2017 Compliance Year, and 2) require

the EDCs to procure the additional non-solar Tier 1 AECs resulting from the adjustment, as set forth in Option 1 from the Tentative Order.

Conclusion

While there may be no perfect solution to this unfortunate situation caused by the Program Administrator's error, WGL Energy strongly believes that the Commission's Option 1 is by far the best way to spread the costs of the adjustment equitably to all customers. Whether they take service under a competitive supply contract or via default service, Option 1 would ensure that all Pennsylvania customers share the incremental compliance costs stemming from the Program Administrator's error. Hence, a non-bypassable charge would ensure that each retail customer, whether served by an EGS or by an EDC, bears the cost of the adjustment in proportion to their electricity consumption. If the Commission chooses not to implement Option 1, WGL Energy would then urge the Commission to consider another solution, such as the "prospective-only" solution suggested by PPL, coupled with a significantly extended true-up period as suggested by RESA, to avoid having EGSs bear the full costs of the Program Administrator's error.

For reasons discussed above and in its Initial Comments, WGL Energy primarily supports imposing an adjustment on a prospective basis only, and implementing Option 1 from the Tentative Order, starting with the 2016-2017 Compliance Year, as the optimal choice to fairly and equitably spread the costs of the adjustment while upholding the Commission's responsibility to implement the AEPS Act. If the Commission chooses not to adopt Option 1, WGL Energy would support an alternative solution that relieves EGSs from bearing the full cost of correcting the Program Administrator's error.

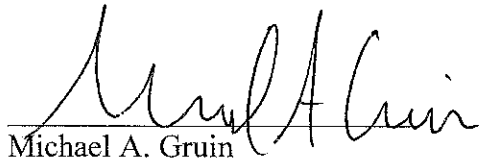
Respectfully Submitted,

Bernice K. McIntyre

Bernice K. McIntyre
Program Director, Regulatory Strategy
WGL Business Development and Non-utility Operations
8614 Westwood Center Drive Suite 1200
Vienna, VA 22182
703-287-9447

Cassandra L. McFadden

Cassandra L. McFadden
Senior Regulatory Analyst, Regulatory Strategy
WGL Business Development and Non-utility Operations
8614 Westwood Center Drive Suite 1200
Vienna, VA 22182
703-287-9417



Michael A. Gruin
PA ID No. 78625
Stevens & Lee
17 N. 2nd St., 16th Fl
Harrisburg, PA 17101
Tel. (717) 255-7365
Fax (610) 988-0852
mag@stevenslee.com
Counsel for WGL Energy Services, Inc.