

COMMONWEALTH OF PENNSYLVANIA



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October 15, 2024

Via Electronic Mail

The Honorable Dennis J. Buckley
The Honorable Alphonso Arnold III
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
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Re: Petition of UGI Utilities, Inc. – Electric
Division For Approval of its Default Service
Program for the Period from
June 1, 2025 through May 31, 2029
Docket No. P-2024-3049343

Dear Counsel:

Please find enclosed a copy of the Main Brief being submitted on behalf of the Office of Consumer Advocate in the above-referenced proceeding.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Sincerely,

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Enclosures

cc: PUC Secretary Rosemary Chiavetta (Letter and Certificate of Service Only)
Certificate of Service

CERTIFICATE OF SERVICE

Petition of UGI Utilities, Inc. – Electric :
Division For Approval of its Default Service : Docket No. P-2024-3049343
Program for the Period from June 1, 2025, :
through May 31, 2029 :

I hereby certify that I have this day served a true copy of the following document: the Office of Consumer Advocate’s Main Brief upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below. This document was filed electronically on the Commission’s electronic filing system.

Dated this 15th day of October, 2024.

SERVICE BY E-MAIL ONLY

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of UGI Utilities, Inc. – Electric :
Division for Approval of a Default Service :
Plan for the period of June 1, 2025 through : Docket No. P-2024-3049343
May 31, 2029 :

MAIN BRIEF
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I. INTRODUCTION

The Pennsylvania Office of Consumer Advocate (OCA) joins in the unanimous partial settlement between UGI Utilities, Inc. – Electric Division (UGI or the Company) and the other parties to this proceeding. All issues but one are addressed in the Joint Petition for Settlement. The one unresolved issue – Penn Renewable, LLC.’s (Penn Renewables) recommendation to change UGI’s proposed methodology of assigning customers to the Generation Supply Rate (GSR)-1 and GSR-2 procurement groups according to supply peak load impact and increase UGI’s GSR threshold from 100 kilowatts (kW) to 3 megawatts (MW), or by 2,900% – was reserved for briefing by the parties and for a final decision by the Pennsylvania Public Utility Commission (Commission). The OCA now submits this Main Brief in opposition to the proposal by Penn Renewables.

A. Description of the OCA

The OCA is a statutory advocate with the authority and duty to represent the interest of consumers as a party before the Commission in public utility rate requests. 71 P.S. § 309-4.

B. Procedural History

On May 31, 2024, UGI filed a Petition (Petition) with the Pennsylvania Public Utility Commission (Commission) seeking approval of its default service provider (DSP) default service program and procurement plans for the period June 1, 2025 through May 31, 2029 (DSP V Plan).

On June 13, 2024, the Office of Small Business Advocate (OSBA) filed a Notice of Appearance. On June 18, 2024, Penn Renewables filed a Formal Complaint. On June 21, 2024, the OCA filed an Answer to UGI’s Petition and a Notice of Intervention and Public Statement.

The Commission assigned UGI’s Petition to the Office of Administrative Law Judge for investigation and the scheduling of hearings. On June 13, 2024, the Administrative Law Judges

(ALJs) Dennis Buckley and Alphonso Arnold issued a Prehearing Conference Order indicating that a Prehearing Conference was scheduled for June 28, 2024, and detailing the parties' obligations with respect to the Prehearing Conference.

On August 2, 2024, the OCA served the direct testimony of Dr. Serhan Ogur. Also on August 2, 2024, the OSBA and Penn Renewables served direct testimony. On August 29, 2024, the OCA served the rebuttal testimony of Dr. Serhan Ogur. Also on August 29, 2024, OSBA and UGI served rebuttal testimony. On September 25, 2024, the OCA served the surrebuttal testimony of Dr. Serhan Ogur. Also on September 25, 2024, OSBA and Penn Renewables served surrebuttal testimony.

The ALJs held an evidentiary hearing on October 1, 2024, during which the ALJs admitted all pre-served, written testimony into the record as evidence. During the evidentiary hearing, the parties informed the ALJs that the parties reached a resolution of all issues in the proceeding except for the one contested issue identified above. The OCA submits the following Main Brief pursuant to the litigation schedule in this proceeding.

II. LEGAL STANDARDS

A. Burden of Proof

Proponents of an order bear the burden of proof. 66 Pa.C.S. § 332(a); *see also* *Petition of Pike County Light and Power Company for Approval of its Default Service Implementation Plan for the Period of June 1, 2014 through May 31, 2016*, Docket No. P-2013-2371666, (Opinion and Order entered March 20, 2014) at 5-6. The burden of proof in administrative proceedings is the preponderance of the evidence standard. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992) (*Lansberry*). That is, the party with the burden must bring forth evidence that is more convincing, by even the smallest amount,

than the evidence presented by the other parties. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). “The term ‘burden of proof’ is comprised of two distinct burdens, the burden of production and the burden of persuasion.” *Hurley v. Hurley*, 754 A.2d 1283, 1285 (Pa. Super. 2000). The burden of production dictates which party has the duty to introduce enough evidence to support the proposed order. *Id.* at 1286. The burden of persuasion determines which party has the duty to convince the finder-of-fact that a fact has been established. *Id.* “The burden of persuasion never leaves the party on whom it is originally cast.” *Id.*; *see also Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also Pa. PUC v. Equitable Gas Co.*, 57 Pa. PUC 423, 471 (1983).

Additionally, the Commission’s decision must be supported by substantial evidence in the record. Indeed, “the elements of that cause of action [must be] proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.” *Burleson v. Pa. PUC*, 461 A.2d 1234, 36 (Pa. 1983). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 49 Pa. 109, 413 A.2d 1037 (1980).

B. Default Service Supply Requirements

Default service is the basic service that Pennsylvania’s electric customers are entitled by law to receive if they do not switch to an alternative retail electric generation supplier (EGS), or if their alternative EGS fails to provide them with service. 66 Pa. C.S. § 2807. UGI as the Default Service Provider (DSP) is required to provide electric generation supply service to all of its default service customers through a Commission-approved competitive procurement plan. *See* 66 Pa. C.S. § 2807(e).

By statute, the DSP must offer default supply service “pursuant to a commission-approved competitive procurement plan” through a “prudent mix of contracts” that is designed to ensure the

“least cost to customers over time.” 66 Pa. C.S. § 2807(e)(3.1, 3.4). The DSP must procure generation supply through competitive procurement processes that include one or more of the following: auctions, requests for proposals, and bilateral agreements. 66 Pa. C.S. § 2807(e)(3.1). As part of a procurement plan, the DSP must include a “prudent mix” of power purchases, as follows:

The electric power procured pursuant to paragraph (3.1) shall include a prudent mix of the following:

- (i) Spot market purchases.
- (ii) Short-term contracts.
- (iii) Long-term purchase contracts, entered into as a result of an auction, request for proposal or bilateral contract that is free of undue influence, duress or favoritism, of more than four and not more than 20 years.

66 Pa. C.S. § 2807(e)(3.2). The prudent mix of contracts must be designed to achieve certain goals, as follows:

The prudent mix of contracts entered into pursuant to paragraphs 3.2 and 3.3 shall be designed to ensure:

- (i) Adequate and reliable service.
- (ii) The least cost to customers over time.
- (iii) Compliance with the requirements of paragraph (3.1).

66 Pa. C.S. § 2807(e)(3.4).

A determination of what constitutes “prudent mix” is subject to the Commission’s discretion based on the substantive evidence in the record. *Popowsky v. Pa. PUC*, 71 A.3d 1112, 1117-1118 (Pa. Cmwlth. 2013) (*Popowsky*). The Commonwealth Court determined as follows: “[I]n interpreting the term ‘prudent mix,’ the PUC must exercise some balance and discretion under the circumstances of the case in order for the ‘mix’ in question to be ‘prudent.’” *Popowsky* at 1117.

The Commission must evaluate whether the DSP's plan meets the requirements of the Act.

The Commission must take several factors into consideration, and must make specific findings that the default supplier's plan meets the requirements of the Act, as follows:

(3.7) At the time the commission evaluates the plan and prior to approval, in determining if the default electric service provider's plan obtains generation supply at the least cost, the commission shall consider the default service provider's obligation to provide adequate and reliable service to customers and that the default service provider has obtained a prudent mix of contracts to obtain least cost of a long-term, short-term and spot market basis and shall make specific findings which shall include the following:

(i) The default service provider's plan includes prudent steps necessary to negotiate favorable generation supply contracts.

(ii) The default service provider's plan includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis.

(iii) Neither the default service provider nor its affiliated interest has withheld from the market any generation supply in a manner that violates Federal law.

66 Pa. C.S. § 2807(e)(3.7).

The Commission has recognized that the "least cost" standard must be considered in conjunction with the statutory requirements that prices be stable, and that service be reliable. The Commission's *Final Rulemaking Order* states:

Finally, it should be noted that the "least cost over time" standard should not be confused with the notion that default prices will always equal the lowest cost price for power at any particular point in time. In implementing default service standards, Act 129 requires that the Commission be concerned about rate stability as well as other considerations such as ensuring a "prudent mix" of supply and ensuring safe and reliable service. *See* 66 Pa. C.S. §§ 2807(e)(3.2), (3.4) and (7). In our view, a default service plan that meets the "least cost over time" standard in Act 129 should not have, as its singular focus, achieving the absolute lowest cost over the default service plan time frame but, rather, a cost for power that is both adequate and reliable and also economical relative to other options.

Implementation of Act 129 of October 15, 2008: Default Service and Retail Electric Markets, Docket No. L-2009-2095604, Slip op. at 11-12 (Oct. 4, 2011) (*Final Rulemaking Order*). As the Commission's *Final Rulemaking Order* makes clear, default service providers must consider price stability and reliability when developing a procurement plan that meets the "least cost over time" standard.

In addition to the foregoing statutory requirements, the Commission has enacted regulations, 52 Pa. Code §§ 54.181 to 54.190, and a Policy Statement, 52 Pa. Code §§ 69.1801 to 69.1817, addressing default service programs.

III. SUMMARY OF ARGUMENT

UGI's methodology classifies customers into GSR-1 or GSR-2 based on their supply peak load impact, with a threshold of 100 kW. The OCA and UGI support the methodology, as it ensures fair treatment of GSR-1 customers and aligns with PJM's locational marginal pricing construct. Penn Renewables failed to meet its burden of proving that its proposed change to UGI's supply peak load impact criterion is supported by substantial evidence. Penn Renewables' alternative recommendation to increase UGI's proposed GSR-2 threshold from 100 kW to 3 MW is similarly fails and it would produce unjust and unreasonable outcomes.

IV. ARGUMENT

A. Penn Renewables Bears the Burden of Proof as the Proponent of an Order that Changes UGI's Existing Customer Classification for GSR Customers.

In this case, UGI proposed to continue its classification from its DSP III and IV, to classify a customer account as GSR-1 or GSR-2 according to the “supply peak load impact” criterion. OCA St. 1R at 7. Under UGI’s proposal, supply peak load impact will be determined based on a customer’s net demand contribution impact to UGI’s default service procurement activity as determined upon the net power flow from or into UGI’s distribution system. *Id.* Customers with a supply peak load impact below 100 kW will continue to be classified as GSR-1, and customers with a supply peak load impact that is greater than or equal to 100 kW will continue to be classified as GSR-2. *Id.* at 7-8. Both a non-residential customer with a peak demand of 100 kW or above, and as clarified in UGI’s Petition, a non-residential customer-generator with a peak injection into the Company’s distribution grid of 100 kW or above, will be classified as GSR-2 customers because both have respective supply peak load impacts of 100 kW or above. *Id.* at 8.

UGI’s DSP V filing does not contain a request to change UGI’s GSR threshold from 100 kW to 3 MW in order to be classified to GSR-2. Thus, as the proponent of an order approving a change to UGI’s GSR-2 threshold, Penn Renewables bears the burden of proof. *See* 66 Pa. C.S. § 332(a). Penn Renewables has failed to carry its burden of proof and failed to produce substantial evidence to support its proposal.

B. Penn Renewables’ Recommendation to Change UGI’s Proposed Supply Peak Load Impact Criterion Lacks Substantial Evidence and Fails to Meet Penn Renewables’ Burden of Proof.

The OCA and UGI agree that UGI’s methodology to classify GSR-1 as those under 100kW and GSR-2 customers as those above 100kw appropriately ensures that GSR-1 customers will not

be negatively impacted by the market activities of large customer-generators and ensures least cost procurement for these customers. UGI St. 2 at 29-30.

Penn Renewables witness Crist argued that UGI should not be permitted to use UGI's proposed methodology to classify customers into the GSR-1 and GSR-2 procurement groups. Penn Renewables St. 1 at 20. Mr. Crist noted that he is not aware of any other Pennsylvania EDC using peak supply to establish commodity rates that are paid to customer-generators. *Id.* Mr. Crist also argued that when GSR-2 customer-generators produce power for export, the locational marginal price (LMP), and the customer-generator's compensation, declines. *Id.* Mr. Crist claimed that GSR-2 customers would pay more than the amount that net metered customer-generators will be paid for excess generation for the same hour. *Id.* Crist's recommendation that the classification of customers into GSR-1 and GSR-2 procurement groups be based exclusively on a customer's peak demand, regardless of a customer-generator's maximum injection into the Company's distribution grid. OCA St. 1R at 9. Each Pennsylvania EDC has a different default service procurement grouping reflecting the criteria which make the most logical sense for that EDC's customer and load characteristics. OCA St. 1R at 9. Each EDC also has a different peak demand cutoff for small commercial, medium commercial, and large commercial and industrial procurement group designations. *Id.* at 9-10. If an EDC does not use the same classification methodology proposed by UGI, that is likely because another methodology better fits its needs and customer characteristics. *Id.* at 10. If other EDCs did not propose a procurement group cutoff based on both demand and supply peak cutoff, that is likely because their systems do not have as much pending customer-generator capacity relative to their overall customer loads. *Id.*

It is a natural consequence of PJM's LMP construct that, all else equal, as supply increases, price falls. OCA St. 1R at 10. Similarly, as demand increases, price rises. *Id.* However, by Mr.

Crist's logic, any generator could claim a higher payment rate than LMP because in the absence of that generator's output, the market price would be higher. *Id.* This would be a self-conflicting element of the LMP construct because payments from load would not be sufficient to pay for the resources. *Id.* The LMP in any given hour in a specific location is determined by the intersection point of supply and demand, and all resources are paid, and all loads pay, that same LMP. *Id.* Mr. Crist's concern is not a flaw of the compensation mechanism design for exports by customer-generators. *Id.* Instead, Mr. Crist's concern merely reflects the fundamental principles and rules of PJM's LMP construct in which UGI operates. *Id.*

UGI's methodology, which the OCA agrees with, ensures that GSR-1 customers are not adversely affected by large customer-generators. It is reasonable and designed to ensure that overall UGI's default service construct, including its rates and rate classification, are designed to produce least cost over time procurement. Penn Renewables has not provided substantial evidence to support its recommendation to change UGI's proposed supply peak load impact criterion. As such, Penn Renewables' proposal fails to meet the burden of proof required to justify a change in the classification methodology.

C. Penn Renewables' Recommendation Proposing to Increase the GSR-2 100 kW Threshold to a 3 MW Threshold is Not Supported by Substantial Evidence and Would Result in Unjust and Unreasonable Rates.

Under Section 1301 of the Public Utility Code, "[e]very rate made, demanded, or received by any public utility . . . shall be just and reasonable, and in conformity with regulations or orders of the commission." 66 Pa C.S. § 1301. The proposal by Penn Renewables would require UGI to reclassify GSR-2 from 100 kW to 3 MW if the Commission authorizes UGI to compensate GSR-2 customer-generators based on LMP, Penn Renewables St. 1 at 28, would produce results that are

unjust and unreasonable to the majority of customers within the GSR-1 class and should not be adopted.

Penn Renewables' proposal also results in an unreasonable preference and advantage for large customer-generators at the expense of small customer-generators and does not ensure least cost procurement for GSR customers. As outlined by OCA witness Ogur, the price GSR-2 customers pay for electricity and how that may differ from the compensation rate for a customer-generator's exports has no relationship with the criterion according to which customers are classified into the GSR-1 and GSR-2 procurement groups. OCA St. 1R at 10. Mr. Crist does not establish a relationship between these two concepts. *Id.* at 10-11. Assigning large supply peak load impact customer-generators to the GSR-1 procurement group merely because Mr. Crist perceives GSR-1 rates to be higher than GSR-2 rates on average, or because GSR-1 customers are offered fixed rates but GSR-2 customers are not, is unreasonable gamesmanship as it would produce unjust and unreasonable rates by requiring current GSR-1 customers to pay premiums for large customer generators. *Id.* at 11. Furthermore, changing the threshold between GSR-1 and GSR-2 harms current GSR-1 customers operating at under 100 kW.

Under Section 69.2902 of the Commission's regulations, a large-scale solar project is defined as "[a]n alternative energy generation system employing solar photovoltaic technology with a nameplate capacity of 200kW or more." 52 Pa. Code § 69.2902. Similarly, small-scale solar project is defined as "[a]n alternative energy generation system employing solar photovoltaic technology with a nameplate capacity of less than 200kW." *Id.* When PPL Electric Utilities Corporation (PPL) requested that the Commission increase the threshold between these two defined categories to 500kW in its policy statement regarding AEPS, the Commission determined that it would not increase the 200kW threshold. *Policy Statement in Support of Pennsylvania Solar*

Projects, 2010 Pa. PUC LEXIS 1580, *20. Penn Renewable's proposal to increase UGI's GSR-2 threshold to 3 MW is a substantial 2,900% increase compared to UGI's 100 kW threshold proposed in UGI's DSP V and is contrary to the Commission's policy statement regarding the definitions of small-scale and large-scale solar projects in relation to AEPS.

Raising the threshold for an account to be classified as GSR-2 from 100 kW to 3 MW if the Commission authorizes UGI to compensate GSR-2 customer-generators based on LMP is not logical or acceptable. OCA St. 1R at 11. It is nothing more than conflating two unrelated issues and attempting to substitute one as a remedy for another without any justification and without any regard to the negative effects of such an action on the GSR-1 customers under the current definition of GSR-1 (i.e., residential customers and small commercial customers with supply peak load impacts less than 100 kW). *Id.*

The inclusion of large customer-generators in the GSR-1 procurement group as proposed by Penn Renewables, bundles residential customers and truly small commercial customers (i.e., which have supply peak load impacts less than 100 kW) with more sophisticated, large customer-generators in the same fixed-price, full-requirements (FPFR) contract procurements. OCA St. 1R at 11. This would negatively affect residential default service customers. *Id.* As larger customer-generators are more sophisticated and would entail a higher switching risk for the FPFR suppliers, the FPFR suppliers would either build larger risk premiums into their FPFR contract bids or shy away from participating in the FPFR auctions. *Id.* at 11-12. This would have the likely effect of higher PTCs and/or more volatile rates for residential customers due to the inclusion of large customer-generators in the GSR-1 procurement group. *Id.* at 12.

Under Penn Renewables' recommendation, large customer-generators would receive the higher PTC, which would have been inflated simply by their mere participation and switching risk

for their exports, which in turn would be recovered from all GSR-1 default service customers, most of which are residential customers. OCA St. 1R at 12. Residential customers constitute 73 percent of the GSR-1 default service load while non-residential GSR-1 customers account for merely 27 percent. OCA St. 1 at 33. Moreover, even the large customer-generators that stay on default service constitute volumetric risk for FPFRR suppliers because of the uncertainty surrounding the level and profile of on-site generation (e.g., outages, in-service dates of on-site generators that are in UGI's distribution interconnection queue). OCA St. 1R at 12. Similar to switching risk, this volumetric risk would prompt the FPFRR suppliers to either build larger risk premiums into their FPFRR contract bids or shy away from participating in the FPFRR auctions, resulting in higher PTCs and/or more volatile rates for residential customers. *Id.*

Penn Renewables has failed to carry its burden that its proposed alternative is just or reasonable or otherwise consistent with the Public Utility Code and it should be rejected.

V. CONCLUSION

The OCA agrees with UGI's proposed methodology of assigning customers to the GSR-1 and GSR-2 procurement groups according to supply peak load impact is reasonable and aligns with least cost procurement. Penn Renewables has failed to satisfy its statutory burden of proof and to provide substantial evidence supporting its recommendations. As such, the OCA respectfully requests the Commission reject Penn Renewables recommendation to change the classification thresholds of UGI's proposed GSR-1 and GSR-2.

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