HMS Legal

Regulation is a maze. We can show you the way!

Todd S. Stewart
717.703.0806
tsstewart@hmslegal.com

501 Corporate Circle, Suite 302, Harrisburg, PA 17110 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

October 25, 2024

VIA ELECTRONIC FILING

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

Re: Petition of UGI Utilities, Inc. – Electric Division for Approval of a Default Service Plan (DSP V) for the Period of June 1, 2025 through May 31, 2029; Docket Nos. P-2024-3049343; G-2024-3049351; Penn Renewables LLC v. UGI Utilities, Inc. – Electric Division; Docket No. C-2024-3049618; **PENN RENEWABLES LLC'S STATEMENT IN OPPOSITION TO PETITION FOR NON-UNANIMOUS SETTLEMENT**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is Penn Renewables LLC's ("Penn") Statement in Opposition to Petition for Non-Unanimous Settlement in the above-referenced matters. Copies have been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. If you have any questions related to this filing, please do not hesitate to contact my office.

Very truly yours,

Todd S. Stewart
Counsel for Penn Renewables LLC

TSS/jld
Enclosure
cc: Administrative Law Judge Dennis J. Buckley (via electronic mail - debuckley@pa.gov)
Administrative Law Judge Alphonso Arnold III (via electronic mail - alphonarno@pa.gov)
Per Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA ELECTRONIC MAIL ONLY

Lindsay Berkstresser
Counsel, Energy & Regulatory
UGI Corporation
500 North Gulph Road
King of Prussia, PA 19406
Berkstresserl@ugicorp.com

Devin T. Ryan
Post & Schell, P.C.
One Oxford Centre
301 Grant Street, Suite 3010
Pittsburgh, PA 15219
dryan@postschell.com
Counsel for UGI Utilities, Inc.

Anthony D. Kanagy
Nicholas A. Stobbe
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
akanagy@postschell.com
nstobbe@postschell.com
Counsel for UGI Utilities, Inc.

Harrison W. Breitman
Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Forum Place
Harrisburg, PA 17101-1923
HBreitman@paoca.org

Steven Gray, Esquire
Senior Attorney
Assistant Small Business Advocate
Office of Small Business Advocate
555 Walnut Street, 1st Floor
Forum Place
Harrisburg, PA 17101
sgray@pa.gov

DATED: October 25, 2024

Todd S. Stewart

BEFORE
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of UGI Utilities, Inc. – Electric Division for Approval of a Default Service Plan (DSP V) for the Period of June 1, 2025 through May 31, 2029	:	Docket Nos. P-2024-3049343 G-2024-3049351
Penn Renewables LLC	:	
v.	:	C-2024-3049618
UGI Utilities, Inc. – Electric Division	:	

PENN RENEWABLES LLC'S
STATEMENT IN OPPOSITION
TO PETITION FOR NON-UNANIMOUS SETTLEMENT

TO ADMINISTRATIVE LAW JUDGES DENNIS J. BUCKLEY AND ALPHONSO ARNOLD III:

I. INTRODUCTION

Penn Renewables, LLC ("Penn") is a developer of net metered solar projects that have been approved by the Pennsylvania Public Utility Commission ("Commission") to operate as customer-generators in the service territory of UGI Utilities, Inc. – Electric Division ("UGI"). On May 31, 2024, after Penn's projects had been approved by the Commission but before UGI completed its interconnection analysis, which as of today is still not completed, UGI filed its Default Service Plan V ("DSP V"), for the years 2025-2029. UGI's DSP contains all the "usual" discussion of procurement and auction plans, etc., but also contained something else – an attempt to illegally

alter the rules for customer-generators in a manner that, if approved, would make it impossible for Penn to complete its projects.

UGI proposes to reclassify customer generators by system impact, rather than by the registered peak load, as the Commission's Regulations require, and then by changing the threshold for inclusion in the newly defined and modified procurement class, GSR-2. UGI's proposal violates the statutory requirement that customers of Penn's project size, as small business customers, must have a rate that varies no more than quarterly, but UGI proceeded nonetheless and proposed to alter the statutorily required compensation method for customer generators like Penn and its 12 separate-entity projects on UGI's system, based on this new classification. Rather than compensate customer-generators for excess generation at full retail value as the Alternative Energy Portfolio Standards Act ("AEPSA") requires, UGI proposed a formula rate that would compensate Penn's projects at a fraction of full retail value based on the operation of a proxy wholesale formula that would produce a different default service rate for each project for each hour which is absolutely not a legal default service rate that applies to small, less than 25 kW, small business customers.

Penn promptly filed a complaint against the DSP V filing on that basis, i.e., that the proposed reclassification and change to the compensation for customer generators is illegal, unjust and unreasonable. Penn's view has not changed.

As the matter progressed, the OSBA and OCA entered settlement discussions with UGI and eventually reached a non-unanimous settlement ("Settlement"), in which, among other things, the OCA and OSBA agreed with UGI that the reclassification issues should be resolved as proposed, over Penn's objection. They cannot, however, reach a settlement on Penn's independent Complaint. The Post Hearing Order required that Statements in Opposition to the Non-Unanimous

Settlement are due to be filed on October 25, 2024, and this Statement is intended to comply with that requirement.

II. BASIS OF OPPOSITION

Penn Opposes the Non-Unanimous settlement in one primary respect[1] – that it purports to resolve the issue of reclassification of customer-generators such as Penn's 12 projects, by turning them into GSR-2 projects; by classifying them using a new unsanctioned metric; and then by subjecting them to an hourly changing wholesale proxy rate that does not compensate at full retail value, even though according to the Commission's Regulations, 52 Pa. Code § 54.2, Penn's projects are small business customers which must be provided a fixed rate that changes no more than quarterly. 66 Pa. C.S. § 2807(7). For a complete discussion of the many reasons why UGI's plan must be rejected, see Penn's Main and Reply Briefs, which along with its testimony and exhibits are incorporated into these comments as though stated herein, by reference.

III. THE SETTLEMENT IS NEITHER JUST NOR REASONABLE AND IS NOT IN THE PUBLIC INTEREST

The Settlement of the reclassification issue is premised on one conclusion – that adding Penn's 12 solar projects to UGI's system will harm other customers by forcing them to subsidize net-metering customer generators and that UGI's new scheme is necessary to obtain default service supply at least cost over time. UGI Statement in Support, p. 18. Neither of these "concerns" are borne out by facts of record in this proceeding, only by speculation or predictions. For example, both Ms. Hazenstab and Mr. Faryniarz consistently refer to Penn's projects as large, when none of them will even be the maximum size for customer-generators in the net metering program. UGI's witnesses speak of the impact of having 12 projects on its system but never present facts to

[1] (*Joint Petition for Approval of Non-Unanimous Settlement*, ¶ 34).

substantiate what factor other than the number of kilowatt hours the projects will produce could cause a negative impact, and they cite to no law that would limit those kilowatt hours. To the contrary, UGI fails to acknowledge that the AEPSA requires it to accept the kilowatts generated by the customer generators and to compensate the customer-generator projects at full retail value. UGI instead has done everything it could do, short of simply adding a line to its tariff saying it would not allow non-residential customer generators to interconnect on its system, to keep Penn's projects off its system.[2] But that is in essence what UGI has done and is attempting in this matter. UGI's actions in this regard clearly violate the spirit and intent of the AEPSA which is to incentivize the development of alternative energy projects by providing a stable and transparent revenue stream so that projects will be financially viable. UGI has taken up the sword against net metering customer-generators – in obvious and explicit derogation of the APESA requirements – in the name of providing default service at least cost over time, as directed by Act 129, 66 Pa. C.S. § 2807(3.4)(ii). However, UGI's reliance on the bare language of Act 129 as support for its illegal efforts to re-engineer default service, ignores the requirement that it also comply with other applicable laws.

There is no precedent in Pennsylvania for the Commission to alter regulatory requirements to intentionally prevent twelve customers from interconnecting with an EDC system as required by APESA. In this case, the customers provide multiple benefits to the EDC and its customers. For example, in its order on PPL's 2014 DSP plan, the Commission did approve PPL's proposal to reduce the threshold for Small C&I customers, thus providing hourly-priced service to a larger class of default service customers "**who appeared to be 'well-equipped and educated to manage**

[2] It should not be forgotten that even though Penn's projects were approved by the PUC over 6 months ago, the interconnection studies which are necessary for interconnection, have yet to be completed and there is no completion date in sight.

their commodity costs in an hourly spot market default service environment."[3] UGI has relied on a premise that Penn's projects can adjust production or markets and that UGI's plan will do no harm. UGI is wrong. There is no evidence in this case that solar production can be turned on and turned off in any efficient or effective way in response to hourly price signals as was the basis for the Commission's decision in PPL. Rather, the opposite is true. Mr. Faryniarz admitted under cross examination that most of the customers in the GSR-2 rate class are already shopping, but that he did not know if customer generators has a meaningful ability to contract with an EGS (Tr. 47); that he did not know whether customer generators were able to go from production to non-production effectively nor did he know how easily such projects could move between wholesale markets (PJM) or a retail program such as net metering. (Tr. 48-50). Penn's witness made it clear that solar projects are not able to go from production to non-production in an effective manner. (Penn St. 1-SR, 18:1-23). The basic premise of UGI's argument for why it can reclassify customers is therefore incorrect and is contradicted by clear evidence of record.

It is also telling that the record is devoid of any evidence that including all customer generators in GSR-1 would harm other customers. Again, the opposite is true. UGI's scheme will instead impose immediate and certain harm on customer-generators – they will be unable to proceed with the projects. Under cross-examination, Mr. Faryniarz agreed that his definition of the harm that he alleges "could" be that a GSR-1 customers "could" be forced to accept a higher PTC rate, but provides nothing to support such speculation. (Tr. at 52). Because it is clear that its proxy wholesale rate price to compare mechanism violates the AEPSA, UGI attempts to justify its

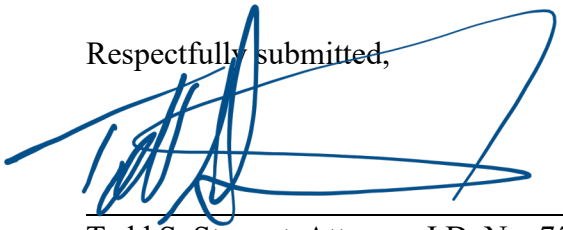
[3] *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2015, Through May 31, 2017*, Docket No. P-2014-2417907 (Opinion and Order entered February 26, 2015) (slip op. at 9) (emphasis added).

proposal as being needed to prevent some possible future harm, but that argument cannot stand up to scrutiny and cannot overcome the plain requirements of the law.

Because the Settlement would endorse UGI's proposal and would rely upon UGI's flawed reasoning, it must be rejected. The Settlement is not reasonable, nor is it just, and it certainly is not in the public interest, which favors compliance with all laws, not just the parts that UGI wants to be applied.

WHEREFORE, Penn Renewables, LLC respectfully request that any portion of the Settlement that reclassifies Penn's projects as GSR-2 or changes the PTC calculation for GSR-2 customers as proposed, be rejected and denied as described more fully in Penn's Main and Reply Briefs.

Respectfully submitted,



Todd S. Stewart, Attorney I.D. No. 75556
HMS Legal LLP
501 Corporate Circle, Suite 302
Harrisburg, PA 17110
Direct: (717) 703-0806
Facsimile: (717) 236-4841
tsstewart@hmslegal.com

Counsel for Penn Renewables LLC

DATED: October 25, 2024