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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; **REPLY BRIEF**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the Reply Brief of Penn Renewables LLC 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).

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DATED: October 25, 2024

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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	:	

REPLY BRIEF
OF PENN RENEWABLES LLC

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DATED: October 25, 2024

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I. COUNTER STATEMENT OF THE CASE

Penn Renewables, LLC's ("Penn") filed a Complaint against UGI Utilities Inc., Electric Division, DSP V filing because Penn is developing 12 net metered, customer-generator owned solar projects in UGI's service territory and UGI's DSP V would impose illegal conditions on those projects, mostly regarding compensation for excess generation that would make those projects untenable if imposed. UGI's primary premise, as promoted in its main brief, is that the Public Utility Code's admonition in 66 Pa. C.S. § 2807(e) (3.4) (referred-to as "Act 129"), that default service being provided at "least cost over time" is the only thing that matters in a default service case and is paramount to all other statutory requirements. UGI's approach is misdirected, contrary to law, and incorrect as discussed herein, and must be rejected. [1]

Default service is not immune or insulated from other statutory requirements that apply to the provision of default service and of particular importance here is the *Alternative Energy Portfolio Standards Act*, 73 P.S. 1648.1, *et seq*. ("AEPSA"). The AEPSA introduced several new terms into the lexicon, "customer-generator" and "full retail value", the former being a customer that operates an alternative energy system and is ***engaged in net metering***, the latter, "full retail value", being undefined in the statute, but by common usage meaning the complete sum of all costs that a retail customer pays for electricity procured through default service. It is the interplay of Act 129's condition that default service be provided at least cost over time while complying with the AEPSA requirement that customer-generators be compensated at full retail value for all of their excess generation that is at issue here. UGI's position is that Act 129 is superior to the AEPSA requirement to the degree that UGI can disregard both the intent and clear direction of the

[1] In this Reply Brief Penn Renewables Responds to Arguments raised in UGI and OCA's Main Briefs. To the extent that a particular argument raised by any other party is not addressed in this Reply Brief, it does not mean that Penn's position has changed from what is stated in its Testimony, Exhibits or Main Brief, and those documents are incorporated herein by reference.

AEPSA, and that it can manipulate the concept of full retail value in a way that some customer-generators are compensated at a retail rate lower than other customers on default service will pay for any given kilowatt hour of excess energy, a rate that is substantially less than the "full retail value" that some customer-generators are paid.

UGI's proposal ignores the fact that the AEPSA does not authorize two different measures of full retail value, yet UGI proposed two such measures: one rate (GSR-1) that is fixed on a semi-annual basis and is posted on UGI's website as the "Price to Compare", and another (GSR-2) driven by a formula proposed by UGI, that produces a rate that varies each hour for each customer, and can vary depending upon whether they are generating or consuming electricity. It also is contrary to the AEPSA to conceive of full retail value for one (GSR-2) customer who only consumes electricity as being radically different from full retail value for a GSR-2 customer-generator in the same hour producing the same number of kilowatt hours – kilowatt hours that flow into UGI's distribution system for consumption by other nearby GSR-1 and GSR-2 customers. Under UGI's approach, full retail value is not as it is described in the AEPSA.

UGI's rationale for proposing that it can create these individualized proxy rates for GSR-2 customer-generators is that it must protect its other customers from the impact of customer-generators coming on to its system and that UGI should be allowed to ignore the directive of the AEPSA and do whatever is "necessary" to keep its rates low. The intent of the AEPSA is to foster development of alternative energy technologies, recognizing that there may be a cost to do so, but that such cost is reasonable and necessary and will be borne by the ratepayers as such ratepayers benefit from the overarching societal good of generating electricity with alternative technologies. UGI has failed to produce any evidence that the impact of customer-generators will be harmful, and yet continues to repeat its false claims, and continues to assert, nonetheless, that it can

manipulate full retail value to whatever value it likes. UGI's proposed formula produces a different measure of value for each customer for each hour. UGI claims that doing otherwise would not produce least cost over time. Full retail value is supposed to be the same rate that other similarly situated customers are paying, yet it is not under UGI's proposed formula.

To accomplish its desired goal, UGI proposes to ignore the established measure of peak demand and reclassify non-residential customers by a newly invented standard, and to group certain customer-generators whose load under the present legal standard would qualify them as small business customers, into a different procurement class where customers pay rates or are compensated by rates that are vastly different from what they would have paid or been paid absent the reclassification. This outcome is contrary to the AEPSA, not authorized by the Public Utility Code and should not be approved by the Commission.

II. SUMMARY OF THE REPLY ARGUMENT

Penn Renewables, LLC's position continues to be that UGI's proposal in this case to reclassify customer-generators such as Penn's twelve projects (which UGI has deliberately stalled in the approval process) in a fashion that will compensate those customer-generators using a formula that will produce an hourly rate that is discriminatory, unjust and unreasonable and in violation of the requirement of the AEPSA that customer-generators be compensated for excess energy at full retail value. Penn raised a number of substantial reasons why UGI's proposal violates either the Public Utility Code, the Commission's Regulations and in some cases, both, while any one of these violations are sufficient in the prejudice their violation imposes, to justify rejecting UGI's proposal outright.

In its Main Brief ("MB") UGI's primary effort appears to be to justify the extreme prejudice its proposal would foist upon Penn in particular, by consistently reciting one specific requirement of Act 129, which modified the *Electricity Generation Customer Choice and Competition Act*, 66

Pa. C.S. § 2807 to provide a more specific framework for default service. The single requirement that UGI repeats like a *mantra* is that default service plans ("DSP") must provide default service at least cost over time.[2] However, UGI does not cite to any requirement that it violate the APESA in its quest to provide energy at the least cost over time. Indeed, there is no such requirement. Read to give each provision its full meaning, it is clear that any extra cost incurred for compensating customer-generators, if indeed there are any, is to be recovered from customers, not by reducing the compensation to customer-generators as UGI proposes.[3] Moreover, UGI's single-minded approach completely ignores the many benefits that having alternative energy systems located on its distribution system including that the developers such as Penn pay for the distribution system upgrades that are needed for them to interconnect. Penn St. 1, 8:9-11:2. Finally, UGI makes claims but provides no evidence that including Penn's projects with all of its other customer-generators on the GSR-1 PTC will increase costs to customers in the long run.

UGI's proposal to reclassify customer-generators with peak load less than 25 kw as GSR-2 customers, should be rejected for all the reasons stated herein, in Penn's testimony and Main Brief, which are incorporated herein by reference, and UGI must be required to treat Penn's projects the same as other residential and small business customers, and compensate them at full retail value as embodied in the PTC for GSR-1.

[2] *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*; Docket No. I-2011-2237952 (Final Order entered Feb. 15, 2013) ("End State Order"). The "End State" order was issued after the AEPSA was passed and the Order discusses the AEPSA requirements but does not even suggest not paying full retail value to customer-generators.

[3] 73 P.S. § 1648.3(3).

III. REPLY ARGUMENT

1. UGI's Argument on the Alleged Impacts of Customer-generators is Fatally Inconsistent with Reality. (UGI MB at 1-2).

Within the same section of its Main Brief, UGI argues that putting customer generation onto its system "could" drive up prices for default service (a conclusion that is contrary to the law of supply and demand and the facts of this case) while at the same time arguing that if customer-generators that are established on the distribution system leave its system it will likewise cause harm. Both of these arguments cannot be true at the same time, and in fact, neither is correct.

Adding customer-generators to the UGI distribution system will add needed generation capacity, and therefore reduce the need to purchase energy from outside wholesale suppliers and reduce transmission capacity needs, therefore reduce transmission costs for UGI customers. Penn St. 1, 20:20-21-10. The testimony in this case is clear, UGI's witness Mr. Faryniarz has no evidence to support his allegation that customer-generators can or will exit the customer-generator status to seek out the wholesale market. Tr. 59. He did testify that customer-generators are able to leave (and not come back) UGI's system as soon as they want, and UGI will not stand in their way. UGI's witnesses offer no understanding of what it takes to enter the wholesale market, and do not refute Mr. Crist's testimony that there are no solar projects less than 3,000 kW participating in the PJM wholesale market in Pennsylvania. Penn St. 1-SR, 6:21-7:7. Thus, the only evidence presented shows that customer-generators have not moved between the retail and wholesale markets, that the PJM queue debacle[4] has made PJM a non-option for many years to come and customer-generators do not increase costs for default service for other customers. Instead the

[4] The PJM queue has not processed new interconnection request for over a year and will not process any new requests until 2026.

opposite is true, that the presence of customer-generators on the utility distribution system leads to lower costs for default service customers. Penn St. 1-SR, 6:6-20.

What is true, however, is that if customer-generators leave UGI's system, such actions will increase costs for other customers. UGI has failed to contradict Mr. Crist's statement that customer-generators do not intend to move between markets, which deflates the argument that customer-generators' ability to leave the system poses a cost for other customers through increased load risk. Penn St. 1-SR, 7:1-7. There is no evidence that customer-generator's load risk is much greater than any other customer, when in fact it is logically less. Customer-generators invest substantial funds to participate in Pennsylvania's net metering program and have no incentive to move to any other market. Any customer on UGI's system could choose to procure energy supply from default service or competitively procured energy sources. Customers are free to enter or leave the UGI default service at will. There is no evidence on the record to suggest that customer-generators are more likely than any other customer group to leave the system and so UGI's load risk argument is a fallacy, as is the risk of customer-generators coming on to the system and overwhelming UGI's system supply.

As discussed in Penn's testimony, customer-generators will lower transmission costs for customers, and add generation to the system, thus requiring less energy to be purchased from off-system sources. Penn St. 1-SR, 7: 11-16. Additionally, there are reliability benefits that customer-generators bring to the system. It is true, however, that customer-generator load, solar in particular, is intermittent, but it is predictable to the extent that the sun rises and sets at known times and the weather is knowable – to a certain degree – in advance. Penn St. 1-SR, 8:1-9. There is no great mystery to solar production, solar panels produce energy when the sun is shining. It also may be true that adding solar distributed generation to UGI's system will reduce tranche size for UGI's

procurements, but that is a consequence of the fact that the AEPSA incentivizes those kilowatts to be produced and introduced into the UGI system. If that causes tranche sizes to change, it may be a consequence of adding renewable generation to the system and reducing the need to purchase other energy, at the exact same price, but it is not a legal justification for violating the law, which is what UGI proposes to do. Penn St. 1-SR, 7-11-16.

2. UGI Incorrectly Argues that Other Customers will Subsidize Customer-generators if the Customer-generators are not Discriminatorily Segregated from Those Other Customers. (UGI MB at 2, 5-6).

One of the primary motivations of UGI's segregation plan is to classify customers by its newly invented factor called "system peak load impact" or "SPLI" rather than the required registered peak load, and to also change the threshold from 25 KW of peak load to 100 kW of SPLI. Penn St. 1-SR, 23:5-14. As discussed in Penn's Main Brief, at pages 11-12, UGI finally acknowledged in its rebuttal testimony that its scheme violated Act 129 and the Commissions regulations and requested a waiver to allow it to so segregate only customer-generators, thus adding to the discriminatory nature of its reclassification.[5] UGI argues that customer-generators such as solar projects capable of output of 1,000 to 2,000 kW, like Penn, are not small business customers, even though all of the projects are situated at a small commercial customer whose load is less than 25 kW. Under today's regulations, each Penn solar project is a small business customer, and must be offered a fixed default service rate that changes only quarterly.[6] The larger point, however, is that there is no evidence other than UGI's false statements to the contrary, that default service customers subsidize customer-generators. UGI did not explain how a customer-generator receiving the same price per kWh for excess generation that default service suppliers are paid for

[5] See 66 Pa. C.S. § 2807(e)(7) which requires that small business customers are required to be offered a fixed default service rate that changes no more frequently than quarterly, and 52 Pa. Code § 54.2 (definition of small business customer.).
[6] 66 Pa. C.S. § 2807(7).

energy, which is the same price that retail customers pay for the energy supplied by default service, creates a subsidy to customer-generators. There is no subsidy. If compliance with the AEPSA imposes any additional costs on UGI for complying with its requirements, the AEPSA requires UGI to recover those costs from customers.[7] But UGI provides no evidence that it incurs such costs, nor does it show that it has recovered such costs from customers or cannot recover such costs from customers, nor that it would create a substantial burden if cross subsidization did occur or the magnitude of the alleged subsidy.

There is no legal support for UGI's reclassification proposal. 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 their commodity costs in an hourly spot market default service environment.**"[8] The evidence in this case demonstrates that solar production cannot 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 have 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-

[7] 73 P.S. §§ 1648.3(3)(i)&(ii), which require that purchases of electric energy generated from alternative energy sources, including transmission charges, shall be recovered on a full and current basis pursuant to an automatic adjustment clause as a cost of generation.

[8] *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).

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.

UGI's motivation for this entire scheme is, in its words, to protect small customers from the alleged and unproven "potential" increase in costs from customer-generators coming on to its system. Such a position ignores the obvious fact that the statute that authorizes and encourages customer-generators to develop on system, also *requires* UGI to recover any such costs, were they to exist, from customers through an automatic adjustment clause.[9] In short, the AEPSA does not authorize UGI to engage in a discriminatory and otherwise illegal reclassification of customer-generators and to burden them with a byzantine compensation system that cannot produce payment at full retail value as required. AEPSA anticipated that the development of alternative energy technology may create new costs and directed that such costs be recovered from the system customers. UGI's proposal, that it claims will protect small customers from an alleged harm of increased costs, will actually harm customers by retarding the development of alternative energy technology and stop its introduction to the UGI distribution system. UGI's proposal is contrary to law and must be rejected.

3. UGI's Proposal to Reclassify Penn from a Small Business Customer to a Customer-Generator only Status, Violates Act 129, the Commission's Regulations and the AEPSA. (UGI MB 5-7).

Act 129, which was passed after the AEPSA was amended in 2007, requires that small business customers be provided with a fixed rate that varies no more frequently than quarterly.[10] In its Regulations implementing Chapter 28 of the Public Utility Code, the Commission defined Small Business customer as a legal entity, be it a person, a partnership or a corporation, with

[9] 73 P.S. § 1648.3.
[10] 66 Pa. C.S. § 2807(e)(7).

maximum registered Peak Demand greater than 25 kW.[11] The record is clear that each Penn project is a distinct corporate entity and that peak demand at each location is no more than 25 kW. Penn St. 1, 23:1-11. UGI argues that Penn's projects are not "customers," based on the fact that they are also customer-generators. UGI cites no regulation or statute to refute that Penn's projects are small business customers as defined by the Commission, in fact the Commission's Regulations make it clear that Penn must be treated exactly like other customers.[12] Because Penn's projects all meet the less-than 25kW threshold, they all must be offered a fixed rate that changes no more than quarterly. UGI's contention that customer-generators are not customers is blatantly in conflict with the law. Customer-generators are by definition "customers"[13] and the fact that they generate in some hours does not change the fact that in some hours they buy – which is the act of a customer. A fundamental premise of net metering is to allow customers to consume power and produce power, and at times have power in excess of the customer's consumption flow into the UGI distribution system. Customer-generators are not utility scale as UGI suggests, but rather small and limited in size to 3,000 kW in most instances.

4. UGI's Last Minute, Last Ditch Effort to Convince Anyone that its GSR-2 Rate will Produce Full Retail Value Fails. (UGI MB 7-8).

In its Direct Testimony, Penn's witness noted that UGI's failure to credit customer-generators for PLC and NSPL charges was one obvious fact leading to the conclusion that that UGI's proposed GSR-2 default service rate, the so-called PTC-2, was not full retail value. Penn St. 1, 24:1-10. Then, literally on the day of the hearing, UGI presented rejoinder testimony for both

[11] 52 Pa. Code § 54.2
[12] 52 Pa. Code § 75.14(i). While this subsection also allows EDCs to use a special load profile that incorporates a customer-generator's real-time generation, if the Commission approves is. That is not what UGI is proposing here, which is an all new rate, and which differs vastly from a load profile and the proposed rate is missing retail rate components that differ from other customers.
[13] 73 P.S. § 1648.2.

Mr. Faryniarz and Ms. Hazenstab, that purports to agree to credit the PLC and NSLP amounts because Penn's testimony was convincing. The crediting does little to change the fact that the rate produced for customer-generators by UGI's formula is less than the LMP for UGI's territory in many hours and is even less than zero on regular occasions, meaning customer-generators would actually pay to generate power. See Exhibits JC-10 and JC-11. The GSR-2 formula cannot claim to produce full retail value when it charges a customer who only consumes energy a negative rate, or even a rate below the LMP – which is a wholesale rate. Even if that customer used the same number of kWh in the same time period as a customer-generator generates, if the two rates do not match then it is not full retrial value by definition. UGI argues that it is unreasonable for customer-generators to expect to be paid when the spot market is below zero. The AEPSA requires that customer-generators be compensated at full retail value for every excess kilowatt hour, recognizing that other GSR-2 consuming customers rates would remain above zero. UGI has no coherent explanation as to how a negative rate effectuates a full retail value. It analysis is apples to oranges. Contrary to UGI's ridiculous statements on page 8 of is MB, default service providers are permitted to offer time of use or spot market following default service rates – as an option. Spot market purchases are indeed a permitted resource for default service providers, See 66 Pa.C.S. § 2807(e), and Penn never argued the contrary. Rather it said because of its less than 25 kW demand, and that it is a small business customer by definition, that it must be offered a fixed rate option. UGI's plan does not do that and is in violation of Act 129.

Ironically in this same section in its Main Brief, UGI claims that it is not subject to the single rate requirement of the Commissions regulations. 52 Pa. Code § 54.187(c). The requirement is that a "default service customer shall be offered a single rate option, which shall be identified as its PTC, and which shall appear on the customer's bills identified as its PTC". There is no

exception to this rule that is relevant here. UGI's hourly changing PTC plainly fails the single rate requirement and the requirement that it be posted on the customer's bill. In fact, Ms. Hazenstab admits that the PTC will not be displayed on a GSR-2 customer's bill. TR at 80. UGI boldly claims that this regulation cannot apply but offers no cogent rationale why that should be so, because there is no good argument. Rather, UGI contends that if it is prohibited from offering a mandatory hourly rate with no option for a single rate, that all hourly rates are illegal. UGI's hyperbolic claim is something Penn never argued, and which clearly is not true; utilities are permitted to offer variable or time of use rates, but must also offer a single rate option. UGI fails to make that distinction in its argument and in its proposed rates.

Finally, UGI rails against the argument that its proposed GSR-2 PTC will decline as consumption increases, again without providing any reference to any exhibit that might demonstrate it's point, because it is not true. The Commission's regulations do not allow default service rates to decline as consumption increases. 52 Pa. Code § 54.187(d). The rates paid via the GSR-2 PTC formula do decrease as production increases and are in violation. See Exhibit JC-9.

5. UGI's Redefined GSR-2 Procurement Group is Illegal. (UGI MB, 12-16).

UGI's filing would impose an entirely new and different classification system for default service customers, one (GSR-1) that produces a full requirement fixed rate for one group of customers, and smaller customer-generators, and the other (GSR-2) which is an LMP-based wholesale proxy rate where UGI assigns larger customers who consume electricity, expecting that they will soon shop rather than pay such volatile and unpredictable rate, and where somewhat larger customer-generators would now be sent. UGI St. 2, 29:19-23. In the current iteration of it default service plan UGI has made substantial changes. First, specific to customer-generators, it belatedly asked for a waiver, to classify them as GSR-2, based not upon load (kW) as has been established practice since UGI's first DSP, but instead by its newly derived supply peak load impact

("SPLI") measure which classifies customers either by peak load or by peak generation output. The new threshold level requested is 100 kW "supply peak load impact." But the Commission's regulations say that Penn's projects, whose customer peak load is no greater than 25 kW, is a small business customer and Act 129 requires that small business customers be offered a rate that changes no more frequently than quarterly, and the new Rate GSR-2 PTC will change hourly, no exceptions. The claimed reason for UGI ignoring the law and seeking to impose such requirements is UGI's belief that adding Penn's (and perhaps other customer-generator projects) to its system "could" negatively impact the rates small customers pay. UGI introduced no evidence of rate impacts in other service territories where this alleged harm could be demonstrated, just its own speculation, and is asking the Commission to authorize a dramatic and heretofore illegal discrimination against customer-generators.[14]

The simple fact is that even if there were negative impacts on small customers, which is not proven in this record, the AEPSA anticipated this as a potential condition and requires that such increased costs be recovered from ratepayers under an automatic adjustment clause, as a cost of energy. 73 P.S. § 1648.3(3). What that means is that any allegations of harm are not a legitimate basis for violating any of the provisions of the AEPSA, the Public Utility Code or Commission's regulations. Even if the AEPSA did not explicitly require costs to be recovered from customers, the outcome would be the same because the AEPSA requires compensation at full retail value and UGI is not complying. To the extent that UGI might argue that such an outcome might conflict with Act 129's goal of providing default service at least cost over time, it does not. The goal of least cost does not empower the utility to seek to avoid other applicable laws in pursuit of least

[14] If one is unsure of UGI's intent to specifically discriminate against customer-generators, one must look no further than Ms. Hazenstab's belated waiver request in her rebuttal testimony, aimed specifically at reclassifying just customer-generators, not other GSR-2 customers.

cost, an outcome we are hopeful will be recognized by the Commission. In other words, asking customers to pay for the costs of adding renewable and alternative energy to the mix of resources, even if that could cost more on an occasional hour, is not in conflict with least cost over time, it is subsumed within it.

6. Penn Renewables' Projects meet the Commission's Definition of Small Business Customers and Must be Treated as Such. (UGI MB 18-21).

The Commission's Regulations, 52 Pa. Code § 54.2, defines a small business customer as:

> *Small business customer*—The term refers to a person, sole proprietorship, partnership, corporation, association or other business entity that receives electric service under a small commercial, small industrial or small business rate classification, and whose maximum registered peak load was less than 25 kW within the last 12 months.

The record is clear that every one of Penn's projects are separate business entities and that none of them will have a registered peak load of greater than 25 kW, ever. Penn St. 1-SR, 23:19-24:2; 27:1-17. Also clear are the Commission's Regulations at 52 Pa. Code § 54.187(h) and the Public Utility Code at 66 Pa. C.S. § 2807(e)(7) which both mandate that small business be offered a rate that changes no more frequently than quarterly, a requirement that is clearly violated by UGI's proposed hourly GSR-2 PTC. UGI claims, nonetheless, that Penn's projects are not small businesses and not entitled to a quarterly rate. The first reason UGI cites is the lack of a definition of "small business customer" in the Public Utility Code. Simply put, the regulations define what the statute did not and there is no legal basis for UGI's spurious argument. Second, UGI claims that the AEPSA does not mention small business customers, and instead uses the term "customer-generators." The definition of customer-generators is clear that customer-generators are "customers" and does not abrogate customer rate classes. UGI's final effort at linguistic gymnastics claims the opposite argument; that because the definition of small business customer does not include "customer-generator" customer-generators are not small business customers –

sort of like saying that if the definition of small business does not include the neighborhood pharmacy, the neighborhood pharmacy cannot be a small business, even though we know that is not true. UGI's argument is a tautology and has no merit. One need only read any of the references in the Commission's net metering regulations, 52 Pa. Code § 75.13, which is the provision that allows customer-generators to shop for electricity, subsection (g) for example, to realize that it is clear that customer-generators are customers, have rate classes and are entitled to the same protections and benefits as other customers.

UGI wrongly suggests that because customer-generators generate electricity, that the size of the generator matters for purposes of its rate classification, it does not. The classifications based on size in the AEPSA are for "a nameplate capacity not greater than 50 kW at a residential service or not larger than 3,000 kilowatts at other customer service locations." There is no large or small classification. The fact that a project may produce up to 3,000 kW does not change it to a larger or smaller customer for purchasing energy, by the plain terms of the APESA. The attempt to reclassify Penn's projects as large customers is a diversion and a further attempt to avoid the plain meaning of the law. UGI's self-serving testimony is a further attempt to add further requirements to the regulation that are not there. A customer's size classification is defined by its consumption; period. UGI's emphatic attempts to argue otherwise ignore that basic fact. The AEPSA is premised on customer-generators producing energy but did not require that they be reclassified based upon output. Because it did not, it cannot be assumed, in the multiple ways UGI has argued that it should, that the General Assembly intended to do so. Rather, the absence of any discussion of reclassification anywhere solidifies the argument that a business customer whose peak demand is less than 25 kW, is indeed a small business and is entitled to a fixed quarterly rate.

7. Including all Customer-Generators in the GSR-1 Group will not Violate any Applicable Statutory Requirement nor will it Cause a Subsidy. (UGI MB 21-24).

UGI's perpetuates a theory that customer-generators "could" cause an increase in costs of providing service to GSR-1 customers, and that said hypothetical increase in costs "could" constitute a subsidy, along with its unproven allegations that the hypothetical subsidy "could" violate the requirement that default service be provided at the least cost over time. UGI's theory is incorrect for several reasons. First, least cost over time is one of three requirements of Section 2807(e)(3.4). Another requirement is that the service be adequate and reliable, and it is clear that adding generation to the distribution system makes it more reliable. Nonetheless, the criteria that default service be provided at least cost over time is not a mandate to allow UGI to violate other provisions of law in attaining it, nor could it be. The AEPSA requires that customer-generators be compensated for excess generation at full retail value. More fundamental, however, is the fact that there is no evidence that demonstrates that including all customer-generators, residential and "other service locations" in GSR-1 will cause any harm to any customers. How could there be, if customer-generators are to be compensated at the same amount per kwh that other GSR-1 customers pay for their energy and the same cost at which UGI sources the energy? UGI does not explain how paying customer-generators the same amount per kWh that consuming customers pay to UGI could be a subsidy. Nor does UGI make anything other than false statements to substantiate its claim that there is some inherent subsidy created by including customer-generators that will impact tranche size and possibly increase volatility, even if those allegations were true. Again, no evidence of this outcome was presented by UGI, and it is certainly no basis for violating the express requirements of the AEPSA. It also is worth noting that Penn never claimed that hourly default service rates to consuming customers are illegal, many EDCs have voluntary hourly rates, but also

provide a fixed rate option. Penn has stated that that because of Penn's small load, as a small business customer, it must be offered a fixed rate option, because a sole offering of a mandatory hourly rate would violate the law. Moreover, the question here is not whether the GSR-2 PTC is a default rate, that is a red herring. The correct question is whether it provides full retail value, and it does not.

8. Customer-generators will not Receive Full Retail Value for all Excess Generation on an Annual Basis Under UGI's Proposal. (UGI MB at 26-29).

UGI's argument that its GSR-2 formula will provide "full retail value" to customer-generators is wrong, and the criticisms of UGI's position are justified and accurate. First, UGI fails to explain how a rate that is charged or paid to only to a single customer for one hour is reflective of the "full retail value." The Commissions regulations require that a default service rate be "reflective of serving the average member of a customer class" and yet UGI's alleged "full retail value" calculation is specific to each customer for each hour and could regularly be a negative number. 52 Pa Code § 54.187(e). UGI never explains how a rate for a single customer that is different from that being charged to any other customer can be reflective of the average cost of serving all customers in a customer class. UGI's rate stands this concept on its head and must be rejected.

As discussed in Penn's Main Brief and its testimony and elsewhere in this brief, UGI conceded at the last minute to compensate customer-generators for PLC and NSPL, which may increase the rate by a small amount but cannot transform a wholesale proxy rate into a mechanism that provides full retail value. The change, which should have been included in UGI's filing, was made on the day of the hearing thus depriving Penn Renewables of the opportunity to conduct a thorough analysis or offer any testimony in violation of 52 Pa. Code § 5.243(e). Nonetheless, UGI offered no testimony that the change produces full retail value. In fact, there is no refutation of

exhibits JC-10 and JC-11 or that both demonstrate that over time, generators on the GSR-2 rate formula will earn substantially less per kwh than customers who consume energy will pay for that same energy. There is testimony that the GSR-2 PTC will continue to go negative for customer-generators but never for consuming customers. In short, the agreement to compensate for these two minor cost items may sound good, but the impact is minimal.

At pages 27-29 of its MB, UGI also fails to explain how its netting mechanism will ensure that customer-generators are paid appropriately for all excess generation on an annual basis, when it is clear that UGI is not going to follow the process mandated in the APESA or the Commission's Regulations (52 Pa. Code § 75.13(d)) to net kWh against kWh. UGI's proposal instead would cash out kWh surpluses monthly, thus failing to properly compensate for each surplus kWh at year-end. A mechanism that carries forward only dollars as UGI has proposed will net the value of dollar cost on a monthly basis and can carry forward only dollars. This method does not net kWh produced versus kWh consumed and then carry forward a kWh balance to be compensated at the end of the year. Even UGI's brief at page 27 admits that it is dollars being carried forward, not kWh as required. Carrying kWh imbalances monthly until a cash-out at year end is what the Regulations mandate. UGI's claim that it must net in its proposed fashion because of its proposed hourly rate does not change the fact that the proposal is not authorized and is illegal and is evidence of UGI's continued insistence on jamming the square peg of its program into the round and well-established hole of the law.

9. The Entirety of UGI's Proposal for Placing Customer-Generators into GSR-2 is Contrary to Law and will Produce Unjust and Unreasonable Compensation for Customer-generators Such as Penn. (UGI MB 30-38).

UGI's proposal to divert some customer-generators into a mandatory variable rate formula that will produce unknowable prices that differ every hour, and that will produce a different rate for each customer in each hour, cannot, by definition produce a full retail value, is discriminatory and illegal. Retail value is the average of the complete cost at which energy is sold to default service customer in the class. In this case, UGI's claim that its GSR-2 PTC will provide full retail value can never be true.[15]

Contrary to its contrived argument, Penn did not assert that UGI's debits line losses when it should credit them, rather, as Mr. Crist made clear during cross examination, his argument is that line losses should not be part of the equation at all because customer-generators are required to be compensated for excess generation, per kWh at the meter.

UGI also doubles down on the fact that its rate formula produces negative rates on a regular basis and claims that such an occurrence is a proper price signal that should incentivize customer-generators to not generate. UGI St. No. 2-RJ, 6:4-16. UGI also testified that there will be no accurate price signal provided to customer-generators, hence no transparency, and made worse because prices will not be known until weeks later. Tr. at 80:21-81:18. No amount of backtracking in its brief can alter the fact that UGI's formula will produce negative rates. See Exhibits JC-10, JC-11. UGI fails to explain how full retail value for consuming customers is opposite of full retail value for producers. The APESA requires compensation at full retail value and was never conceived, as its plain requirements state, to reflect proxy wholesale market prices as UGI suggests

[15] 52 Pa. Code § 54.187(e) (a default service rate is to be "designed to recover all default service costs, including generation, transmission and other default service cost elements, incurred in serving the average member of a customer class").

it should. UGI's brief admits that even its own analysis shows that there will be on average 140 hours per year where the LMP will be negative. Even one hour would pose the same illegality problem and UGI's rate fails to comply.

UGI also contends that moving the GSR-2 minimum threshold to 3 MW and thus matching the limits in the AEPSA is no solution, and that if Penn's projects were allowed in the GSR-1 procurement class that it could cause higher rates for customers and could create cross-subsidization. UGI, however, never offers any evidence other than pure speculation -- Mr. Faryniarz cites no evidence to substantiate his claim. UGI has failed to meet the burden of proof. Moreover, UGI present the theory of a subsidy as justification for its plan violating so many requirements – that the least cost over time for some customers over others is paramount – and that justifies all the other violations. The AEPSA does not consider or authorize a separate measure of full retail value for different customer-generators, rather, it requires that all customer-generators, and not just some, receive full retail value. This simple truth has not been addressed by UGI, which instead falsely claims that full retail value could be customer specific, based upon characteristics like size, sophistication or knowledge. Imagine your local grocery store measuring your height or making an assumption about your IQ before deciding the price of your groceries; but that is exactly what UGI proposes here. UGI's proposal is designed to do one thing, to introduce rate risk to customer-generators so they are unable to finance and complete projects in UGI's territory. UGIs failure, despite months of unwarranted delays, to complete Penn's applications, many of which were submitted in 2023, is yet another demonstration of UGI's approach. UGI will not approve the projects until this proceeding is over and has been illegally delaying since the 12 project applications were filed. All of UGI's actions result in increased risk to Penn and are otherwise in violation of the AEPSA.

10. OCA's Gross Misstatement of the Law Contending that Penn Bears the Burden of Proof When Opposing a Proposal Made by UGI is Legally and Factually Incorrect. (OCA Main Brief at 7).

On page 7 of its MB, OCA contends that Penn bears the burden of proving that its response to UGI's illegal classification of GSR-2 customers by SPLI rather than peak load as required in the Commission's Regulations. OCA is simply wrong. The burden of proof in this default service proceeding, and in the Complaint case, because it concerns UGI's rates, attaches to every aspect of UGI's proposal.[16] Penn's response to UGI's illegal re-classification was to suggest as an alternative that UGI should not change the threshold to 100 kW but rather to 3,000 kW since that is the practical limit provided for in the AEPSA for projects at "other customer service locations." The result of the proposed reclassification in the manner suggested by Penn's witness, Mr. Crist, is that customer-generators, for all practical purposes would be compensated at full retail value as members of the GSR-1 procurement class, as they should be. Penn St. 1-SR, 34:18-22. OCA's mistake is that Penn's 3,000 kW threshold proposal was not made in isolation, but rather in response to UGI's new proposal to re-classify customer-generators not as small business customers, which they are, but as something else and to alter UGI's proposal in a manner that would make it compliant with the law. It is UGI that bears the burden of proving its plan is in the public interest – which it has not done. Penn's plan, which complies with the law, is in the public interest.

[16] UGI has the burden of proof in this proceeding to establish that it is entitled to the relief it is seeking. 66 Pa.C.S. § 332(a). UGI must establish its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). In this case, UGI requests that the Commission approve its default service filing, including its changes to the manner in which customer-generators are compensated under the requirements of the AEPSA and, therefore, has the burden of proving that the plan satisfies all applicable legal requirements for it to be approved, including changes to its tariff and changes to procurement classes, among other items.

11. Contrary to OCA's Claim, Penn did not Propose a New Classification Using SPLI, Rather, it Proposed a Method to Make UGI's Illegal Proposal Acceptable. (OCA MB at 7-9).

The OCA continues to insist that Penn carries the burden of proving, what UGI has proposed is illegal and that Penn therefor has the burden of proving legal alternatives comes with a burden. OCA is incorrect. Section 315 of the Public Utility Code makes it clear that it is UGI, as the proponent of a new rate and a change to its tariff, bears the burden to prove the proposals are just and reasonable and in the public interest, even if Penn did file a complaint against it. 66 Pa. C.S. § 315. OCA's analysis fails to address the very first sentence in Section 332 that states, "Except as may be otherwise provided in Section 315 (relating to burden of proof) or other provisions of this part . . ." It is clear that Section 315 provides otherwise and OCA's argument regarding burden of proof must be disregarded.

With regard to OCA's contention that Mr. Crist incorrectly contends that "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," OCA appears to disagree with the fundamentals of economics that increasing supply into the wholesale market should reduce wholesale prices, which is a benefit to UGI's customers, regardless of how UGI compensates customer-generators for their excess generation. Mr. Crist does not propose that customer-generators be compensated at the LMP because UGI's mechanism for doing so is flawed and operates outside the supply and demand realm, as Mr. Crist's testimony points out. Exhibit JC-11 demonstrates this action, the GSR-2 rate will increase, and be far greater than LMP when a generator is not producing and be at or lower than LMP when a customer generator is producing electricity.

OCA also expresses solidarity with UGI on the notion that GSR-1 customers should be protected from rate impacts occasioned by developers like Penn, whom they allege could interfere

with the ability to provide default service at least cost over time. OCA's reliance on UGI's position is misplaced because there is no evidence in the record, nor does OCA cite to any such evidence, that Penn's projects would impact GSR-1 customer prices and ignores the plain fact that nothing in the Public Utility Code allows for the imposition of illegal rates to prevent compliance with another statute.

12. Contrary to OCA's Incorrect Statement, UGI's Proposal is Illegal and is not Supported in the Record. (OCA MB 9-12).

At the outset, Section 1301 of the Public Utility Code applies to utilities and requires that rates and tariffs be just and reasonable and in conformity with the law. UGI's proposal to reclassify small business customers who are also customer-generators as GSR-2 and to subject them to an illegal, unreasonable and unjust default service formula rate does not comply with Section 1301, 66 Pa. C.S. § 1301. The burden of proving compliance of its proposal to the statutory requirements is on UGI, and UGI has failed to carry that burden regardless of OCA's incorrect conclusion that Penn has not carried the burden of proving that its proposal to bring UGI's otherwise illegal reclassification into the realm of legality, by compensating customer-generators at full retail value as required by the APESA. What OCA overlooks is that the Commission has NEVER authorized UGI to reclassify its customers using SPLI, nor has it authorized any other EDC to do the same. Nor has the Commission authorized UGI to change the law regarding the classification of small business customers and to extend the cap to 100 kw impact, not load as the regulations require, but by "impact", which provisions UGI belatedly asked to be waived.

Finally, OCA's position that the reclassification of customers from GSR-1, where Penn would be classified but for UGI's proposal, has nothing to do with how customers are compensated, is nonsensical. That classification has everything to do with compensation and was predicated on altering the compensation for GSR-2 customers. Mr. Crist did not state that

customer-generators should be classified as GSR-1 customers solely because the PTC for GSR-1 customers is full retail value and the GSR-2 PTC is not, but also because the law requires that all customer-generators, regardless of size receive full retail value and neither UGI nor OCA explain how a single service territory has two measures of full retail value; one of which is a price that is never paid by more than one generator per hour. There is no evidence in this record, nor does OCA cite to any, that demonstrates that moving all customer-generators to GSR-1 PTC would cause any harm to other GSR-1 customers. [17]

OCA joins UGI in contending that Penn has failed to carry its alleged burden of proof, which is simply incorrect, and joins in the notion that because customer-generators such as Penn are "more sophisticated large customer-generators" as measured by UGI's made-up SPLI measure that is not approved by any regulation or order, that it is acceptable to discriminate against Penn based on its alleged size (which is within the limits for customer-generators) or sophistication (which is based on conjecture), regardless of 66 Pa. § 1304, that prohibits such discrimination. The OCA, like UGI, produces nothing but bald claims of expected harm, but no actual evidence that reliably demonstrates that there will be unjustified rate impacts. Both UGI and OCA ignore that the AEPSA requires that costs of compliance, including alternative energy purchases, are to be recovered from customers. 73 P.S. § 1648.3(3). In other words, even if, and the "if" is not proven on this record, customer-generators being compensated for excess generation at full retail value as embodied in GSR-1 PTC, did cause additional costs for other customers, that is not harm, that is what the law requires.

[17] With regard to OCA's citation to the Commission's Policy Statement at 52 Pa. Code § 69.2902, as a regulation is plainly wrong, as is OCA's continued reliance on that section as though it were a regulation, when it does not have the force or effect of law.

IV. CONCLUSION

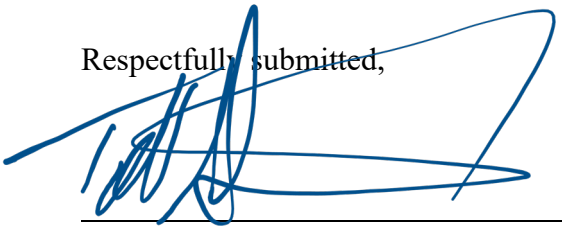
There is little nuance to this case. It is about Penn seeking to participate as a customer-generator in Pennsylvania's net metering program that allows customers with alternative energy systems at their location, to offset their consumption with energy produced by that system and to inject that energy into the EDC's distribution system and be compensated for the excess at the same rate that other customers, its neighbors, pay for energy as default service customers. That is what the law requires.

UGI, concerned about the impact of including a customer-generators on its system, decided to adopt an offensive position and make it difficult, if not impossible for Penn's projects to ever be built. First it slowed the approval process for the 12 projects to a near stop but went further and now seeks to alter the economics upon which the projects are proposed so that Penn no longer will receive full retail value for its excess generation in the form of the default service rate. Instead, UGI proposed a rate formula, that will produce compensation for Penn's excess energy that is orders of magnitude less than what the prior configuration would have produced. UGI tacitly denied that its new compensation proposal was intended to disincentivize Penn from further developing its projects, but regardless, UGI's actions will have the same impact, and UGI is well aware of those. UGI claims that its action was taken to ensure that customers in the GSR-1 procurement class do not subsidize customer generators consistent with the Act 129 requirement that default service be provided at least cost over time. UGI is unapologetic that its new method is blatantly discriminatory and will violate the "full retail value" requirement of the AEPSA, and instead doubles down and claims that even if the compensation for excess energy is less than zero (i.e., that customer-generators pay to produce energy) it still represents full retail value, even though the price for the energy for the very same hour, that a consuming customer will use, will never fall below zero, or even get close.

There are a multitude of infirmities of UGI's proposal discussed in Penn's Main Brief and in its testimony and exhibits, which are incorporated herein by reference, but the simple fact is that the law requires net metered customer generators to be compensated at full retail value. Full retail value is what other customers (GSR-1 or GSR-2) are paying for electricity. It is a retail value, not some contrived LMP hybrid that UGI wants to pay Penn for its excess generation that no other customer will likely pay in that hour. UGI never refutes Penn's logic that full retail value is not a measure of the output of UGI's self-serving formulaic rate, which is based upon factors unique to the customer generator. Retail value must look outward to what other customers are paying. It is not a retail value unless customers are paying the value for what they consume. The only retail value that UGI presently has, is the GSR-1 that is a rate that customers of Penn's size are paying for energy and that is the rate that should apply to Penn.

WHEREFORE Penn Renewables, LLC respectfully requests that UGI's proposal to reclassify customer generators "at other service locations" such as Penn's 12 projects, as belonging to the GSR-2 procurement class, and to alter the compensation mechanism for such GSR-2 customer-generators to anything other than the same default service rate as will be charged to GSR-1 customers, be denied as not in compliance with he law, as being unjust and unreasonable and not in the public interest, and grant such other relief as may be necessary in the Commission's discretion.

Respectfully submitted,



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