

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

RECOMMENDED DECISION

Before
Dennis J. Buckley
Alphonso Arnold III
Administrative Law Judges

INTRODUCTION

This Recommended Decision considers the Joint Petition for Approval of Non-Unanimous Settlement (“Joint Settlement” or “Non-Unanimous Settlement”) of the UGI Utilities Inc.-Electric Division’s (“UGI”, “UGI Electric” or “the Company”) Fifth Default Service Plan for the period of June 1, 2025 through May 31, 2029 (“DSP V” or “Petition”). It is recommended that the Pennsylvania Public Utility Commission (“Commission”) grant the Joint Settlement and adopt its terms without modification, recognizing the opposition to the same by Penn Renewables, LLC (“Penn” or “Penn Renewables”). The Joint Petitioners are UGI, the Office of Consumer Advocate (“OCA”) and the Office of Small Business Advocate (“OSBA”). The Joint Settlement

resolves the issues in this proceeding with the exception of an issue contested by Penn Renewables, which filed a Formal Complaint (Complaint) in this proceeding. That issue is discussed below. Adoption of the Joint Settlement without modification is in the public interest as will also be discussed below.

The issue raised by Penn Renewables in its Complaint that was not resolved in the Joint Settlement relates to GSR-1/GSR-2 (“Generation Supply Rate”) Customer Classification. UGI, OCA, and Penn Renewables filed Main and Reply Briefs regarding this contested issue.¹ The undersigned include a recommended disposition of this issue in a separate section of this Decision concluding that the Complaint must be dismissed as Penn Renewables did not meet its burden of proof. Finally, this Decision recommends that the Commission approve potential affiliated interest transactions associated with DSP V pursuant to Section 2102 of the Pennsylvania Public Utility Code (“Code”), 66 Pa.C.S § 2102.

We note that the Commission is required by statute under Section 2807(e)(3.6) of the Code to issue a final Order regarding DSP V by February 28, 2025. 66 Pa.C.S § 2807(e)(3.6). The last reasonable public meeting for the Commission to act prior to this deadline is February 6, 2025.²

¹ Though a signatory to the Joint Settlement, OSBA advised the presiding ALJs that it would not be filing Briefs in this matter.

² In its Petition, UGI requested that the Commission approve the Company’s DSP V no later than the Commission’s last public meeting in January 2025, if possible, to provide sufficient time to implement the procurement strategy in DSP V prior to the expiration of the current DSP IV plan on May 31, 2025, for purchases beginning June 1, 2025, without the need for modification of procurement timing. The last public meeting for the Commission to act in January 2025 is January 23, 2025.

HISTORY OF THE PROCEEDING

On May 31, 2024, UGI Utilities, Inc. – Electric Division, filed its Petition with the Commission. The Petition was filed pursuant to Section 2807 of the Code, 66 Pa.C.S. § 2807, and Sections 54.181-54.189 of the Commission’s regulations, 52 Pa. Code §§ 54.181-54.190, and establishes the terms and conditions under which the Company will acquire default service supplies, including Alternative Energy Portfolio Standards (“AEPS”) credits, from June 1, 2025, through May 31, 2029 (“DSP V Term”). UGI also requested approval of potential affiliated interest transactions associated within its DSP V pursuant to Section 2102 of the Code, 66 Pa.C.S § 2102.

On June 5, 2024, a telephonic Prehearing Conference Notice was issued, scheduling a prehearing conference in this matter for June 28, 2024.

On June 13, 2024, a Prehearing Conference Order was issued which included the date and time of the prehearing conference, the procedures applicable to the prehearing conference, and directions for the submission of prehearing conference memoranda prior to the conference.

Also on June 13, 2024, OSBA filed a Notice of Appearance.

On June 18, 2024, Penn Renewables filed a Formal Complaint against the Petition, docketed at Docket No. C-2024-3049618.

On June 20, 2024, OSBA filed an Answer to the Petition, Notice of Intervention, and a Public Statement.

On June 21, 2024, OCA filed an Answer to the Petition.

On June 22, 2024, a notice of the Petition and telephonic Prehearing Conference Notice was published in the *Pennsylvania Bulletin*. The notice established a deadline of July 12, 2024, for the filing of Protests, Interventions, and Answers to the Petition. 54 Pa.B. 3603 (June 22, 2024).

In accordance with the Prehearing Conference Order issued on June 13, 2024, prehearing memoranda were filed separately by UGI, OCA, OSBA, and Penn Renewables.

On June 28, 2024, a prehearing conference was held. Nicholas Stobbe, Esquire, appeared on behalf of UGI. Harrison Breitman, Esquire, appeared on behalf of the OCA. Steven Gray, Esquire, appeared on behalf of the OSBA. Todd Stewart, Esquire, appeared on behalf of Penn Renewables. The parties agreed to a procedural schedule and modifications of the Commission's discovery rules. No Party requested the scheduling of a public input hearing in this matter. A transcript of 19 pages was compiled.

On July 2, 2024, a Post-Hearing Order was issued which memorialized the agreements made at the prehearing conference, including the procedural schedule and modifications to the Commission's discovery regulations.

On July 8, 2024, UGI filed an Answer to the Complaint of Penn Renewables.

On August 19, 2024, a telephonic Hearing Notice was issued scheduling evidentiary hearings for September 30, 2024, and October 1, 2024.

On August 28, 2024, UGI filed a Motion for Protective Order.

On September 25, 2024, the Parties requested through email that the hearing scheduled for September 30, 2024, be cancelled after indicating that it was their belief that given the intended cross-examination that the hearing could be completed in one day. Therefore, a Cancellation Notice was issued cancelling the September 30, 2024, evidentiary hearing.

On September 26, 2024, an Order was issued Granting the Joint Motion for Protective Order which adopted, without modification UGI's Protective Order as agreed to by the parties.

On October 1, 2024, an evidentiary hearing was held as scheduled. Anthony D. Kanagy, Esquire, appeared on behalf of UGI. Attorney Breitman appeared on behalf of OCA. Attorney Gray appeared on behalf of OSBA. Attorney Stewart appeared on behalf of Penn Renewables. As will be detailed, below, pre-filed testimonies and exhibits of the Parties were moved and admitted into the record without objection. Jesse Tyahla, the Director of Energy Supply and Planning for UGI, Stan C. Faryniarz a consultant from Daymark Energy Advisors, and Tracy Hazenstab, Principal Analyst and Business Partner for UGI provided testimony on cross examination on behalf of UGI. James L. Crist, President of Lumen Group, provided testimony on cross examination on behalf of Penn Renewables. A transcript comprising pages 20-133 was compiled.

During the hearing, the Parties stated that UGI, OCA, and OSBA had agreed in principle to file a Non-Unanimous Petition for Settlement, with Penn Renewables opposing the Settlement. The deadlines for the filing of the Settlement and related documents were discussed during the hearing.

On October 7, 2024, a Post-Hearing Order was issued which provided instructions for the submission of the Non-Unanimous Joint Settlement, any written opposition to the Joint Settlement, and Briefs with respect to litigated issues.

On October 8, 2024, UGI filed a Motion to Admit into evidence an on the Record Data Request, moving for the admission of “UGI Electric Updated Response to Penn Renewables Set III, Question 8,” attached as Appendix A.³ By email, the undersigned Presiding Officers directed the Parties to file objections, if any, to the Motion by 4:00 p.m. October 9, 2024. No party objected to the Motion by this deadline.

On October 10, 2024, an Order was issued Granting the Motion to Admit on the Record Data Request, which admitted “UGI Electric Updated Response to Penn Renewables Set III, Question 8” into the record of this proceeding.

On October 15, 2024, UGI, OCA, and Penn Renewables filed Main Briefs. As noted, above, OSBA indicated by letter that it would not be filing briefs.

On October 22, 2024, the Joint Non-Unanimous Settlement was filed by UGI, OCA and OSBA.

On October 25, 2024, UGI, OCA, and Penn Renewables filed Reply Briefs.

Also on October 25, 2024, Penn Renewables filed a Statement in Opposition to the Petition for Non-Unanimous Settlement.

On November 5, 2024, an Order was issued closing the Record.

This matter is now ready for resolution.

³ During the cross-examination of UGI’s witness, Penn made an on the record data request, pursuant to 52 Pa. Code § 5.351, requesting that UGI provide an updated discovery response for Penn Renewables discovery question Set III, No. 8 to UGI Electric. Tr. 123-25. UGI did not object to the request. UGI’s Motion was filed in response to this request.

THE EVIDENTIARY RECORD

The evidentiary record in this proceeding is comprised of the following:

UGI ELECTRIC'S TESTIMONY AND EXHIBITS:

Tyahla Direct Testimony with Exhibits (UGI Statement 1)
Tyahla Rebuttal Testimony with Exhibit (UGI Statement 1-R)
Faryniarz Direct Testimony with Exhibits (UGI Statement 2)
Faryniarz Rebuttal Testimony with Exhibits (UGI Statement 2-R)
Faryniarz Rejoinder Testimony with Exhibits (UGI Statement 2-RJ)
Hazenstab Direct Testimony with Exhibits (UGI Statement 3)
Hazenstab Rebuttal Testimony with Exhibits (UGI Statement 3-R)
Hazenstab Rejoinder Testimony with Exhibits (UGI Statement 3-RJ)
UGI Electric Updated Response to Penn Renewables Set III, Question 8

OCA'S TESTIMONY AND EXHIBITS

Ogur Direct Testimony (OCA Statement 1)
Ogur Rebuttal Testimony (OCA Statement 1-R)
Ogur Surrebuttal Testimony (OCA Statement 1-SR - Public and Confidential)

OSBA'S TESTIMONY AND EXHIBITS

Ewen Direct Testimony with Exhibit (OSBA Statement 1)
Ewen Rebuttal Testimony (OSBA Statement 1-R)
Ewen Surrebuttal Testimony (OSBA Statement 1-S)

PENN RENEWABLES' TESTIMONY AND EXHIBITS

Crist Direct Testimony with Exhibits (Penn Statement 1)

Crist Surrebuttal Testimony with Exhibits (Penn Statement 1-SR)

TERMS AND CONDITIONS OF THE NON-UNANIMOUS SETTLEMENT

The Non-Unanimous Settlement is a 12-page document signed by UGI, OCA, and OSBA. The Settlement is opposed by Penn Renewables. Attached to the Settlement are Appendices A through D. Appendix A is the Pro Forma Tariff that revises UGI's tariff to clarify the application of GSR-1 and GSR-2 default service rate classifications pursuant to the Joint Settlement. Appendix B is the Statement in Support of UGI. Appendix C is the Statement in Support of OCA. Appendix D is the Statement in Support of OSBA.

The essential terms of the Settlement are set forth on pages 5-7 in paragraphs numbered 28-52⁴ in the Settlement. These terms are stated below verbatim and for ease of reference, retain the same format, numbers and headings as they appear in the Settlement.

A. DSP V PROGRAM TERM

28. The DSP V program term will be the four-year period beginning on June 1, 2025, through May 31, 2029.

⁴ The Settlement does not contain paragraph numbers 37 to 49. This is simply a numbering error, and no provisions of the Joint Settlement, substantive or otherwise, are missing.

B. PROCUREMENT ISSUES

29. UGI Electric will procure a 10 MW around-the-clock (“ATC”) block tranche with a five-year term. UGI Electric will procure another 10 MW ATC block tranche with a two-year term on a rolling basis through the term of DSP V and into the term of DSP VI. UGI Electric’s remaining proposed procurement methodologies for GSR-1 and GSR-2 customers as set forth in UGI Electric’s Petition for Approval of a DSP for the period of June 1, 2025 through May 31, 2029 and in UGI Electric St. No. 2, the Direct Testimony of Stan C. Faryniarz, pages 12-23, are approved as filed. The bid documents appended to UGI Electric St. No. 2 as Exhibits SCF-4 through SCF-10 are also approved, with the changes to implement the above modification.

30. UGI Electric will continue to procure supplies for GSR-1 residential and non-residential customers on a combined basis. For the DSP V period, the Company will apply rate allocation factors of 1.01 for residential customers and 0.97 for small commercial customers. The allocation factors will expire on May 31, 2029 at the end of DSP V and will not continue into the next DSP period. These provisions do not prevent any party from proposing, or waiving their right to propose, rate allocation factors in the DSP VI proceeding.

31. UGI Electric’s 50 percent load cap proposal applicable to fixed-price full-requirements (“FPFR”) tranches shall be conditional and apply prospectively to future FPFR solicitations after the point where UGI receives at least three independent bids for a FPFR solicitation (i.e., not apply to such initial solicitation where three bids are received

but thereafter conditionally apply to all future FPFR solicitations). Absent three or more bids, the load cap shall not apply in such future solicitations.

C. RECONCILIATION ISSUES

32. For the GSR-1 customer group, UGI Electric will utilize a 12-month amortization period for over- or under-collections balances reconciled for each six-month period.

33. The GSR-2 reconciliation process will be as set forth in UGI Electric St. No. 3-R, the Rebuttal Testimony of Tracy A. Hazenstab, page 15, and Exhibit TAH-2R.

D. GSR-1/GSR-2 CUSTOMER CLASSIFICATION

34. UGI Electric's proposal to classify GSR-1 and GSR-2 customers based upon their supply peak load impact is approved. UGI Electric St. No. 2, p. 29.

E. STATUTORY FINDINGS

35. As set forth in Paragraph 92 of the Petition, the Joint Petitioners request that the ALJs and the Commission make the findings under Section 2807(e)(3.7) as follows:

- UGI Electric's Plan includes prudent steps necessary to negotiate favorable generation supply contracts;
- UGI Electric's Plan includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis; and
- Neither UGI Electric nor its affiliated interests have withheld from the market any generation supply in a manner that violates federal law.

UNRESOLVED ISSUES

36. As noted above, Penn Renewables opposed the Non-Unanimous Settlement. Penn Renewables' issues are being briefed by the parties. UGI Electric submitted a Main

Brief addressing these issues separately on October 15, 2024, and will submit a Reply Brief responsive to Penn Renewables Main Brief on October 25, 2024.

THE NON-UNANIMOUS SETTLEMENT IS IN THE PUBLIC INTEREST

50. Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense the Parties must expend litigating a case and, at the same time, conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. *See id.* § 69.401. In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. PUC v. C.S. Water and Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991).

51. This Non-Unanimous Settlement was achieved by the Joint Petitioners after an extensive investigation of UGI Electric's filing, including extensive formal discovery and the filing of substantial testimony by the active Parties.

52. The Joint Petitioners will further supplement the reasons that the Non-Unanimous Settlement is in the public interest in their Statements in Support. The Statements in Support are attached to this Non-Unanimous Settlement as Appendices B through D. In their respective Statements in Support, each Joint Petitioner explains why,

in its view, the Non-Unanimous Settlement is fair, just, and reasonable and reflects a reasonable compromise of the disputed issues in this proceeding.^[5, 6]

The Settlement is also conditioned upon the standard settlement conditions. For example, if the Commission modifies the Settlement, the Settlement Parties reserve the right to withdraw from the Settlement and proceed towards litigation. Further, the Settlement Parties reserve their respective procedural rights if the Commission does not approve the Settlement. The Settlement is also conditioned on it not being cited as precedent in any future proceeding, except to the extent required to implement the Settlement, and the Settlement reflects a compromise of competing positions and does not necessarily reflect any Settlement Party's position with respect to any issues raised in this proceeding. Settlement ¶¶ 53-59.

DISCUSSION - TERMS OF THE NON-UNANIMOUS SETTLEMENT

A. Legal Standards

Section 2807 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 2807(e)(6) requires:

A default service plan approved by the commission prior to the effective date of this section shall remain in effect through its approved term. At its sole discretion, the default service provider may propose amendments to its approved plan that are consistent with this section, and the commission shall issue a decision whether to approve or disapprove the proposed amendments within nine months of the date that the amendments are filed. If the commission fails to issue a final order within nine

⁵ Settlement ¶¶ 28-36, 50-52.

⁶ It is noted that, because certain Joint Petitioners only participated with regard to certain issues in this proceeding, some of the Statements in Support may be limited in the scope of issues addressed.

months, the amendments shall be deemed to be approved and the default service provider may implement the amendments as filed.

66 Pa. C.S. § 2807(e)(6).

In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. C S Water and Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa.P.U.C. 1 (1985).

The party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). If a complainant establishes a prima facie case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, a complainant will prevail. If the utility rebuts complainant's evidence, the burden of going forward with the evidence shifts back to a complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Repogle v. Pa. Elec. Co.*, 54 Pa.P.U.C. 528 (1980), *Waldron v. Phila. Elec. Co.*, 54 Pa.P.U.C. 98 (1980).

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n.*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Comm., Dept. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984). Further,

mere opinion, without more, is insufficient to meet the complainant's burden. *Kirby v. PPL Elec. Utils. Corp.*, Docket No. C-20066297 (Final Order entered Nov. 16, 2006) (citing *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A. 2d 12 (Pa. 1987)). Bald assertions, personal opinions or perceptions do not constitute evidence. *Rivera v. Phila. Gas Works*, Docket No. C-2010-2164222 (Opinion and Order entered Jan. 12, 2012) (citing, *Pa. Bureau of Corr. v. City of Pittsburgh*).

B. Public Interest Considerations

Commission policy promotes settlements. 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative hearing resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. Many proceedings are expensive to litigate and the cost of such litigation at a reasonable level is an operating expense recovered in the rates approved by the Commission. This means that a settlement, which allows the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, yields significant expense savings for the company's customers. That is one reason why settlements are encouraged by long-standing Commission policy.

UGI, OCA, and OSBA support adoption of the Joint Settlement and filed Supporting Statements in that regard. As stated, Penn opposes the proposed Joint Settlement. We will first consider the Supporting Statements and then take up the litigated position relative to the classification of GSR-2.

C. UGI's Statement in Support of the Non-Unanimous Settlement

UGI states that the Joint Settlement resolves all of the issues that have been raised concerning DSP V as between the Company, OCA, and OSBA. DSP V establishes the terms and conditions under which the Company will acquire default service supplies, including AEPS credits, from June 1, 2025, through May 31, 2029. Penn Renewables has not agreed to the Joint Settlement and is the only party opposing it. Therefore, the Parties are briefing the issues raised by Penn Renewables in its Complaint and testimony – primarily related to UGI Electric's proposal to classify customers for default service purposes according to their supply peak load impact ("SPLI"). UGI Statement of Support at 2; UGI Main Brief at 2.

DSP V Program Term

With respect to the term of the plan, UGI states that no party took issue with or opposed the Company's proposed four-year DSP V term. As such, the Joint Settlement reflects UGI Electric's proposal to implement a four-year DSP V term, as has been the case for both UGI Electric's DSP III and IV terms. UGI Statement in Support at 5.

Procurement Issues – GSR-1 Procurement

Addressing procurement issues, UGI stated that to pursue its goals and obligations under DSP V, the Company proposed certain differences between the Commission-approved DSP IV Plan and the proposed DSP V Plan. Herein lies the controversy in this proceeding. UGI states that it has historically procured power for residential and small commercial customers on a combined basis due to the relatively small load sizes of both groups. In DSP V, the GSR-1 procurement group will include residential and small commercial customers with up to 100 kW of SPLI, but the GSR-2

procurement group will include residential and commercial customers with greater than 100 kW of SPLI. Historically, these procurement groups were classified based on their peak demand, not SPLI. Penn Renewables has challenged the Company's proposal to classify GSR-1 and GSR-2 customers based upon their respective SPLI. This is the litigated issue in this case and is the basis on Penn Renewable's opposition to the Joint Settlement.

According to UGI, one of the primary goals of the GSR-1 procurement plan is to ensure that load size and tranches are large enough to attract sufficient wholesale bidder interest and reduce bid premiums. UGI Statement in Support at 5. UGI goes on to explain in detail the positions of OCA and OSBA throughout the process leading to the Joint Settlement, the conclusion of which is as follows:

The Non-Unanimous Settlement resolves all of the above-identified procurement issues as between the Joint Petitioners and reflects a carefully crafted compromise of the competing interests present in this proceeding. Specifically, under the Non-Unanimous Settlement, the Joint Petitioners agree that UGI Electric will procure a 10 MW ATC block tranche with a five-year term. UGI Electric will procure another 10 MW ATC block tranche with a two-year term on a rolling basis through the term of DSP V and into the term of DSP VI. (Non-Unanimous Settlement ¶ 29.) This reflects a compromise as between the Company's and the OCA's litigation positions on this issue. This provision serves to enhance rate stability and mirrors similar procurements made by other Pennsylvania EDCs and, therefore, are just, reasonable, in the public interest, and should be approved without modification.

Similarly, the Non-Unanimous Settlement confirms that the Company's other remaining procurement methodologies for GSR-1 and GSR-2 customers as set forth in UGI Electric's Petition for Approval of a Default Service Plan for the period of June 1, 2025 through May 31, 2029 and in UGI Electric St. No. 2, the Direct Testimony of Stan C. Faryniarz, pages 12-23, are approved as filed. (Non-Unanimous Settlement ¶ 29.)

Furthermore, the Non-Unanimous Settlement dictates that the bid documents appended to UGI Electric St. No. 2 as Exhibits SCF-4 through SCF-10 are also approved, with the changes to implement the above modification. (Non-Unanimous Settlement ¶ 29.) The Company designed its procurement methodologies to improve supplier participation, competition, and overall supplier diversity which, ultimately, will provide more reliable competitive products and achieve price benefits for UGI Electric's default service customers. The Non-Unanimous Settlement confirms the efficacy of the proposal as modified; as a result, UGI Electric submits that these provisions are just, reasonable, in the public interest, and should be approved without modification.

UGI Statement in Support at 12.

UGI states that under the Non-Unanimous Settlement, UGI will continue to procure supplies for GSR-1 residential and non-residential customers on a combined basis. However, the Joint Petitioners have also agreed that, in doing so, the Company will also apply rate allocation factors of 1.01 for residential customers and 0.97 for small commercial customers and that the allocation factors will expire on May 31, 2029 at the end of DSP V and will not continue into the next DSP period. These provisions do not prevent any party from proposing, or waiving their right to propose, rate allocation factors in DSP VI. Non-Unanimous Settlement ¶ 30. UGI maintains that this is a compromise between the Company and the OCA's litigation positions, bringing both allocation factors closer to even which lowers the costs for residential customers, and slightly increases the costs for non-residential customers as compared to the as-filed Petition, while still adhering to the spirit of the conclusions reached in the Company's procurement study in reviewing Energy Cost ("EC") rates for both customer groups. UGI Statement in Support at 13.

UGI states that the Joint Petitioners have agreed that UGI Electric's 50 percent load cap proposal applicable to FPFR tranches shall be conditional and apply prospectively to future FPFR solicitations after the point where UGI Electric receives at

least three independent bids for a FPF solicitation, absent three or more bids, the load cap shall not apply in such future solicitations. Non-Unanimous Settlement ¶ 31. UGI contends that this Non-Unanimous Settlement provision reflects a compromise between the Company's and the OCA's respective litigation positions and addresses the OCA's concerns that a lower cap may decrease supplier participation. UGI Supporting Statement at 13-14.

Procurement Issues – GSR-2 Procurement

UGI proposed to continue to procure supplies for GSR-2 customers (customers with SPLI of 100 kW or higher) through the spot market. *See*, UGI Electric St. No. 2, pp. 21-22. UGI states that the Commission has approved hourly spot market pricing for GSR-2 customers since UGI's DSP II proceeding. UGI states that it procures default supplies for GSR-2 customers through the spot market pursuant to the Commission's End State Order. Although no party challenged the Company's proposal to continue to procure spot market supplies for GSR-2 customers, Penn Renewables has challenged the Company's proposal to classify GSR-1 and GSR-2 customers based upon their respective SPLI. This issue is discussed further in the Main and Reply Briefs filed by UGI, OCA and Penn Renewables. UGI Statement in Support at 14.

Reconciliation Issues

UGI agreed with an OCA recommendation with respect to the GSR-1 customer class, and as such, the Non-Unanimous Settlement requires the Company to utilize a 12-month amortization period for over-collections or under-collections reconciled for each six-month period. Non-Unanimous Settlement ¶ 32. The Settlement also memorializes UGI Electric's proposal with respect to reconciliation of the GSR-2 customer class. Non-Unanimous Settlement ¶ 33. UGI contends that both of these commitments extend the rate stability of longer-term amortization, and avoids

administrative complexity, thereby addressing the OCA's concerns. UGI submits these provisions are just, reasonable, in the public interest and should be approved without modification. UGI Statement in Support at 15.

GSR-1/GSR-2 Customer Classification

UGI proposes to classify customers into the GSR-1 and GSR-2 groups based upon their SPLI. UGI Electric St. No. 3, p. 3. UGI Electric proposed to classify customers into the GSR-1 group if they have a SPLI of less than 100 kW and into the GSR-2 group if they have an SPLI greater than or equal to 100 kW. This was explained by UGI witness Hazenstab:

Supply peak load impact will be determined on a Customer's net demand contribution impact to the Company's default service procurement activity, as determined upon the net power flow from or into the Company's distribution system. This approach recognizes that the magnitude of impact on default service supply activities is similar for all large peak load Customers, even in situations where net power from a net metering customer-generator is flowing into the Company's distribution system.

UGI Statement in Support at 15; UGI Electric St. No. 3, p. 5.

Penn Renewables, however, disagreed with UGI's proposal to classify customer-generators with more than 100 kW of SPLI as GSR-2 customers. Penn Renewables St. No. 1, pp. 19-20. Further, Penn Renewables recommended that the threshold for an account to be classified as GSR-2 be raised from 100 kW to 3MW. Penn Renewables St. No. 1, p. 28. UGI disagreed with Penn Renewables' conclusions and recommendation as did OCA. UGI Statement in Support at 17. UGI and OCA disagreed with Penn Renewables' conclusions with respect to the classification of customers into the GSR-1 and GSR-2 procurement groups, as doing so would:

bundle 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 FPFR contract procurements.” OCA St. No. 1R, p. 11. This would negatively impact residential default service customers by: (1) the FPFR suppliers building larger risk premiums into their contract bids or shying away from participating in FPFR auctions, thereby likely creating higher [prices to compare] PTCs and/or more volatile rates for residential customers; and (2) increasing volumetric risk for FPFR suppliers because of the uncertainty surrounding the level and profile of on-site generation. OCA St. No. 1R, pp. 11-12. The OCA also rejected Penn Renewables recommendation that the threshold for an account to be classified as UGI GSR-2 be raised from 100 kW to 3MW if the Commission authorizes to compensate GSR-2 customer-generators based on Locational Marginal Price (“LMP”). OCA St. No. 1R, at 9. The Penn Renewables’ issues related to the classification of the GSR-1 and GSR-2 customer classes are addressed fully in the Company’s Briefs and will not be wholly addressed here. However, UGI Electric notes that the Company’s proposals with respect to the classification of GSR-1 and GSR-2 customers based on their SPLI is supported by both OCA and OSBA. UGI states that the Penn Renewables’ issues related to the classification of the GSR-1 and GSR-2 customer classes are addressed fully in the Company’s Briefs and so are not wholly addressed in the UGI Statement in Support.

UGI Statement in Support at 16.

Statutory Findings

UGI states that the parties to the Non-Unanimous Settlement agree with the following statutory findings under Section 2807(e)(3.7):

UGI Electric’s Plan includes prudent steps necessary to negotiate favorable generation supply contracts;

UGI Electric's Plan includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis; and

Neither UGI Electric nor its affiliated interests have withheld from the market any generation supply in a manner that violates federal law.

UGI Statement in Support at 18; Non-Unanimous Settlement at ¶ 35

UGI's Conclusion

UGI concludes its Statement in Support asserting that the Non-Unanimous Settlement is the result of detailed examination of UGI Electric's proposed DSP V filing, extensive discovery by the parties, multiple rounds of testimony, and reasonable compromise by knowledgeable Joint Petitioners. UGI states that a fair and reasonable compromise of all issues has been achieved in this case as between the Joint Petitioners and requests that the Commission approve the Company's DSP V filing as modified by the Non-Unanimous Settlement without any modification to the terms proposed in the Non-Unanimous Settlement. Finally, UGI requests that the Commission grant any necessary waivers of the Commission's regulations for UGI to implement its default service plan as modified by the Non-Unanimous Settlement.

D. OCA Statement in Support of Non-Unanimous Settlement

OCA submits that the Non-Unanimous Settlement is supported by substantial evidence in the record, is in the public interest, and should be approved by the Commission.

OCA maintains that the procurement plan put forth in the Settlement is in the public interest and represents a reasonable compromise by the parties in this proceeding. OCA states that it is expected to result in greater rate stability than would

have been present under UGI's original proposal. The OCA also supports the Settlement because it ensures reliable electricity supply and follows an established contract duration strategy for load supply contracts. OCA contends that this balance of rate stability with reflectiveness is a benefit because it protects consumers from the shock of price fluctuations. As such, the OCA maintains that these settlement provisions should be adopted by the Commission as there is sufficient and substantial evidence in the record to support a ladder approach proposed by the settlement. OCA Statement in Support at 7-8.

Continuing with its assessment of procurement issues, OCA states;

Under the Settlement, UGI Electric will continue to procure supplies for GSR-1 residential and non-residential customers on a combined basis. Settlement ¶ 30. For the DSP V period, the Company will apply rate allocation factors of 1.01 for residential customers and 0.97 for small commercial customers. *Id.* This is a compromise from their initial litigation position. The allocation factors will expire on May 31, 2029 at the end of DSP V and will not continue into the next DSP period. *Id.* These provisions do not prevent any party from proposing, or waiving their right to propose, rate allocation factors in DSP VI. *Id.*

OCA Statement in Support at 13.

OCA states that it agreed to relatively small revenue allocation factors in the interest of compromise in furtherance of settlement with all parties including the OSBA. These rate allocation factors will expire at the end of DSP V and will not continue into the next DSP period, which helps ensure that they do not continue indefinitely. OCA maintains that these settlement provisions, in the context of the whole of the Settlement, are in the public interest and should be adopted by the Commission.

OCA Statement in Support at 13.

OCA addresses load cap considerations stating that under the Settlement, UGI's 50 percent load cap proposal applicable to FPFR tranches shall be conditional and apply prospectively to future FPFR solicitations after the point where UGI receives at least three independent bids for a FPFR solicitation (i.e., not apply to such initial solicitation where three bids are received but thereafter conditionally apply to all future FPFR solicitations). *See* Settlement at ¶ 31. Absent three or more bids, the load cap shall not apply in such future solicitations. OCA states that the Settlement adequately resolves the OCA's concerns and represents a reasonable compromise on the load cap issue that helps promote competition through diverse bids and reduces counterparty risk by limiting exposure to a single wholesale supplier. OCA concludes that the load cap provisions agreed upon by the settling parties are in the public interest and should be approved by the Commission. OCA Statement in Support at 13.

OCA correctly states that GSR-1/GSR-2 customer classification is the subject of litigation in this proceeding and is the focus of OCA's briefs. OCA points out that under the Settlement, UGI Electric's proposal to classify GSR-1 and GSR-2 customers based upon their supply peak load impact is approved. OCA contends that these provisions are in the public interest and that there is no basis for the position of Penn Renewables which opposes the Settlement. OCA incorporates its arguments from its briefs in support of the Settlement. OCA Statement in Support at 15.

OCA concludes that the Settlement ensures that UGI will meet its statutory responsibilities to procure a default service portfolio that is designed to ensure service at least cost over time. In its whole, all of these benefits, especially when weighed against the risks and costs of litigation, demonstrate that this proposed Settlement is in the public interest. OCA Statement in Support at 16.

E. OSBA Statement in Support of Non-Unanimous Settlement

OSBA supports adoption of the Non-Unanimous Joint Settlement and provides a number of comments in its Statement in Support. OSBA maintains that the procurement changes proposed by the Joint Petition should provide the Company's small business customers with reasonable and stable electricity pricing. OSBA Statement in Support at 3.

Addressing rate differentials, OSBA states that Settlement of the DSP IV proceeding at Docket No. P-2020-3019907 required UGI to file a study by June 30, 2022, evaluating the relative cost of default service supplies for GSR-1 residential and non-residential customers. The study relied on data from DSP III, DSP IV, and actual data through at least the Fall of 2021. The study evaluated the relative costs to GSR-1 residential and non-residential customers associated with: (1) both block-and-spot and full requirements procurements methods; and (2) both separate procurements and cost allocations being made to the residential and non-residential customer groups under a combined procurement.

The NorthBridge Group, a consulting firm, conducted the procurement study on behalf of UGI. OSBA states that NorthBridge's study determined that the cost of UGI's residential GSR-1 default service supply is about two percent higher than the composite GSR-1 default service supply cost. The study also found that the cost of UGI's non-residential GSR-1 default service supply is about six to seven percent lower than the composite GSR-1 default service supply cost. OSBA states that the Joint Petition proposes to follow these results, requiring UGI to apply rate allocation factors of 1.01 for residential customers and 0.97 for small commercial customers. The allocation factors will expire on May 31, 2029, at the end of DSP V. As the Joint Petition conforms to the findings of the NorthBridge study, OSBA supports the proposed rate allocation factors as a just and reasonable solution to this issue. OSBA Statement in Support at 3-4.

OSBA concludes its Statement in Support requesting that the Commission approve the Joint Petition in its entirety. OSBA Statement in Support at 5.

F. Penn Renewables' Statement in Opposition to Petition for Non-Unanimous Settlement

While Penn Renewables opposes the Joint Settlement, and its arguments supporting that opposition are fully set forth in its Main and Reply Briefs, Penn Renewables took the time to compile a Statement in Opposition which is recognized, here.⁷

On October 25, 2024, Penn Renewables filed its Statement in Opposition to Petition for Non-Unanimous Settlement. Penn maintains that UGI, in its DSP V filing, has made, “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 [net metered solar projects] that have been approved by the Commission.” Penn Statement in Opposition at 1-2.

In sum:

Penn Opposes the Non-Unanimous settlement in one primary respect – 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,

⁷ We believe that it was not made clear that Statements in Opposition were primarily meant to afford *pro se* Complainants or UGI customers an opportunity to express and explain opposition to any proposed Settlement, though there is certainly no prohibition on Penn or any entity similarly situated from filing a Statement. Indeed, the filing of a Statement in Opposition reflects well upon the diligence of its Counsel.

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).

Penn Statement in Opposition at 3.

Penn argues that “UGI’s actions in this regard clearly violate the spirit and intent of the Alternative Energy Portfolio Standards Act (“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. Penn Statement in Opposition at 4. Penn concludes that the proposed Non-Unanimous Settlement is neither just nor reasonable, and approval of the same is not in the public interest. Penn requests 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. Penn Statement in Opposition at 6.

Penn, UGI and OCA filed Briefs and Reply Briefs with respect to this classification issue. The parties’ arguments and the Judges’ recommended resolution will be discussed, below.

G. Litigated Issue - GSR-1/GSR-2 Customer Classification

As has been noted at several points throughout this Recommended Decision, there is a litigated issue that must be resolved:

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).

OCA Main Brief at 1.

Just as OCA's identification of the issue before us is to the point, so too is their Summary of Argument which provides needed focus back to a relatively straightforward issue. The OCA's Summary of Argument states:

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.

OCA Main Brief at 6 (emphasis added).

While UGI has submitted a point-by-point response to Penn Renewables' arguments and assumptions, we agree with the OCA's definitive focus on Penn Renewables' error with respect to the burden of proof and the consequent deficiencies in its case. As will be explained below, we agree with OCA's analysis and conclusion. We will not adopt Penn Renewables' proposed modification of UGI's DSP V, and we find the same to be unsupported by law or facts. We also wish to be very clear that we reject as entirely conjectural Penn Renewables' repeated implications (if not outright allegations) that UGI has deliberately fashioned "a plan" to discriminate against Penn Renewables. Even if we accept a hypothetical that assignment to the GSR-2 classification may produce uneconomical results for Penn Renewables, there has been no evidence placed in the record that UGI intended to harm or discriminate against Penn Renewables. The

assertion that anticipated uneconomical outcomes rise to the level of planned, intentional discrimination is unwarranted absent proof of that conscious intent. Further, we are not aware of any provision of the Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.1–1648.6. that allows or directs the Commission to unilaterally direct the assignment of a customer to a separate rate class for the purpose of financially supporting a method of generation.

Penn Renewables argument is summarized in its Main Brief:

Penn Renewables' Summary of Argument states:

UGI's DSP V plan to reconfigure the rate structure for default service customers, particularly those in the GSR-2 procurement class, is intended specifically to address UGI's unfounded and unsupported contention that customer-generators, in this case, solar energy projects, will cause harm to its procurement for residential and small commercial customers in the GSR-1 classification. UGI St. 2, 22:19-23:2. Penn Renewable's projects are, by the Commission's definition, also small commercial customers. In this case, however, UGI has failed to introduce any evidence that supports its contention of harm [to other customers]. No actual evidence of harm, no evidence of the alleged cross subsidies, no evidence, other than conjecture that procurement would be impacted if it paid customer-generators full retail value, has been provided.

The evidence of harm to customer-generators, however, is present. Mr. Crist provided numerous examples of how UGI's GSR-2 mechanism will not fairly compensate customer-generators, most strikingly, that the GSR-2 PTC is so volatile that it will regularly go below the wholesale LMP as well as negative price territory so that customer-generators will not be paid full retail value, but rather be forced to pay some non-transparent wholesale price for the energy a customer-generator is producing and which its neighbors are consuming at the full retail value. It is not possible to reconcile a negative price that charges the generator for producing with the express statutory requirement that customer-generators receive full retail

value for “all energy produced on an annual basis”. 73 P.S. § 1648.5 (emphasis added).

The issue to be resolved is the requirement of the AEPSA that customer-generators be paid full retail value for all excess generation, and the mere allegation that doing so would impact UGI’s procurement for its default service customers. The AEPSA is clear, and nothing in the Public Utility Code contradicts its mandate for how customer-generators are compensated.

* * *

Section 1304 of the Public Utility Code prohibits unreasonable discrimination or disadvantage in rates as between localities or classes of service. 66 Pa. C.S. § 1304. Here, UGI has created a structure whose sole purpose is to discriminate as between GSR-2 and GSR-1, by providing a stable transparent, full retail value rate to GSR-1 customers, and a wholesale market based, ever fluctuating rate to GSR-2. The UGI proposal also discriminates within GSR-2, by charging different rates to different customers, one consuming energy and one producing it, with the rate the producer is being paid being far less than the rate the consumer is paying,

In short, UGI has proposed, without evidence, that it be permitted to openly discriminate between customers, in violation of Section 1304 and the Commission’s Regulations and in violation of the AEPSA. The Commission should not go along with UGI’s plan.

Penn Renewables’ Main Brief at 7-9

The undersigned do not agree with Penn Renewables’ interpretation of the AEPSA. While Penn Renewables is correct that the AEPSA is meant to promote alternative energy, Penn Renewables – without citation to any directive statutory language—misinterprets the AEPSA to require *de facto* subsidization of alternative energy sources. This is clear error. Regardless of how Penn Renewables describes its solar photovoltaic technology, there has been no showing that the Penn Renewables’

alternate generation is entitled to the cross-subsidization assignment to the GSR-1 rate class. As will be explained below, the cross-examination of Penn Renewables' witness, Mr. Crist, established that much of his testimony is based on critically flawed assumptions extending to fundamental misunderstanding of the UGI proposal. We also note that Penn Renewables' attempt to impose the burden of demonstrating harm to other customers onto UGI is a burden that UGI is not required to meet beyond that evidence that UGI provides.

Penn Renewables' argument rests heavily on potential uneconomical results if it is assigned to the GSR-2 rate class. But economic impact, even if adverse, is not the litmus test of rate classification assignment. Penn Renewables incorrectly attempts to shift the burden of proof relative to this issue to UGI. Penn Renewables all but states that UGI is required to prove that Penn Renewables will not incur uneconomical results by assignment to the GSR-2 rate class:

Contrary to UGI's lack of proof, there is ample evidence of the harm that UGI would impose upon customer-generators in the name of protecting its procurement process. Harm of charging customer-generators to produce power, harm of non-transparent rates that will change hourly, but will only be knowable weeks after-the-fact. Harm of reducing the reliability of its distribution system by not adding distributed generation and free upgrades to the local grid and harm of discriminating against legal projects that the AEPSA specifically encourages to provide that generation. UGI's witness even admitted on the stand that they invented new terminology, not authorized in the regulations, but to be included in UGI's tariff in the effort to keep customer-generators off the UGI system. Tr. 53:13-54:8.

Penn Renewables' Main Brief at 8.

What Penn Renewables catalogues above has not been established by evidence in this proceeding as anything but conjecture. Mere opinion, without more, is

insufficient to meet the Complainant's burden. *Kirby v. PPL Elec. Utils. Corp.*, Docket No. C-20066297 (Final Order entered Nov. 16, 2006) (citing *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (1987)). Bald assertions, personal opinions or perceptions do not constitute evidence. *Rivera v. Phila. Gas Works*, Docket No. C-2010-2164222 (Opinion and Order entered Jan. 12, 2012) (citing, *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)). As will be explained below, we do not find the testimony of Penn Renewables' witness persuasive.

UGI is not required to prove that market participants receive optimum economic outcomes. We agree with the OCA that Penn Renewables bears the burden of proof as the proponent of an order that would change UGI's existing customer classification for GSR Customers. We also agree with OCA that: "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." OCA Main Brief at 7.

Penn Renewables' attempts to prove that UGI's DSP V proposals related to the GSR-2 are not just and reasonable are based on the testimony of a single witness, Mr. James L. Crist. At hearing, however, Mr. Crist's testimony and opinions were repeatedly and effectively contradicted and often refuted by UGI:

[T]he Commission has approved hourly default service rates for all of the large EDCs in the Commonwealth, including PPL Electric Utilities Corporation, Duquesne Light Company, the FirstEnergy EDCs and PECO. Penn Renewable argues that the SPLI classification was "concocted." Penn Renewables St. No. 1-SR, p. 2, line 9. Such characterization should be rejected. As demonstrated herein and in the Company's testimony, the Company has given extensive thought and effort to address a discriminatory supply concern and should not

be criticized for being the first EDC to address it in a reasonable and lawful manner. 28113420v1 25 Electric. See UGI Electric St. No. 3-RJ, p. 10. In addition, at the hearing Penn Renewables witness Crist admitted that GSR-2 rate was a “default service rate” that has previously been approved by the Commission. Tr. p. 103, lines 6-9. All of Penn Renewables arguments and statements that the GSR-2 rate is not a “default service rate” should be disregarded.

UGI Main Brief at 24-25

Ms. Hazenstab also explained that the GSR-2 rate includes numerous rate components that are included in a retail rate, which directly contradicted Mr. Crist’s testimony suggesting that the GSR-2 rate did not include retail rate components such as capacity charges, taxes and fees. UGI Electric St. No. 3-R, p. 7, line 17 – p. 9, line 10.

UGI Main Brief at 25-26.

At the hearing, Mr. Crist appeared to backtrack on how he defined a retail rate and whether the GSR-2 rate was a retail rate. Mr. Crist admitted that whether a rate had a load following component did not factor into whether a rate was a wholesale rate or a retail rate. Tr. at 108, lines 5 – 25. Mr. Crist also admitted that a retail sale is a sale to an end use customer. Tr. at 109, lines 2 – 4. And finally, at the hearing Mr. Crist effectively admitted that the GSR-2 rate was a retail rate. Tr. at 110, lines 13 – 15.

It is clear that the GSR-2 rate is a “retail rate” and all of Penn Renewables statements to the contrary should be disregarded, especially given Mr. Crist’s agreement at the hearing that rates for service provided to end use customers are “retail rates” and his agreement that the GSR-2 is a retail rate.

UGI Main Brief at 26.

Penn Renewables appears to take issue with the fact that the customer generator's excess generation is converted to a dollar value each hour and added up each month instead of adding excess kWh each month to be cashed out at a dollar value at the end of the year. In Testimony, Mr. Crist stated as follows:

UGI is proposing to follow the general structure of the AEPS requirements that energy produced by a customer-generator via net metering is credited at the full retail rate up to the point where production exceeds consumption. This netting will take place every month. It appears, however, that rather than carry forward kWh of excess generation, that UGI is planning to determine the value at the end of each billing period and carry forward that amount. What that means is that at the end of the year, there will be no compensation at the PTC for all excess kWh credits. Rather, UGI will simply add the monthly value amounts to determine how much to compensate the customer-generator. Penn Renewables, St. No. 1, p. 18, lines 7 – 15.

Penn Renewables argument that GSR-2 customers will not be compensated at the PTC at the end of the year for excess kWh credits is incorrect and appears to misunderstand the nature of the PTC-2 for GSR-2 customers. The PTC-2 for GSR-2 customers is an hourly PTC. Excess generation each hour will be valued at that hour's PTC-2, carried forward each month and credited to customer-generators at the end of the year. GSR-2 customer-generators will be compensated at the PTC for all excess kWh.

UGI Main Brief at 28.

In his surrebuttal testimony, Mr. Crist took the position that GSR-2 prices paid to GSR-2 customer-generators decreased when output increased. Penn Renewables St. No. 1-SR, p. 20, lines 1-4. In rejoinder, Mr. Faryniarz demonstrated that Mr. Crist was clearly incorrect. Mr. Faryniarz explained:

Now, please review the GSR-2 PTC rate calculated in each of those scenarios in row 23 of the table. The PTC rate for 100 kWh of exported generation is calculated to be

\$0.0353/kWh. When output doubles to 200 kWh under the same conditions including hourly LMP, the corresponding PTC rate for exported generation increases to \$0.0386/kWh. When output increases to 1000 kWh under the same conditions, the PTC rate for exported generation increases to \$0.0412/kWh. This exhibit entirely contradicts Mr. Crist's assertion.... UGI Electric St. No. 2-RJ, p. 7, line 13 – p. 8, line 3.

Mr. Crist's assertion that customer generator rates decrease with increased output is incorrect and should not be accepted.

UGI Main Brief at 31-32.

Throughout his testimony, Mr. Crist argued that UGI Electric was improperly debiting GSR-2 customer-generators for line losses because the majority of customer generator energy would be consumed by customers and not flow to PJM. Penn Renewables St. No. 1, p. 22, lines 5-7. Mr. Crist stated "There should be no loss factors applied to that energy...." Penn Renewables St. No. 1, p. 22, line 4. Mr. Crist also repeated this claim in his surrebuttal testimony. Penn Renewables St. No. 1-SR, p. 6, line 2.

Mr. Crist apparently misunderstood the GSR-2 rate formula calculation. At several points in testimony, UGI Electric explained that GSR-2 customer-generators were getting credited for line losses, not debited. See UGI Electric St. No. 2-R, p. 28, lines 8-9. At the hearing, Mr. Crist admitted that the formula credited customer-generators for line losses, adding kWh for which customer-generators are compensated, rather than deducting kWh for line losses. Tr. at 112, lines 16-24. For these reasons, Penn Renewables statements about line losses in this proceeding should be rejected.

UGI Main Brief at 32. UGI further correctly contends that:

In testimony, Penn Renewables argues that the GSR-2 rate is not a "single rate option" as is required by the

Commission’s default service regulations because the GSR-2 rate is an hourly rate. See Penn Renewables St. No. 1-SR, p. 29, citing 52 Pa. Code § 54.187. Penn Renewables argument should be summarily dismissed.

* * *

Notably, the “single rate option” regulation applies to all default service customer groups and rate options. Effectively, Penn Renewables argument means that no EDC can offer an hourly default service rate because hourly default service rates are not a single rate option. This clearly cannot be the case as the Commission has approved hourly default service rates for many EDCs . . .

Ms. Hazenstab further explained as follows in her rebuttal testimony: The GSR-2 rate is a “single rate option” as required by 52 Pa. Code 54.187(c). 52 Pa. Code 54.187(c) states that “...a default service customer shall be offered a single rate option, which shall be identified as the PTC and displayed as a separate line item on a customer’s monthly bill.” The GSR-2 rate, as defined in the tariff, recovers all energy costs for the customer group and is the price to compare (PTC) for GSR-2 customers, once adjusted for STAS^[8]. GSR-2 is a single rate option. Pursuant to the Company’s proposal, all customers with an SPLI greater than or equal to 100kW will have this single rate as their default service option. It is possible Mr. Crist may be confusing single rate option with a fixed rate. GSR-2 is not a fixed rate. Accordingly, Mr. Crist’s assertion that GSR-2 is not compliant with 52 Pa. Code 54.187(c) is incorrect. UGI Electric St. No. 3-R, p. 10, lines 13-23.

Likewise, Penn Renewables argument that the GSR-2 PTC should be on the bill should also be denied. Penn Renewables St. No. 1-SR, p. 29, lines 14-15. EDCs have been offering hourly default service for many years, and the Commission has never required EDCs to put the PTC on the bill for hourly priced default service.

UGI Main Brief at 35-36.

⁸ “State Tax Adjustment Surcharge.”

Mr. Crist also suggested that large customer-generators should receive a “stable rate.” However, there is no requirement in the AEPS Act, Act 129 or the Commission’s regulations that require EDCs to provide large customer-generators with stable default service rates. The GSR-2 rate has been offered by UGI Electric to customers for over 15 years, and it complies with Commission regulations and precedent.

UGI Main Brief at 37.

In addition, Mr. Faryniarz explained that spot market purchases are accomplished through bilateral agreements. UGI Electric St. No. 2-R, p. 32, lines 13-14. This directly refutes Penn Renewables argument. Despite this, Penn Renewables attempted to cloud the issue in surrebuttal by stating that “UGI is not proposing to ‘purchase’ power from customer-generators on or through the spot market...” and that sales from customer-generators will not “clear” the PJM spot market. Penn Renewables St. No. 1-SR, p. 21, lines 23-26. The issue is not whether “sales” from customer-generators clear the spot market – the issue is that UGI purchases default service supplies for retail GSR-2 customers through the spot market and that these purchases meet the Act 129 requirements. All sales from customer-generators offset energy otherwise purchased by UGI. Mr. Crist admitted this at the hearing. Tr. at 114, line 5 – 115, line 3.

UGI Main Brief at 37.

We find the testimony of Penn Renewables’ witness, James L. Crist, unpersuasive, and Penn Renewables has not met its burden.

We agree with OCA that 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. We accept the agreement between OCA and UGI 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. OCA Main Brief at 7-8 citing UGI St. 2 at 29-30. We agree.

OCA summarizes Penn Renewables' position as follows:

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 [is] 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.

OCA's Main Brief at 8.

OCA then responds:

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 [Locational Marginal Pricing] 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. 9 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.*

OCA Main Brief at 8-9

We agree with the OCA's analysis and conclusions.

OCA concludes:

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.

OCA Main Brief at 9.

We agree with OCA that Penn Renewables' proposal would result 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.

OCA Main Brief at 10.

OCA goes on to provide a helpful analysis based on Commission regulations and a Policy Statement:

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.*

OCA Main Brief at 10-11.

OCA concludes:

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 FPFR 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 FPFR suppliers to either build larger risk premiums into their FPFR contract bids or shy away from participating in the FPFR auctions, resulting in higher PTCs [Price to Compare] and/or more volatile rates for residential customers. *Id.*

OCA Main Brief at 11-12.

Once again, we agree with OCA's focused analysis and well-reasoned conclusions.

OCA closes its Main Brief agreeing 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. OCA reiterates its position that Penn Renewables has failed to satisfy its statutory burden of proof and to provide substantial evidence supporting its recommendations. OCA requests the Commission reject Penn Renewables recommendation to change the classification thresholds of UGI's proposed GSR-1 and GSR-2. OCA Main Brief at 13.

Disposition

Based on the foregoing review and analysis, we find that Penn Renewables has failed to prove, by a preponderance of the evidence, that UGI's proposed DSP V violates the Public Utility Code or any regulation of the Commission, or any statute or precedent applicable to Default Service Plans, generally, including the Alternative Energy Portfolio Standards Act, specifically. Consequently, we decline to recommend adoption of Penn Renewables' requested alterations of DSP V. The Complaint filed by Penn Renewables at Docket No. C-2024-3049618 is dismissed.

RECOMMENDATION

This case is the fifth iteration of UGI's DSP. The Plan sets forth the terms and conditions by which UGI will acquire and price default service supplies for its non-shopping customers for the four-year duration of DSP V. The proposed Joint Settlement of this case resolves all of the issues raised by the OCA and the OSBA, and, in the opinion of the undersigned, provides a default service plan which meets the requirements of Section 2807 and the regulations of the Commission at 52 Pa. Code §§ 54.181-54.190. Based on our evaluation and the support of the Joint Settlement by the public advocates, we conclude that the proposed Joint Settlement is in the public interest because under the terms of the Joint Settlement, UGI will be positioned to obtain an adequate electric generation supply to serve non-shopping customers using an acceptable acquisition and pricing methodology. The parties signatory to the Joint Settlement were ultimately able to settle this case with a result that is reasonable and in the public interest. The parties are commended in this regard.

Therefore, we recommend that the Commission grant the Joint Petition for Non-Unanimous Settlement and adopt the Joint Settlement without modification as it is in the public interest.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. §§ 701, 2807.

2. To determine whether the settlement should be approved, the Commission must decide whether the settlement promotes the public interest. *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa.P.U.C. 1 (1985).

3. The party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

4. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

5. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, a complainant will prevail. If the utility rebuts Complainant's evidence, the burden of going forward with the evidence shifts back to a Complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Replugle v. Pa. Elec. Co.*, 54 Pa.P.U.C. 528 (1980), *Waldron v. Phila. Elec. Co.*, 54 Pa.P.U.C. 98 (1980).

6. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n.*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Comm., Dept. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

7. Mere opinion, without more, is insufficient to meet the Complainant's burden. *Kirby v. PPL Elec. Utils. Corp.*, Docket No. C-20066297 (Final Order entered Nov. 16, 2006) (citing *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A. 2d 12 (Pa. 1987)). Bald assertions, personal opinions or perceptions do not constitute evidence. *Rivera v. Phila. Gas Works*, Docket No. C-2010-2164222 (Opinion and Order entered Jan. 12, 2012) (citing, *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)).

8. No contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing or for the furnishing of any service, property, right or thing other than those above enumerated, made or entered into between a public utility and any affiliated interest shall be valid or effective unless and until such contract or arrangement has received the written approval of the Commission. 66 Pa.C.S § 2102(a).

9. The settlement rates, terms and conditions contained in the Non-Unanimous Joint Petition for Settlement of UGI's DSP V filed on October 22, 2024, at Docket No. P-2024-3049343, submitted by UGI, the Office of Consumer Advocate, and the Office of Small Business Advocate are just, reasonable and in the public interest.

10. The Revised DSP Program contained in the Joint Petition for Settlement at Docket No. P-2024-3049343 includes competitive procurement processes as required by the Public Utility Code and the regulations of the Commission.

11. The generation to be procured by UGI pursuant to the Revised DSP Program contained in the Joint Petition for Settlement at Docket No. P-2024-3049343 includes a prudent mix of spot market purchases, short-term contracts and long-term contracts as required by the Public Utility Code. 66 Pa.C.S. § 2807(e)(3.2).

12. The Revised DSP contained in the Joint Petition for Non-Unanimous Settlement at Docket No. P-2024-3049343 includes a prudent mix of supply resources that is designed to ensure adequate and reliable service at the least cost to customers over time in compliance with 66 Pa.C.S. § 2807(e)(3.4).

13. The Revised DSP Program contained in the Joint Petition for Non-Unanimous Settlement at Docket No. P-2024-3049343 includes prudent steps necessary to negotiate favorable generation supply contracts. 66 Pa.C.S. § 2807(e)(3.7).

14. The Revised DSP Program contained in the Joint Petition for Non-Unanimous Settlement at Docket No. P-2024-3049343 includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short term and spot market basis. 66 Pa.C.S. § 2807(e)(3.7).

15. The terms, conditions and rates for default service that will be produced by the tariffs contained in the Joint Settlement filed on October 22, 2024, are just and reasonable.

16. That the Complaint filed by Penn Renewables, LLC, at Docket No. C-2024-3049618 failed to establish by a preponderance of the evidence that the Joint Petition

for Non-Unanimous Settlement is not just, reasonable and in the public interest and so must be dismissed.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the rates, terms and conditions of service contained in the Joint Petition for Settlement of UGI Utilities, Inc. – Electric Division DSP V, including affiliated interest transactions, filed on October 22, 2024, at Docket Nos. P-2024-3049343 and G-2024-3049351 submitted by UGI Utilities, Inc. – Electric Division, the Office of Consumer Advocate, and the Office of Small Business Advocate be approved and adopted without modification.

2. That upon entry of the Commission Order approving the recommendation to adopt the Joint Petition for Settlement, UGI Utilities, Inc. – Electric Division be permitted to file a tariff and tariff supplement to become effective on one day's notice after entry of the Commission's final order.

3. That those statements and exhibits marked CONFIDENTIAL that have been admitted into the record of this proceeding are not to be included in the public record of this case.

4. That the Complaint filed by Penn Renewables, LLC, at Docket No. C-2024-3049618 be dismissed.

5. That upon acceptance and approval by the Commission of the tariff and tariff supplements filed by UGI Utilities Inc. - Electric consistent with this Order, this proceeding at Docket No. P-2024-3049343 shall be marked closed.

Date: December 3, 2024

_____/s/
Dennis J. Buckley
Administrative Law Judge

_____/s/
Alphonso Arnold III
Administrative Law Judge