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December 13, 2024

VIA ELECTRONIC FILING

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

Re: Petition of UGI Utilities, Inc. – Electric Division for Approval of Default Service Plan (DSP V) for the Period of June 1, 2025 through May 31, 2029; Docket Nos. P-2024-3049343; C-2024-3049618; **EXCEPTIONS OF PENN RENEWABLES LLC**

Dear Secretary Chiavetta:

Enclosed for filing with the Commission is the Exceptions of Penn Renewables LLC (“Penn”) to the Recommended Decision issued December 3, 2024 in the above-captioned proceedings. Copies of the Exceptions 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 me.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Todd S. Stewart", is written over a large, stylized blue scribble.

Todd S. Stewart

TSS/jld

Enclosures

cc: Office of Special Assistants (via electronic mail – ra-OSA@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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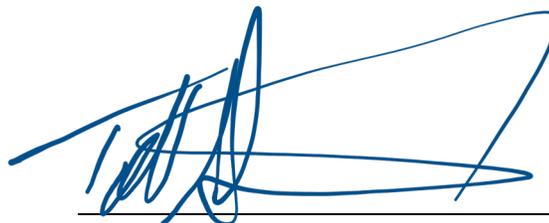
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DATED: December 13, 2024

**BEFORE
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**EXCEPTIONS OF
PENN RENEWABLES LLC**

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DATED: December 13, 2023

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I. INTRODUCTION

UGI Utilities, Inc. – Electric Division (“UGI”) filed its proposed new default service plan (“DSP V”) on May 31, 2024. DSP V primarily addresses the plan for procurement of energy for default service customers as required by 66 Pa. C.S. § 2807(e)(3.6). However, UGI’S DSP V also proposes changes to UGI’s two procurement classes, labeled GSR-1 and GSR-2. In DSP V, UGI has proposed to change the qualifications for these procurement classes and the manner in which those classifications are made. That is, rather than base eligibility for GSR-1 or GSR-2 on peak load as required by the Commission’s Regulations and as has been the norm since UGI’s first DSP,¹ UGI instead proposed to make the classifications based a new variable, contrived by UGI, and labeled the supply peak load impact (“SPLI”), a term or concept that appears nowhere in the Commission’s Regulations. Up to this point customers were assigned to GSR-1 if their peak demand was under 25 kW and to GSR-2 if peak demand was greater than 25 kW, as required by the Regulations. UGI seeks approval (which requires an associated waiver of Commission Regulations that was not requested in its initial filing) to classify customers as GSR-2 if their SPLI is greater than 100 kW. For ordinary residential customers, this change will make no difference because their peak demand is almost certainly below 25 kW. However, the inclusion of “generation” to the SPLI definition, which means customers are classified by system impact, (load or generation), the revised classification will not impact residential net metering customers, i.e., those with nameplate capacity of less than 50 kW,² because by definition, their impact will be less than the 100kW threshold. Despite the fact that customer generators generate electricity, they

¹ 52 Pa. Code §§ 54.2, 54.187(h).

² The Alternative Energy Portfolio Standards Act, (“AEP SA”) 73 P.S. § 1648.2, defines a customer generator.

remain retail customers of the utility,³ and the rights and privileges of other customers must be accorded to them on a non-discriminatory basis.⁴

The only parties relevant to this proceeding that will be impacted by UGI's proposed change will be customer generators "at other customer service locations"⁵ whose nameplate capacity (generation) is greater than 100 kW, regardless of the fact that their maximum registered peak demand will remain less than 25 kW – these are small business customers. This is despite the Code's mandate that small business customers⁶ be provided with a default service rate that changes no more frequently than quarterly.⁷ The Commission's regulations define a small business customer as a commercial customer whose maximum registered peak load is less than 25kW.⁸ The Commission's Regulations⁹ draw these two concepts together requiring that default service rates for customers whose maximum registered peak load is less than 25 kW must be provided with a default service rate that changes no more frequently than quarterly. The reason the 25-kW threshold matters is because UGI's proposal is to place the GSR-2 customers on a newly created default service rate that will change hourly, with no alternative available. Accordingly, as proposed and as recommended for approval by the Recommended Decision ("RD"), UGI's revised GSR-2 provisions are inconsistent with the regulations and violate the Public Utility Code ("Code").¹⁰ These proposed changes alter the default service rate for the impacted customers (large industrial

³ 73 P.S. § 1648.2

⁴ 66 Pa. C.S. § 1502.

⁵ 73 P.S. § 1648.2.

⁶ See, 52 Pa. Code § 54.2. *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."

⁷ 66 Pa. C.S. § 2807(e)(7).

⁸ 52 Pa. Code § 57.2.

⁹ 52 Pa. Code § 54.187(h).

¹⁰ UGI belatedly asked for a waiver of the regulations in rebuttal testimony, but it is absolutely clear that the Commission cannot waive the requirements of the Code at 66 Pa. C.S. § 2807(e)(7). 66 Pa. C.S. § 501 (the Commission may not act in a fashion that is inconsistent with the Public Utility Code).

or commercial customers with peak load greater than 100 kW and customer generators with nameplate generating capacity greater than 100 kW), far beyond the standard procurement methodology concerns typically addressed in default service proceedings.

UGI's proposed new methodology for calculating the proposed hourly default service rate would be devastating to the net metering solar projects of Penn Renewables LLC ("Penn"), as it fails to comply with the statutory requirement that customer generators be compensated at "full retail value for all energy produced on an annual basis."¹¹ The record is replete with facts that demonstrate this fundamental problem with UGI's proposed rate mechanism, but importantly, even UGI admits that the GSR-2 default service rate will be negative (meaning that customers that produce electricity would actually be charged by UGI to take the electricity produced) in certain hours.¹² In response to Penn's arguments, no viable explanation has been given as to how one can consider "full retail value" to be a different value for different customers who are making retail purchases and sales of the same energy on the same distribution system at the same time. What is clear is that the AEPSA does not use the term "retail rate". There are other deficiencies in UGI's proposed rate and how it is calculated, including that it is a wholesale rate, designed to allow large customers to independently hedge their load, not a retail rate.

The Commission does not have the statutory authority to modify the compensation for net metered customers. The Commonwealth Court has held that "the amount that the utility will pay for the customer-generator's excess electricity has been established by the legislature in Section 5

¹¹ 73 P.S. §1648.5.

¹² UGI St. 2-R, 25:7-20. In his rebuttal Testimony, Mr. Faryniarz extolls as beneficial that customer generators would be incentivized by a sub-zero compensation rate, to not produce energy in certain hours. However, he fails to consider that the AEPSA requires that customer generators be compensated at full retail value for all excess generations, not for some, which is what would happen if Customer generators were debited (i.e., charged a negative rate) for producing excess generation in certain hours. Mr. Faryniarz takes this position despite his admission that he has no idea whether customer generators can switch easily between production and non-production or easily move between retail and wholesale markets as he suggested they are able to do. (Tr. 48-50).

of the Alternative Energy Act, *i.e.*, the ‘full retail value.’”¹³ It is also true that the Commission’s Regulations currently align compensation with the price to compare (“PTC”), but the PTC does not, as was pointed out in Penn’s Testimony, equate to full retail value because it does not include distribution charges for excess energy. Not including distribution charges for excess generation when it is included in the formula for offsetting generation is incongruous and an admission that full retail value must include distribution. In short, the Commission cannot impose, in this or any proceeding, a net metering compensation methodology that does not equate to full retail value. UGI’s proposed methodology falls well short of the mark and must be rejected.

The fundamental error of the RD was to accept without question or meaningful analysis, UGI’s proposal that does not allow customer generators with less than 25 kW of demand to remain as GSR-1 customers and to receive default service and be compensated for excess generation at “full retail value.” It is not surprising then, that nowhere does the RD determine whether the GSR-2 rate mechanism will produce “full retail value” which is a statutory requirement and is far more concerned that a “full retail value” rate may be subsidized by other customers, even though there is no evidence presented by UGI to support that notion.¹⁴

Contrary to the RD’s hyperbole, Penn has not interpreted the AEPSA as requiring a subsidy, but rather as requiring the utility to compensate customer generators for excess generation at full retail value on an annual basis, which UGI’s proposed modifications to the GSR-2 rate mechanism will not accomplish. If the RD’s repeated mention of subsidies is intended to suggest that “full retail value” compensation produces a subsidy, it commits an error of Law.¹⁵

¹³ *Sunrise Energy, LLC v. FirstEnergy Corp.* 148 A.3d 894 at 906 (Pa Cmwlt 2012) (“*Sunrise*”).

¹⁴ See Penn Main Brief at 19.

¹⁵ See, *Sunrise*.

The RD makes a number of additional errors, not the least of which is to accept UGI's contention, without supporting evidence, that including customer generators in the GSR-1 procurement class would cause the other default service customers in that class to subsidize the customer generators. There is no evidence in the record other than conjecture to support the "harm to other customer theory", nonetheless, the RD accepts it as truth and largely bases its conclusions on that alleged concept.¹⁶ The AEPSA did not attempt to encourage the development of alternative energy technologies with the restriction that they be less expensive at all times, now and in the future, than existing power generation technology, and even though the Code, does seek to ensure that default service rates are "least cost to customers over time" that mandate does not authorize the Commission to illegally reduce the compensation to customer generators to something less than full retail value.¹⁷ The two statutes must be read to give meaning to each provision which means least cost must consider the actual cost of compensation to customer generators.¹⁸

The RD includes a number of critical and fatal flaws and should be modified accordingly.

II. EXCEPTIONS

1. **Exception No. 1 - The RD commits an error of law in assigning to Penn the burden of proving that UGI's entire proposal was unjust and unreasonable. Rather, the burden is on UGI to prove that its proposal is just and reasonable, a burden that UGI failed to carry. (RD at 13, 27, 31, 38, and 41).**

On page 13, and elsewhere, the RD states that a party seeking relief from the Commission has the burden of proof (66 Pa. C.S. § 332(a)) and mistakenly states that the Complainant in a rate proceeding bears the burden of proof. The RD's statement is an error of law. It is not Penn that has the burden of proof regarding its proposed changes to the rate mechanism for GSR-2 and

¹⁶ UGI's testimony makes this point clear, it is intended to "protect those residential and small commercial customers served under GSR-1 from paying default serviced rates that are greater than necessary." UGI St. 2-RJ, 3:3-13.

¹⁷ 66 Pa. C.S. § 2807(3.4)(ii).

¹⁸ 1 Pa. C.S. § 1921(a).

changes to the classification methodology that will force customer generators into GSR-2 and its new mechanism, but rather UGI. This matter is not about a customer complaining about an existing rate or service; the complaint was filed against a newly proposed default service rate methodology and new classification for customers that was proposed by UGI, and which will change the rates for Penn. The burden of proof is UGI's.¹⁹

Characterizing the primary issue as being Penn's alleged failure to carry its burden of proving that its recommendation to change UGI proposed methodology is just and reasonable, is contrary to the law. The RD largely ignores the black letter law that it is UGI that bears the burden of proving that its proposal change in the rate structure for GSR-2 customers and the change in reclassification of customers generators to GSR-2, are just and reasonable. Something that UGI failed utterly to accomplish. Section 315 of the Code is clear, "Where a customer is heard to complain concerning a proposed change in rate, the burden of proof is upon the public utility to show the proposed rate is just and reasonable; where the complaint involves an existing rate, however, the burden falls upon the customer to prove that the charge is no longer reasonable."²⁰ This matter is not about an existing rate, and the burden of proof falls squarely on the shoulders of UGI.

UGI's filing proposes to change the rates for customer generators that today, because their demand is less than 25 KW, are considered GSR-1. The change in procurement class and accompanying change in compensation methodology will have a dramatic impact on the rate that GSR-2 customers will pay and/or be paid because it is based on a mechanism that will produce a

¹⁹ See, 66 Pa.C.S. § 315(a) ("the burden of proof to show that the rate involved is just and reasonable *shall be upon the public utility*") (emphasis added).

²⁰ *Cup v. Pennsylvania Public Utility Commission*, 556 A.2d 470 at 472 (Pa Cmwlth. 1989) (emphasis in original). See also *Brockway Glass Co. v. Pennsylvania Public Utility Commission*, 437 A.2d 1067 (Pa Cmwlth. 1981); *Zucker v. Pennsylvania Public Utility Commission*, 401 A.2d 1377 (Pa Cmwlth. 1979).

different rate each hour. During this proceeding, in its surrebuttal testimony, Penn did propose an alternative methodology for how GSR-2 customers could be classified to eliminate its concern, but making that proposal does not and cannot shift the entire burden of proof on to Penn, as the RD purports to do.

The RD states several times that Penn failed to carry its burden of proving the justness and reasonableness of its proposed “alternative” to UGI filing, as if the burden of proof for the entire change had come to rest on Penn.²¹ That clearly is an incorrect conclusion and is contrary to the law.

Penn introduced ample evidence of the unreasonableness and illegality of UGI’s proposed change, including blatant deviations from Commission Regulations. UGI produced only the opinions of UGI’s witnesses, who offered no evidence that maintaining the status quo and allowing customer generators to be classified like other customers, by peak demand, and maintaining the 25 kW threshold would cause any harm.²² Moreover, the ALJ’s accepted with no analysis of any sort except to state agreement with the accusation leveled by UGI that compliance with the AEPSA would cause harm to residential customers in the form of a subsidy.

The RD fails completely to acknowledge that UGI bears the burden of proving the justness and reasonableness of its proposed changes to rates and thus commits fatal and reversible error.

2. **Exception No. 2 - The RD erroneously states that the only litigated issue to be resolved is UGI’s proposed methodology for assigning customers to either the GSR-1 or GSR-2 procurement classes. The proposed assignment methodology, as discussed herein, is the mere tip of the iceberg and the RD’s focus on that issue while neglecting the others, provides an incomplete decision by failing to address the clear statutory violations of UGI’s entire proposal. (RD at 26-27, 31).**

²¹ The RD makes this claim several time, on pages 13, 27, 31, 38, and 41.

²² Mere opinion, without more, is insufficient to meet the burden of proof. *Kirby v. PPL Elec. Utilities Corp.*, Docket C-20066297 (Final Order entered November 16, 2006), citing, *Pa. Bureau of Corrections v. City of Pittsburgh*, 552 A.2d 12 (Pa. 1987).

The primary issue discussed in the RD is Office of Consumer Advocate's ("OCA") contention that Penn failed to carry its burden of proving that its counter-proposed re-classification of customers into GSR-1 or GSR-2 procurement classes is the only issue to be resolved.²³ OCA's assertion is patently wrong. While it could be true (it is not) that Penn did not carry the burden of proving that expanding the GSR-1 classification to include customers with a SPLI of 3 MW, such a failure would in no way be dispositive of the issues that have to be resolved in litigation – the most important of which is whether UGI's proposed default rate for GSR-2 customers complies with the statutory requirement that Customer-Generators be paid at full retail value for excess generation, an issue that the RD never discusses.

Moreover, contrary to the RD's assertion, Penn Renewables did not state that UGI's plan was intended to discriminate solely against Penn. Rather, Penn's contention is that UGI created a compensation scheme after receiving a number of applications for net metering customer generators – applications that to this day have not been studied. (Penn St. No. 1-SR, 21:21-22:2). Those applications for net metering also affect potential customers other than affiliates of Penn. What is important, however, is that UGI admitted that the new pricing scheme is intended to address UGI's unproven concerns about the impact of non-residential customer generators on its default service rate as well as the demands on its staff. (UGI St. No. 2, 23:17-22)

While the RD may disagree with Penn's characterization of UGI's proposed compensation scheme, the facts are clear that UGI intends to compensate entities it refers to as large customer generators at a rate other than the PTC of the GSR-1 procurement class, which is the rate all other customer generators on UGI's system, to this point, are being paid. UGI's intention is to make the GSR-1 compensation for excess generation an hourly Locational Marginal Price ("LMP") rate that

²³ RD at 31.

would substantially reduce the compensation to customer generators such as Penn. Moreover, UGI is certainly aware that such compensation would make any proposed net metering project non-viable.

Penn agrees with the RD's conclusion that "we are not aware of any provision of the AEPSA 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."²⁴ That is not what Penn has requested in this case. However, the corollary of that statement is also true. UGI has proposed to transfer customer generators away from the procurement class to which they would otherwise belong under the present tariff (GSR-1), to a re-fashioned procurement class (GSR-2) that will provide massively less compensation than what they otherwise would have received as GSR-1 customers, solely to assuage its speculative and unproven concerns that could increase default service rates for residential and small business and industrial customers. UGI initiated this change "after" Penn submitted its applications for 12 net metering projects. In short, UGI is assigning some customer generators from GSR-1 to GSR-2, to address its alleged but unproven concerns that including them in GSR-1 would harm other customers. Neither the Code nor the AEPSA authorize such a discriminatory move.²⁵ Rather, the AEPSA requires that all customer generators, regardless of size, receive full retail value for all excess generation.²⁶ Penn responded appropriately to the business conditions envisioned and created by the AEPSA to develop the nascent solar generation technology in UGI's territory, and UGI responded by proposing a rate that will squash any hope of a project developing.

²⁴ RD at 28.

²⁵ 66 Pa. C.S. § 1304; 73 P.S. § 1648.1, *et seq*

²⁶ 73 P.S. § 1648.5.

3. Exception No. 3 - The AEPSA expressly requires that customer generators be compensated at “full retail value” for excess generation. To the extent that the RD considers full retail value to be a subsidy, it is in error. (RD 29-30).

The RD states quite emphatically that Penn Renewables “misinterprets the AEPSA to require *de facto* subsidization of alternative energy sources.”²⁷ This statement is not correct. What Penn has stated consistently throughout this case is that it is entitled to receive *full retail value* for its excess generation.²⁸ The RD then goes on to state that “there has been no showing that the Penn’s alternate generation is entitled to the cross-subsidization assignment to the GSR-1 rate class.” This is a flawed argument because at this moment, as UGI’s tariff stands, Penn Renewables is entitled to participate in the GSR-1 procurement class, and it is UGI’s proposal in this case to remove Penn from that group. It is that proposed move and its consequences that prompted Penn’s Complaint.

UGI’s proposal requires the Commission to grant a waiver of its regulations to allow the use of a classification mechanism other than what is required in the regulations now, and to permit a violation of the Public Utility Code to allow UGI to not provide a customer that meets the definition of small business customer with a rate that changes no more frequently than quarterly. It is black letter law that the Commission cannot waive the requirements of the Code.

The AEPSA requires that customer generators be compensated at full retail value for excess generation on an annual basis. Neither UGI, OCA nor the RD explain how moving a small business customer to a procurement class where the compensation is based largely the PJM LMP, and more or less a “proxy” wholesale rate, satisfies the statutory requirement that customer generators be compensated at full retail value, or how allowing some customer generators to be compensated at the GSR-1 PTC (i.e., full retail value) and pushing other customer generators to a wholesale price

²⁷ RD at 29.

²⁸ 73 P.S. § 1648.5.

complies with the same requirement of full retail value that does not differentiate based on size. The AEPSA does not authorize one full retail value for some customer generators and a different one for others – to the extent that the RD’s authorization of the implementation of UGI’s proposed GSR-1-GSR2 separation creates two different measures of full retail value for the UGI service territory, it is beyond the authorization of the APESA.

UGI’s basis for making the change is the speculative Testimony of its witness who hedged every answer referring to alleged harm with a “could”, “would” or “might” – never conclusively proving the factual underpinning of UGI’s rationale.²⁹ In short, UGI presented no conclusive evidence of any harm that would accrue if no changes were made to the procurement class qualifications or rate mechanisms.³⁰ Recall that it is UGI that bears the burden of proof for its proposed changes. What this means is that there is no evidence of harm, no evidence of the alleged subsidy and no basis for the RD’s conclusion, which is contrary to the AEPSA, that compensating customer generators at full retail value is a subsidy. Additionally, there is no evidence in the record to suggest that UGI considered other means of addressing its concerns that might have been used instead of the draconian proxy wholesale GSR-2 rate coupled with procurement class modifications it eventually proposed. Accordingly, it is error for the RD to claim that compensating customer generators at full retail value results in a cross subsidy and impossible for UGI to claim that it seeks to employ the least harmful alternative. Even if compensating customer generators at full retail value was shown to cause a subsidy, which it has not, it is what the AEPSA requires and the RD’s conclusion otherwise is unsupported.

²⁹ See, e.g., UGI St. 2, 23:17-22.

³⁰ Mere opinion or speculation, with nothing more, is insufficient to meet the burden of proof. *Kirby v. PPL Elec. Util. Corp.* Docket No. C-20066297; *Pa Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (1987), nor are bald assertions or speculation considered evidence. *Rivera v. Phila. Gas Works*, Docket No. C-2010-2164222 (Order Entered Jan. 12, 2012).

What also is true is that there will be demonstrated subsidies, under UGI's proposed classification and GSR-2 rate mechanism, that flow from customer generators to GSR-1 customers in the form of reduced transmission expenses, increased reliability through upgrades to the distribution system that will be paid for by the solar developer, among others. Customer generators have no way to recover those subsidies to UGI's GSR-1 customers. These subsidies and benefits were discussed in Mr. Crist's testimony,³¹ yet not discussed at all in the RD. Doing so was in error.

4. Exception No. 4 - The RD fails to consider that UGI's request to change the classification methodologies for GSR-1 and GSR-2 violate the Public Utility Code, and the Commission's Regulations. (RD. at 30-31).

On page 31, the RD claims "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." The record is clear, however, that it is UGI that has proposed, in this case, to change the classification methodology for its GSR-1 and GSR-2 procurement groups from maximum registered peak load to SPLI and it is UGI that proposed to move the threshold for the classification to 100 kW instead of the current 25 kW. There is no actual analysis that considers that the Commission's Regulations require that a customer with less than 25 kW of registered peak demand, (it is unrefuted on the record that Penn's projects would have registered peak demand of less than 25 kW) be provided with a rate that changes no more frequently than quarterly.³² It also is unrefuted that the Public Utility Code requires that small business customers (customers with less than 25 kW of peak demand,³³ be likewise provided with a rate that changes no more frequently than quarterly.³⁴ Assuming for the sake of argument only, that Penn failed to carry its burden of proving its counter proposal that the classification threshold for GSR-2 be raised to 3000

³¹ Penn St. 1, 8:18-11:3.

³² 52 Pa. Code § 54.187(h).

³³ 52 Pa. Code § 54.2).

³⁴ 66 Pa. C.S. § 2807(7).

kW, which it did not fail to do, UGI still failed to prove that its proposal, which is not sanctioned by the Commission's regulations, is deserving of a waiver of those regulations, not to mention, addressing the blatant violation of the Code.

5. **Exception No. 5 – The RD erred by rejecting Penn's counterproposal made in its surrebuttal testimony, that the classification threshold for GSR-1 should be expanded to include customer-generators with SPLI up to 3,000 kW in contrast to UGI's proposal to raise the limit for customers and customer generators up to 100 kW in SPLI. (RD at 27).**

The RD took great issue with Mr. Crist's proposal in his surrebuttal testimony that the threshold for customers to be classified as GSR-1 be extended to all customers, including customer generators, with SPLI of less than 3,000 kW, which not-coincidentally is the AEPSA size limit customer generator nameplate capacity for non-parallel operation at other customer locations.³⁵ Mr. Crist testified that because the AEPSA permits customer generators whose nameplate capacity is under 3000 kW to participate in net metering, and because the size of the generator has little impact on the costs of distribution, it made sense to allow all of those generators to receive full retail value, as AEPSA requires, and which Mr. Crist conceded is the GSR-1 PTC.

The RD, however, incorrectly claims that there was no support for Mr. Crist's proposal in fact or law. This assertion is made in the context of the RD's erroneous claim that this proposal had the effect of transposing the burden of proving that every aspect of UGI's filing was unjust and/or unreasonable, because it was not part of UGI's initial proposal, and for which the law is clear that UGI bears the burden of proof.³⁶ Simply put, there is no support in the record and most certainly not in the law, for UGI's proposed change from 25 kW to 100 kW or its desire to switch to SPLI and away from the maximum registered peak demand that appears as the classification

³⁵ See, 72 P.S. §1648.2.

³⁶ 66 Pa. C.S. § 315(a).

requirement in the Commission's Regulations. Both of these changes require waivers, which the RD barely mentions, the requests for which were made too late (i.e., not in UGI's case in chief)³⁷ and which UGI failed to support with concrete evidence other than arguing that it wanted them. The RD erred in not adopting Mr. Crist's recommendation and in claiming that it has no support.

6. Exception No. 6 – The RD accuses Penn of trying to shift the burden of proof on economic impact to UGI. The claim is plainly incorrect, as Penn demonstrates that UGI's plan harms Penn to the benefit of other customers. (RD at 30).

As discussed above, the burden to prove that its proposed rate changes are just and reasonable, rests with UGI. Nonetheless, the RD accuses Penn of seeking to shift the burden of proving economic impact to UGI. That claim is not correct. Penn's testimony shows that UGI's customers will benefit from the presence of distributed generation on its system in various ways, not the least of which is that it will reduce transmission charges.³⁸ Mr. Crist also testifies that compensating customer generators at full retail value typically means that customer generators are compensated at the host utility's PTC, even though that is not precisely what the AEPSA requires. The PTC for the rate class to which Penn's projects belong under UGI's current tariff should be the standard for full retail value in UGI's service territory. Mr. Crist testified that under normal circumstances, a customer generator will be compensated for excess generation at the same PTC that the other customers are being charged for default service, and so no evidence of harm to residential or small business customers under such a scenario. Mr. Crist also testifies that UGI's proposal to relocate certain customer generators to a new procurement class, even though it is entirely unsupported that any negative impact to UGI's approved rate classes would occur as a result, and UGI proposes compensate customer generators at a variable rate that will not resemble

³⁷ 52 Pa. Code §5.243(e)(2). ("A party will not be permitted to introduce evidence during a rebuttal phase which should have been included in the party's case-in-chief").

³⁸ Penn St. No. 1-SR 7:11-16.

the GSR-1 PTC, UGI will cause harm to customer generators such as Penn.³⁹ However, it was undisputed that some positive impacts to UGI's customers as a whole will occur. In particular, Mr. Crist pointed out that the aggregate impact of all the 22 MW of proposed customer generator generation, if they were to come online, would be less in any single year than the magnitude of ordinarily occurring volume (usage) changes on UGI's system, which are caused primarily by weather variations. These potential volume changes were stated by UGI as the primary driver of UGI's concerns.⁴⁰ In short, Penn has shown that there is no harm to residential and small commercial customers from implementing Mr. Crist's recommendation.

Penn does point out that UGI has conversely failed to prove that its proposed rate for GSR-2 will not harm those customers assigned to it. UGI's witness knew nothing about the circumstances of the non-generating customers in that rate class except that they tend to shop for service, and clearly UGI has not taken the time to ascertain what the rate impact on those customers might be. In that sense, UGI has not carried its burden of proof in demonstrating that its proposal will do no harm, and the RD committed an error by finding otherwise. It also demonstrates that UGI did not consider the benefits and detriments to all of its customers when proposing its changes to default service. UGI appears to have focused solely on trying to eliminate any possibility that default service costs for residential customers would see any impact from net metering, even though net metering provides ample benefits for those customers.⁴¹

7. Exception No. 7 – The RD mistakenly concludes that Penn has admitted that GSR-2 as proposed is a default service rate. (RD at 32-34).

It is correct to state that UGI is proposing the GSR-2 rate mechanism as a default service rate for those 100 or so customers who are unfortunate enough to be assigned to that classification,

³⁹ Penn St. No. 1-SR, 1:20-3:2.

⁴⁰ UGI St. No. 2, 3:1-13.

⁴¹ UGI St. No. 2, 3:1-13.

SPLI greater than 100 kW, while now the classification applies to customers with peak load of less than 25 kW. In that sense only, it is a retail rate because semantically it is being charged to “retail” customers, but the proposed mechanism is not the same as full retail value because its underpinnings are not based on retail sales, but rather a pass-through of a wholesale rate and associated components. UGI uses the GSR-1 rate as the default service rate for all but approximately 100 of its 60,000 plus customers. UGI may intend its GSR-2 rate as a default service rate, but to use it as a compensation mechanism for a customer generator it must be full retail value, which it is not. The General Assembly used the specific words full retail value, not retail rate, and effort must be given to give effect to each word of a statute, and “value” does not have the same meaning as rate.⁴² The RD’s acceptance of a rate mechanism that does not reflect retail sales, but rather reflects wholesale prices, cannot be a retail value - particularly in this case where the GSR-2 rate will not reflect the price of any other transaction in any hour.

Under cross-examination Mr. Crist was clear when he pointed out that the GSR-2 rate is a default service rate, for large (greater than 100 kW load) customers, but not for the net metering customers with loads of 25 kW or less.⁴³

In short, it does not matter what one calls the default service rate because it does not comply with the AEPSA mandate that customer generators be paid for excess generation at full retail value on an annual basis. UGI’s rate fails the definition and the RD’s conclusion that a wholesale rate will embody full retail value is an error.

⁴² *Sunrise*. See, also 1 Pa. C.S. §1921(a). (“The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions”).

⁴³ Tr. 106-107.

8. Exception No. 8 – The RD committed a fatal error by concluding that UGI’s proposed GSR-2 classification mechanism does not violate the Commission’s Regulations or the Public Utility Code. (RD at pp. 34-36).

On pages 35 and 36, the RD quotes extensively from UGI’s Briefs and then draws incorrect conclusions from them regarding UGI’s filing’s compliance with the Commission’s Regulations. First, the RD quotes from UGI’s brief for the proposition that Mr. Crist’s statement that Penn is entitled to a rate that changes no more frequently than quarterly and UGI’s blatant misrepresentation that no law “requires EDCs to provide large generators with stable default service rates.”⁴⁴ Nothing could be further than the truth. The law requires that small business customers, which clear record testimony demonstrates is true, with demand of less than 25 kW, which also is unrefuted in the record, are to be provided with a rate that changes no more frequently than quarterly.⁴⁵ It is true that UGI has had the GSR-2 rate for years, but UGI fails to mention that until its proposal in this case, GSR-2 had a threshold of 25 kW of load. Accordingly, UGI’s statement is misleading at best. Penn may be a customer generator, but it is also a customer and as a customer it is entitled to what the law provides. UGI’s proposal would strip away the 25 kW threshold that kept GSR-2 in compliance and replace it with a new threshold and a new mechanism, SPLI, to replace maximum registered Peak load. UGI should not be permitted to skirt the law, or the specific regulations. The RD’s willingness to do so is reversible error.

⁴⁴ RD at 34-36.

⁴⁵ 66 Pa. C.S. § 54.187(7).

III. CONCLUSION

The RD contains numerous errors of law and fact. These include:

1) The fatal error of law is in assigning the burden of proof. UGI as the proponent of a new rate for GSR-2 and new classification, bears the burden of proving its proposal is just and reasonable and in the public interest. The RD purports to impose the entire burden of proof on Penn to prove that UGI proposals are not just and reasonable, contrary to the law, and thus ignores that UGI failed to satisfy its burden.⁴⁶

2) Failing to address that the proposed GSR-1/GSR-2 classification and rate mechanism violate the Public Utility Code that requires that small business customers with less than 25 kW of maximum registered peak load be provided a rate that changes no more frequently than quarterly, when the proposed rate changes every hour.

3) Failing to even consider, regardless of whether it intended to discriminate, that UGI's proposed classification and rate mechanism will discriminate against customer generators to the benefit of GSR-1 customers in violation of the Public Utility Code.⁴⁷

4) The RD commits an error by failing to examine whether UGI's proposed GSR-2 Rate mechanism will compensate customer generators at full retail value, based upon the expressed opinion that such compensation will result in a subsidy from GSR-1 customers to customer generators, and ignoring that the APESA requires such compensation and that the Commission has no authority to allow otherwise.⁴⁸

There are other errors of law and fact in the RD that are discussed herein, not the least of which is the fact that the RD does not appear to have given any weight to Penn's testimony, while

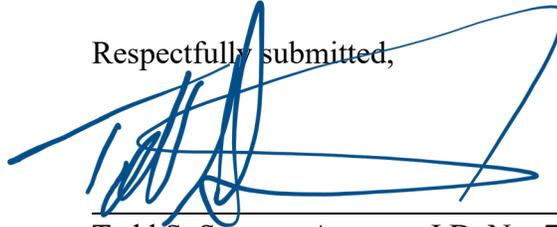
⁴⁶ *Cup*.

⁴⁷ 66 Pa. C.S. § 1502, and § 1304.

⁴⁸ *Sunrise*.

unquestioningly accepting OCA's and UGI's testimony despite its failure to acknowledge that the UGI proposal will not provide the statutorily required full retail value to which customer generators are entitled. The fact that three parties agreed to the settlement, and Penn did not, is not evidence of the correctness of the proposals agreed-to in the settlement and yet the RD accepted the settlement as such, based largely on that fact. The RD should be reversed and UGI instructed to include all net metered customer generators with, or likely to have, maximum registered peak demand of less than 25 kW in the past year in the GSR-1 procurement class so that they are compensated at full retail value as the APESA requires.

Respectfully submitted,



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