

COMMONWEALTH OF PENNSYLVANIA



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December 18, 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 its Default Service  
Program for the Period from  
June 1, 2025 through May 31, 2029  
Docket No. P-2024-3049343

Dear Secretary Chiavetta:

Attached please find the Office of Consumer Advocate's Reply Exceptions in the captioned proceeding.

Copies will be served as indicated on the enclosed Certificate of Service.

Respectfully submitted,

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Enclosures

cc: The Honorable Dennis J. Buckley (Via Email Only)  
The Honorable Alphonso Arnold III (Via Email Only)  
Certificate of Service (As Indicated)

CERTIFICATE OF SERVICE

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

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

Dated this 18<sup>th</sup> day of December, 2024.

SERVICE BY E-MAIL ONLY

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Date: December 18, 2024

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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REPLY EXCEPTIONS  
OF THE  
OFFICE OF CONSUMER ADVOCATE

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## I. INTRODUCTION

The Office of Consumer Advocate (OCA) submits these Replies to the Exceptions of Penn Renewables, LLC. (Penn Renewables or PR). The Public Utility Commission (Commission) should adopt the Recommended Decision of Administrative Law Judges (ALJs) Dennis J. Buckley and Alphonso Arnold III as Penn Renewables has failed to satisfy its burden of proof as proponent of an order to change UGI Utilities, Inc. – Electric Division’s (UGI’s) methodology for assigning customers to Generation Supply Rate (GSR) classifications. Additionally, Penn Renewables has failed to support its proposals with substantial evidence.

## II. REPLY EXCEPTIONS

**Reply to PR Exception No. 1, PR Exception No. 2, PR. Exception No. 4, and PR Exception No. 6: The Recommended Decision Applies the Appropriate Legal Standards. R.D. at 13-14, 27-32, 36-38, 41; OCA M.B. at 2-3, 7-12; OCA R.B. at 2-5.**

Penn Renewables argues that it does not have the burden of proving that the entirety of UGI’s Default Service Plan (DSP) V is unjust and unreasonable. PR Exc. at 5-7. According to Penn Renewables, UGI failed to carry its burden. *Id.* Penn Renewables further argues that the burden of proof is not dispositive of the issues in this case. PR Exc. at 7-9. Additionally, Penn Renewables argues that the ALJs failed to consider that UGI proposed a change and bears the burden of proof. PR. Exc. at 12-13. Penn Renewables then argues that the ALJs accused Penn Renewables of trying to shift the burden of proof to UGI, but that Penn Renewables did not shift the burden of proving 66 Pa. C.S. § 332(a). Penn Renewables neither cites to statute nor case law to support its assertion that it does not carry the burden of proof as a proponent of a rule or order beyond citing to 66 Pa. C.S. § 332(a).

UGI’s DSP V filing does not propose a change UGI’s proposed GSR threshold. *See* R.D. at 31; OCA M.B. at 7. Instead, Penn Renewables proposed a change to UGI’s DSP V proposal –

specifically, to the classification GSR-1 and GSR-2 customers. As the proponent of a rule or order, Penn Renewables bears the burden of proof. *See* 66 Pa. C.S. § 332(a). Instead of satisfying their burden of proof, Penn Renewables attempts to argue that the ALJs committed an error of law and attempts to shift the burden of proof to UGI.

As discussed in the OCA's Reply Brief, Penn Renewables' attempt to shift the burden of proof is unreasonable and Penn Renewables' arguments are not supported by substantial evidence. *See* OCA R.B. at 3-5. Moreover, Penn Renewables' argument that it does not have the burden of proof in showing that the entirety of UGI's DSP V is unjust and unreasonable is a strawman. No party argued that Penn Renewables is required to show that the entirety of UGI's DSP V is unjust and unreasonable. Instead, the ALJs correctly stated that Penn Renewables attempted to shift the burden of proof to UGI to prove that that Penn Renewables will not incur uneconomical results by assignment to the GSR-2 class. R.D. at 30; *see also* PR Exc. at 11, 15. This is the crux of the issue: Penn Renewables proposed a change to UGI's customer classifications that was not in UGI's original filing and then asserted that UGI must show that UGI's DSP V does not economically harm large customer-generators. Despite arguing in its Exception #6 that Penn Renewables did not attempt to shift the burden of proving economic impact to UGI (PR Exc. at 14-15), Penn Renewables stated as follows earlier in its Exceptions:

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 [Alternative Energy Portfolio Standards Act], 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.

PR Exc. at 11. Penn Renewables continues to attempt to shift the burden of proving economic impact to UGI.

The Recommended Decision properly stated that “UGI is not required to prove that market participants receive optimum economic outcomes.” R.D. at 31. The ALJs also correctly noted that Penn Renewables’ arguments were established by conjecture as opposed to substantial evidence. R.D. at 30. Penn Renewables failed to carry its burden of proving that its proposed classification of GSR-1 and GSR-2 customers will not result in the residential customer class subsidizing the large customer-generator class of customers. *See* 66 Pa. C.S. § 2807(e)(7) (“[a]ll default service rates shall be reviewed by the commission to ensure that the costs of providing service to each customer class are not subsidized by any other class.”)

For all the reasons stated more fully in OCA’s Briefs, Penn Renewables has failed to satisfy their burden of proof as a proponent of an order and has not provided substantial evidence in support of its arguments. OCA M.B. at 7-12; OCA R.B. at 1, 4-5, 13. Penn Renewables’ continued effort to shift its burden of proof to UGI should be denied.

**Reply to PR Exception No. 3: The Recommended Decision accurately states that UGI’s DSP V does not violate the Alternative Energy Portfolio Standards Act. R.D. at 29-37; OCA M.B. at 10-11; OCA R.B. at 3-5, 8-12.**

Penn Renewables argues that the Alternative Energy Portfolio Standards Act (AEPSA) expressly requires that customer-generators be compensated at full retail value for excess generation and that there is no subsidy if Penn Renewables’ proposal is adopted. PR Exc. at 10-12. Additionally, Penn Renewables argues that there is no evidence in the record to suggest that UGI considered other means to address Penn Renewables’ concern besides UGI’s DSP V proposal. PR Exc. at 11.

The ALJs properly determined that UGI’s DSP V does not violate the AEPSA. R.D. at 29-30. As discussed in the OCA’s Reply Brief, the plain language of the AEPSA does not restrict UGI from utilizing the Supply Peak Load Impact (SPLI) methodology when classifying GSR

customers. OCA R.B. at 3-5. The AEPSA merely requires – but does not define – that net metered customers receive full retail value for excess generation. 73 P.S. § 1648.5 The ALJs accurately noted that Penn Renewables failed to cite to any statutory language supporting Penn Renewables’ position that it is entitled to a cross-subsidization assignment to the GSR-1 rate class. R.D. at 29-30. Moreover, many of Penn Renewables’ assumptions regarding SPLI were flawed and refuted by UGI, and they merely reiterate these claims in their Exceptions. *See* R.D. at 30-35.

As discussed in the OCA’s Reply Brief, Penn Renewables conceded that “full retail value” is not defined in the AEPSA. *See* OCA R.B. at 3; PR M.B. at 9. The AEPSA does not control classification of customers within rate classes, nor should a broad and silent restriction on UGI’s DSP V classification of GSR customers be assumed. OCA R.B. at 3. Instead, the AEPSA delegates technical and net metering rules to the Commission. *See* 73 P.S. § 1648.5. The Public Utility Code requires that “[a]ll default service rates shall be reviewed by the commission to ensure that the costs of providing service to each customer class are not subsidized by any other class.” 66 Pa. C.S. § 2807(e)(7).

As discussed in the OCA’s Briefs, if Penn Renewables’ requested proposals are adopted, residential customers will be unreasonably subsidizing customer-generators in contravention of the Public Utility Code. *See* OCA M.B. at 9-10; OCA R.B. at 8-12. In contrast, there is no unreasonable subsidization of rates under UGI’s proposed GSR-2 rate. Under UGI’s proposal, both a non-residential customer with a peak demand of 100 kW or above, and a non-residential customer-generator with a peak injection into UGI’s distribution grid of 100 kW or above will be classified as GSR-2 customers because both have respective supply peak load impacts of 100 kW or above. OCA M.B. at 7; OCA R.B. at 9. UGI’s DSP V Plan is intended to separate portfolio risk management and cost impacts to default service procurement activities, and to address potential

small versus medium/large cross-subsidy concerns while providing clarity for all customers. OCA R.B. at 9.

Classifying all customer-generators as GSR-1, as proposed by Penn Renewables, unreasonably ignores the differences between GSR-1 and GSR-2 customers. *See* OCA R.B. at 12. It would be inappropriate to include customers with large onsite generators attached to their loads in the same default service procurement and rate group as residential customers because this will lead to indirect and unreasonable subsidization of such customers by residential customers. OCA R.B. at 12.

Penn Renewables also argues that there is no evidence on the record to suggest that UGI considered other means of addressing Penn Renewables' concerns. PR Exc. at 11. However, this is not the legal standard under AEPSA, the Public Utility Code, or the Commission's Regulations. UGI proposed rate classifications that would fully compensate Penn Renewables and all net metered customers at their full retail rate within their respective rate classes. Penn Renewables proposed to change UGI's proposed class allocation but has failed to show that its proposal would not result in cross-subsidization and is in violation of Section 2807(e) of the Public Utility Code. *See* 66 Pa. C.S. § 2807(e)(7) (“[a]ll default service rates shall be reviewed by the commission to ensure that the costs of providing service to each customer class are not subsidized by any other class.”).

**Reply to PR Exception No. 5: Penn Renewables' argument that the ALJs erred by rejecting Mr. Crist's proposal in testimony should be denied. R.D. 27, 31, 40; OCA M.B. at 7, 9-12; OCA R.B. at 12.**

Penn Renewables argues that the ALJs erred by rejecting Penn Renewables witness Crist's proposal in testimony that the classification for GSR-1 should be expanded to include customer-generators with SPLI up to 3 MW instead of UGI's threshold of 100 kW. PR Exc. at 13-14.

Penn Renewables did not advocate in support of Mr. Crist's proposal in its Briefs. Now in Exceptions, Penn Renewables argues that the ALJs erred because they did not accept Mr. Crist's proposal made in testimony. Instead of advocating in support of Mr. Crist's proposal in its Main Brief, Penn Renewables proposed that "[t]he only way that the statutory mandate is satisfied is if all excess generation, from all customer-generators, are compensated at full retail value, i.e. the GSR-1 PTC that UGI pays other net-metered customer-generators." PR M.B. at 23. In its Reply Brief, Penn Renewables characterized Mr. Crist's proposed reclassification of the GSR-2 threshold from 100 kW to 3 MW in testimony as, for practical purposes, a suggestion intended to compensate customer generators as members of the GSR-1 classification. PR R.B. at 21.

To be clear, Penn Renewables proposed to eliminate the GSR-1 and GSR-2 threshold for customer-generators. *See* OCA R.B. at 12-13. Penn Renewables' proposal in its Briefs was a significant step beyond Mr. Crist's proposal in testimony to increase the GSR-2 threshold by 2,900% from 100 kW to 3 MW. *See* OCA M.B. at 9-12; OCA R.B. at 12.

UGI's DSP V filing neither contains a request to increase UGI's GSR threshold from 100 kW to 3 MW nor to eliminate the GSR-1 and GSR-2 classifications by classifying all customer-generators as GSR-1 customers. Both Penn Renewables' proposal and Mr. Crist's recommendation in testimony result in an unreasonable preference and advantage for large customer-generators at the expense of small customer-generators. As discussed in the OCA's Main Brief, Mr. Crist's proposal to increase the GSR-2 threshold from UGI's current GSR-2 threshold of 100 kW to 3 MW results in unjust, unreasonable, and discriminatory rates. *See* OCA M.B. at 12-15; 66 Pa C.S. §§ 1301, 1304.

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 R.B. at 7. Mr. Crist and Penn Renewables never established a relationship between these two concepts. OCA St. 1R 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. *Id.* at 11. Indeed, Mr. Crist'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 the AEPSA. *See* OCA M.B. at 10-11 *citing Policy Statement in Support of Pennsylvania Solar Projects*, 2010 Pa. PUC LEXIS 1580, \*20.

Since Penn Renewables failed to convince the ALJs that its proposal to eliminate the GSR threshold should be adopted, Penn Renewables now attempts in Exceptions to advocate for a different proposal requiring the Commission issue an order to increase UGI's DSP V GSR classification threshold from 100 kW to 3 MW. The ALJs neither erred in their consideration of Penn Renewables' proposal nor in their discussion of Mr. Crist's proposal. Penn Renewables' Exceptions to the contrary should be denied.

**Reply to PR Exception No. 7: The Recommended Decision correctly concluded that Mr. Crist admitted that the GSR-2 as proposed is a default service rate. R.D. at 32-34; OCA R.B. at 4-5.**

Penn Renewables argues that it did not admit that UGI's proposed GSR-2 is a default service rate. Penn Renewables. Exc. at 16. Penn Renewables further states that Mr. Crist pointed out that the GSR-2 rate is a default service rate for customers greater than 100 kW, but GSR-2 is not a default service rate for the net metering customers with loads of 25 kW or less. PR Exc. at 15.

At the evidentiary hearing, Mr. Crist acknowledged that the GSR-2 rate (which is the rate that applies to all customers with SPLI of 100 kW and greater) is a retail rate as follows:

Q. Yeah, but if I just go back here and it seems like in your testimony throughout, you suggest that the GSR-2 rate can't be retail because it's based on spot market. Is that correct?

A. Can't be retail and can't - doesn't meet the criteria to apply to the small customers because it's a spot market rate. **It very well might be a retail rate that applies to 100kw and greater customers.**

Tr. 110 (emphasis added).

Mr. Crist's evidentiary hearing testimony speaks for itself. The ALJs correctly stated that Penn Renewables attempted to show that UGI's DSP V proposals related to GSR-2 are unjust and unreasonable by introducing Mr. Crist's testimony into the record. R.D. at 31-37. However, as noted by the ALJs, Mr. Crist's testimony contained assumptions regarding GSR-2 prices paid to GSR-2 customers that were shown to be incorrect and inconsistent. *Id.* To be clear, under UGI's proposal, the GSR-2 rate is a retail rate that is offered to all customers with a peak demand or supply impacts greater than 100kW. OCA R.B. at 4.

**Reply to PR Exception No. 8: The Recommended Decision complies with the Commission's Regulations and the Public Utility Code. R.D. at 42; OCA R.B. at 5-7.**

Penn Renewables argues that the ALJs 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. PR. Exc. at 17. Specifically, Penn Renewables argues that the Public Utility Code requires that small business customers are to be provided with a rate that changes no more frequently than quarterly. PR. Exc. at 17.<sup>1</sup>

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<sup>1</sup> The OCA notes that Penn Renewables cites as authority "66 Pa. C.S. § 54.187(7)." See PR. Exc. at 17. However, there is no such section of the Public Utility Code. As such, the OCA assumes that Penn Renewables either intended to cite to the Commission's regulations at 52 Pa. C.S. § 54.187(7) or intended to cite the Public Utility Code at 66 Pa. C.S. § 2807(e)(7). The OCA further notes that there are no other

The Commission's Regulations states as follows:

(c) Except for rates available consistent with § 54.190 (relating to universal interest applicable to over collections and under collections resulting from reconciliation of automatic adjustment clauses costs and revenues related to electric default service), 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.

52 Pa. Code § 54.187(c).

Section 2807(e)(7) of the Public Utility Code states as follows:

The default service provider shall offer residential and small business customers a generation supply service rate that shall change no more frequently than on a quarterly basis. All default service rates shall be reviewed by the commission to ensure that the costs of providing service to each customer class are not subsidized by any other class.

66 Pa. Code §2807(e)(7).

The Recommended Decision contains no fatal error regarding the Commission's Regulations. UGI is not required to provide an hourly changing PTC on their bill under the Commission's regulations. OCA R.B. at 5. UGI witness Hazenstab testified that UGI would not be able to inform the customer as to a specific PTC until the end of the month because the PTC is not based solely on the hourly rate. Tr. 81. Moreover, UGI noted that EDCs have been offering hourly default service for over 15 years and the PTC for GSR-2 customers has never been on UGI's bill. OCA R.B. at 5-6.

Penn Renewables' argument that the Public Utility Code requires that the default service rate charged to small business cannot change more frequently than quarterly confuses the issues in this proceeding. The Locational Marginal Price (LMP) in any given hour in a specific location (e.g., UGI zone) is determined by the intersection point of supply and demand, and all resources

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citations to either the Public Utility Code or the Commission's Regulations in this section of Penn Renewables' Exceptions.

are paid, and all loads pay, that same LMP. OCA R.B. at 6. Penn Renewables' concern is not a flaw of the compensation mechanism design for exports by customer-generators. *Id.* Instead, it merely reflects the fundamental principles and rules of PJM's LMP construct in which UGI operates. *Id.*

Penn Renewables' concerns with the GSR-2 customer-generator compensation mechanism has no relationship with the methodology by which customers are classified into the GSR-1 and GSR-2 procurement groups. OCA R.B. at 6-7. What 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, and Penn Renewables does not establish a relationship between these two concepts. OCA R.B. at 7; OCA St. 1R at 10-11. If there is a discrepancy between what GSR-2 customers pay for electricity and the compensation rate for a customer-generator's exports, such discrepancy should be addressed on its own merits without deviating from a proper and logical customer classification methodology. *Id.* Assigning large supply peak load impact customer-generators to the GSR-1 procurement group because Penn Renewables 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 not a reasonable or proper remedy. OCA R.B. at 7.

### **III. CONCLUSION**

Penn Renewables has failed to satisfy their burden of proof as proponent of an order and failed to support its arguments with substantial evidence. For the reasons herein and articulated in the OCA's Briefs, the well-reasoned Recommended Decision of ALJs Buckley and Arnold should be approved and the Exceptions of Penn Renewables should be denied.

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Dated: December 18, 2024

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