

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17120

Penn Renewables LLC
vs.
UGI Utilities Inc. – Electric Division

Public Meeting held February 20, 2025
3049343-OSA
Docket No. P-2024-3049343 et al.

STATEMENT OF VICE CHAIR KIMBERLY BARROW

Today we resolve the Default Service Plan for UGI Utilities Inc. – Electric Division (UGI).

Penn Renewables takes exception to the Recommended Decision’s (RD) treatment of burden of proof in this proceeding, alleging that the RD inappropriately relieves UGI of its burden of proof and instead places the burden on Penn Renewables. I agree with the exception, but would find that even under an appropriate standard, UGI has met its burden of proof.

In cases such as this, a utility proposing a default service plan is under the burden of proof to show that its plan is just and reasonable. “Section 315(a) of the Public Utility Code imposes a burden on the public utility proposing a new rate to prove that the rate is just and reasonable.¹ This burden does not shift from a utility whose burden has been statutorily imposed.”² Moreover, the burden of proof is on a utility not just to prove the justness and reasonableness of the overall rate, but also the utility must “establish the justness and reasonableness of every component of its rate request”.³ When the utility’s proposed rate is challenged, and a modification is proposed, the challenger bears the burden with respect to the change.⁴ Yet, before the modification is evaluated, the utility must still meet its original burden: “First, [the utility] must, under Section 315(a), prove that **its** proposed rate is just and reasonable, and was required to present direct evidence to support that conclusion.”⁵

So, in this case, UGI had the burden of proving that the proposed 100 kW threshold and Supply Peak Load Impact definitions were just and reasonable. Only then should the Penn Renewables challenge that the appropriate threshold was 3 MW have been evaluated.

I do not view the Recommended Decision as having taken the appropriate initial step of evaluating the justness and reasonableness of the GSR-2 rate threshold of 100 kW including the modifications to the definition of Supply Peak Load Impact. As described above, the utility bears the burden of proof that each component of its proposal is just and reasonable and the proposal as a whole is just and reasonable. It cannot be argued that UGI has previously met this burden, because, although the GSR-2 rate and the 100 kW threshold are pre-existing, this is the first time Supply Peak Load Impact has included exports of generation, not simply consumption.

¹ 66 Pa.C.S. § 315(a).

² *NRG Energy, Inc. v. Pennsylvania Pub. Util. Comm'n*, 233 A.3d 936, 950 (Pa. Cmwlth. 2020).

³ *Metro. Edison Co. v. Pennsylvania Pub. Util. Comm'n*, 22 A.3d 353, 359 (Pa. Cmwlth. 2011).

⁴ *Id.*

⁵ *Id.* (emphasis in original).

Moreover, even where a utility has met its burden of proof on a proposal previously, when it is seeking reauthorization, it again bears the burden to show its proposal is just and reasonable against novel protests.

Had the Recommended Decision evaluated the record evidence to determine whether UGI had met its burden of proof, I believe it would have found sufficient evidence to indicate UGI had met its original burden of proof.

“It is well settled that the establishment of a rate structure is an administrative function peculiarly within the expertise of the commission.”⁶ In general, Witness Faryniarz for UGI credibly establishes that “[l]arge customer-generators are appropriately classified as GSR-2 customers due to their general sophistication, likely impact on default service solicitations, and overall grid impact from a default service prospective. Starting with impact to the grid in relation to default service, large customer-generators are those that have a system peak load impact (“SPLI”) of at or above 100 kW.”⁷ This classification situates large net metering facilities similarly to other customers that have similar grid impacts.⁸ UGI also credibly established that large customer generators are not similar to the small business customers in the GSR-1 rate.⁹ UGI also credibly established that the inclusion of large customer generators with small commercial customers would increase supply rates due to uncertainty from the customer-generators’ impact.¹⁰ This uncertainty risk is less harmful in the GSR-2 context in my view, because as the record clearly establishes, GSR-2 customers are sophisticated and able to avoid disadvantageous rates through shopping.

Moreover, the change proposed by UGI does not impact any existing net metering customers.¹¹ Altogether, these facts and others in the record establish by a preponderance of the evidence that UGI is classifying large customer generators with similarly situated customers.¹²

With respect to the claim that GSR-2 rates do not constitute full retail value, UGI met its burden of proof. The GSR-2 rate is a pre-existing full retail rate, which is not subsidized by any other class. The primary difference between the GSR-2 rate and other rates is its flexible wholesale market component. The flexibility of the retail rate does not diminish its retail nature. The GSR-2 rate includes all other components of a retail rate.¹³ Full retail value does not mean complete isolation from the wholesale market. All retail rates are based in part on wholesale

⁶ *Peoples Nat. Gas Co. v. Pennsylvania Pub. Util. Comm'n*, 409 A.2d 446, 456 (Pa. Cmwlth. 1979).

⁷ Rebuttal Testimony of Stan C. Faryniarz, UGI Electric Statement No. 2-R, at 18.

⁸ Direct Testimony of Stan C. Faryniarz, UGI Electric Statement No. 2, at 29-30.

⁹ Rebuttal Testimony of Stan C. Faryniarz, UGI Electric Statement No. 2-R, at 22.

¹⁰ *Id.* at 24; see also Rejoinder Testimony of Stan C. Faryniarz, UGI Electric Statement No. 2-RJ, at 10-12.

¹¹ Direct Testimony of Stan C. Faryniarz, UGI Electric Statement No. 2, at 30.

¹² 66 Pa.C.S. § 1304; *Lloyd v. Pennsylvania Pub. Util. Comm'n*, 904 A.2d 1010, 1015 n. 10 (Pa. Cmwlth. 2006) (“Rate classes are established by taking similarly situated customers with similar characteristics as to the type of service (e.g. residential, commercial and industrial) and the type and demand of service (e.g. amount of usage and demand load) and rates that are designed to recover the cost of serving that class.”); *Philadelphia Suburban Transportation Co. v. Pennsylvania Pub. Util. Comm'n*, 281 A.2d 179, 186 (Pa. Cmwlth. 1971) (“Differences in rates between classes of customers based on such criteria as the quantity of electricity used, the nature of the use, the time of the use ..., or based on differences of conditions of service, or cost of service are not only permissible but often are desirable and even necessary to achieve reasonable efficiency and economy of operation.”)

¹³ Rejoinder Testimony of Stan C. Faryniarz, UGI Electric Statement No. 2-RJ, at 4-7.

energy values.¹⁴ The rate paid under GSR-2 simply follows the wholesale market more closely, instead of being fixed on a six-month basis.¹⁵ The record indicates that the GSR-2 rate constitutes full retail value.

Finally, much of the record deals with the specifics of a solar facility. It should be noted that the GSR-2 classification is technologically neutral for all eligible customer generators of any Alternative Energy Portfolio Standards resource. The flexible GSR-2 classification will encourage resources that provide energy at times when it is most needed, while still providing the advantages of a simple net metering construct under Pennsylvania law.

February 20, 2025



Kimberly Barrow, Vice Chair

¹⁴ Rejoinder Testimony of Tracy A. Hazenstab, UGI Electric Statement No. 3-RJ, at 8.

¹⁵ *Id.* at 10.