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October 17, 2025

Matthew L. Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

**VIA ELECTRONIC FILING**

**RE: Pennsylvania Public Utility Commission v. Citizens' Electric Company of Lewisburg, PA; Docket No. R-2025-3054394**

Dear Secretary Homsher:

Attached for filing with the Pennsylvania Public Utility Commission is the Reply Brief of Citizens' Electric Company of Lewisburg, PA, in the above-referenced docket.

If you have any questions regarding the attached document, please feel free to contact the undersigned. As shown by the attached Certificate of Service, the parties to this proceeding are being duly served with a copy of this filing. Thank you.

Very truly yours,

Adeolu A. Bakare
MCNEES WALLACE & NURICK LLC

Counsel to Citizens' Electric Company of Lewisburg, PA,

c: Mary D. Long, Administrative Law Judge (via e-mail)
Certificate of Service

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants, listed below, in accordance with the requirements of Section 1.54 (relating to service by a participant).

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Dated this 17th day of October, 2025, in Harrisburg, Pennsylvania.

**BEFORE THE**
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| Pennsylvania Public Utility Commission | : | |
| | : | |
| v. | : | Docket No. R-2025-3054394 |
| | : | |
| Citizens' Electric Company of Lewisburg, PA | : | |

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# REPLY BRIEF
# OF CITIZENS' ELECTRIC COMPANY OF LEWISBURG, PA

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Dated: October 17, 2025

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*Pa. PUC v. Philadelphia Electric Company*, Docket No. R-891364, et al., 1990 Pa. PUC LEXIS 155 (Order dated May 16, 1990)

Pennsylvania Department of Revenue, Corporation Tax Bulletin 2020-01, *Telecommunications and Electric Gross Receipts Tax – Sale for Resale* (Last revised Feb. 11, 2021), available at https://www.pa.gov/content/dam/copapwp-pagov/en/revenue/documents/taxlawpoliciesbulletinsnotices/taxbulletins/ct/documents/ct_bulletin_2020-01.pdf.

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

*Philadelphia Indus. & Com. Gas Users Grp. v. Pennsylvania Pub. Util. Comm'n*, No. 128 C.D. 2024, 2025 WL 2177932, at *1 (Pa. Cmwlth. 2025) (emphasis omitted).

*Philadelphia Suburban Tramp. Co. v. Pa. Pub. Util. Comm'n*, 281 A.2d 179 (Pa. Cmwlth. 1971)

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73 P.S. § 1648.5

73 P.S. 1648.5

Act of November 30, 2004, P.L. 1672, *as amended,* 73 P.S. §§ 1648.1-1648.8

## I. INTRODUCTION

On April 30, 2025, Citizens' Electric Company of Lewisburg, Pennsylvania ("Citizens'" or "Company") filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") Supplement No. 172 to Tariff Electric – Pa. P.U.C. No. 14 ("Supplement No. 172"), proposing to increase annual revenues by $1,794,525 per year, with a proposed effective date of June 29, 2025.[1] In support of this filing, Citizens' submitted a Statement of Reasons, the supporting information required by 52 Pa. Code § 53.52(a), (b), and (c), and various other information.

The as-filed rate case would result in an approximately 29.6% increase to Citizens' annual distribution revenues compared to revenue at current rates.[2] When considering the Company's total annual revenues (distribution and generation supply), the overall as-filed revenue increase is approximately 11%.[3]

On September 26, 2025, Citizens' filed a Joint Petition for Non-Unanimous Settlement ("Settlement" or "Non-Unanimous Settlement") on behalf of Citizens', the Commission's Bureau of Investigation and Enforcement ("I&E"), the Office of Consumer Advocate ("OCA"), and the Office of Small Business Advocate ("OSBA") (collectively, "Settlement Parties") in support of a settlement agreement which included a stipulated increase in the Company's annual revenue requirement of $1,390,000. Kelly Road Solar, LLC, Lancaster Avenue Solar, LLC, and Twilight Renewables, LLC (hereinafter, the

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[1] *See* Citizens' Statement No. 1, Exhibit__(HSG-1), Schedule C1.

[2] *See* Citizens' Statement No. 1 at 3.

[3] *See id*.

"Solar Projects") filed a Main Brief ("SP Main Brief") opposing the Non-Unanimous Settlement on grounds that it approves the Company's proposed update to the definition of Billing Demand in its tariff and related issues concerning customer-generators. Citizens' likewise filed a Main Brief on September 26, 2025, regarding these issues. As addressed herein, Citizens' has met its burden to support the proposed changes to its tariff definition of Billing Demand and the related changes necessary to appropriately classify customer-generators under its Generation Supply Service Rates ("GSSR") and ensure customer-generators pay reasonable distribution costs in accordance with cost-of-service principles.

## II. SUMMARY OF REPLY ARGUMENT

As noted above, the Company has entered into a Non-Unanimous Settlement of all issues with the Settlement Parties, which was filed simultaneously with the Main Brief on September 26, 2025. In Citizens' Main Brief, the Company supported its proposed changes, which (1) update the definition of "Billing Demand" to measure Billing Demand bi-directionally, and (2) apply the new definition for purposes of classifying default service customers and calculating the demand portion of distribution rates. These changes are intended to more accurately and equitably reflect cost-causation principles for customer-generators and align with the Commission's recent decision in UGI Utilities, Inc.—Electric Division's ("UGI") default service proceeding ("UGI Order").[4]

[4] *Petition of UGI Utilities, Inc-Electric Division for Approval of a Default Service Plan for the Period of June 1, 2025 through May 31, 2029,* Docket No. P-2024-3049343, et al. Opinion and Order, February 20, 2025 ("UGI Order"). On March 18, 2025, Penn Renewables filed a Petition for Review in the Nature of an Appeal with the Commonwealth Court of Pennsylvania at Docket No. 337 CD 2025.

In the Main Brief, the Solar Projects offer a variety of arguments, claiming that the updated Billing Demand definition violates cost-causation principles, discriminates against customer-generators, and violates the law. The Solar Projects also recommend *against* application of Commission precedent, contesting the Commission's interpretation of the Alternative Energy Portfolio Standards (AEPS) Act of 2004 ("AEPS Act")[5] and its own Regulations. Further, the SP Main Brief spends a significant amount of time arguing against the Company's original proposal, which included Gross Generator Rating (or Gross Generator Capacity) in the definition, even though the Gross Generator Rating portion was superseded in settlement discussions and later testimony. While the Company continues to believe that use of the Gross Generator Rating is reasonable and comports with Commission precedent, the Company is no longer proposing to incorporate Gross Generator Rating into the Billing Demand definition; rather, the Company's settlement proposal is to measure actual peak metered flows bi-directionally when calculating Billing Demand.

This Reply Brief responds to the arguments advanced in the Solar Projects' Main Brief by referencing the applicable responses in Citizens' Main Brief and identifying additional record evidence in support of Citizens' position. As demonstrated herein, the Solar Projects' arguments fail to show that the Company's proposal is unreasonable, unjust, or unduly discriminatory. For their many arguments on brief, the Solar Projects fail to

[5] Act of November 30, 2004, P.L. 1672, *as amended,* 73 P.S. §§ 1648.1-1648.8.

account for the simple and clear cost mismatch that occurs when a 400-3,000 kW energy production facility is treated the same as a pizza shop, small office building, or hair salon.

In contrast, the Company is responding to Commission guidance encouraging Electric Distribution Companies ("EDCs") to take the actions that comport with just and reasonable, non-discriminatory rates: to utilize definitions that measure actual use of the distribution system; to classify "like with like"; to prevent unreasonable cost shifts; and to give large customer-generators greater alignment with costs they can control. The Company respectfully requests that the ALJ recommend approval of, and the Commission approve, its tariff proposal as set forth herein and in the Non-Unanimous Settlement.

## III. ARGUMENT

### A. BILLING DEMAND DEFINITION

#### 1. The Solar Projects' argument that incorporating customer-generators' Gross Generator Rating into billing demand conflicts with cost causation are without merit and inapplicable to the proposed settlement.

The Solar Projects assert that Citizens' Billing Demand proposal is unjust, unreasonable, and contrary to cost-causation principles.[6] This erroneous assertion is based upon a misunderstanding of the costs that are incurred to serve customer generators and a disregard for Commission precedent in the UGI Order.[7] Further, the Solar Projects' concerns regarding utilizing customers' Gross Generator Rating are misplaced and

[6] SP Main Brief at 18.

[7] *Petition of UGI Utilities, Inc-Electric Division for Approval of a Default Service Plan for the Period of June 1, 2025 through May 31, 2029*¸ Docket No. P-2004-3049343, et al. Recommended Decision and Order, December 3, 2024 ("UGI Order").

meritless. As settlement discussions ensued, the Company agreed with other Settlement Parties to replace the Gross Generator Rating portion of the definition with the peak bi-directional demand. This updated proposal was stated in Company Rejoinder Testimony.[8] However, even if the Company had moved forward with its proposal to use Gross Generator Rating to measure Billing Demand, such an approach remains a reasonable allocation method that comports with cost causation principles and Pennsylvania law.

The original proposal of the Company proposed to measure Billing Demand by the greater of (1) maximum electricity withdrawn from the system during the month (maximum demand); (2) 50% of the maximum demand during the prior 11 months; or (3) nameplate capacity of generating unit (Gross Generator Rating).[9] In Rejoinder Testimony, the Company updated its proposal to remove the Gross Generator Rating and to instead measure bi-directional peaks—that is, to measure imports from and exports to the system in determining Billing Demand.[10] Despite this change, the Solar Projects waste a number of pages in the Main Brief arguing against measuring Billing Demand with

[8] Citizens' Statement No. 4R at 8.

[9] Citizens' Statement No. 1R at 16.

[10] As stated in the Non-Unanimous Settlement, the Company's proposal for distribution charges and net metering of customer-generators is modified as follows:

> i. The Company shall use the peak bi-directional demand in place of the originally-proposed Gross Generator Capacity.
> ii. The Company shall establish the placement of the account on the GSSR-1 or GSSR-2 in June of each year based on the peak bi-directional demand for the prior June to May period, with the account classified as GSSR-2 if the 400 kW demand threshold was achieved in any of the months during the period.
> iii. The net metering compensation for accounts on GSSR-2 shall be as stated in Citizens' Statement No. 4R.

Gross Generator Rating, which is a proposal that is **not** at issue in the settlement petition. Many of these arguments have no applicability to Citizens' updated proposal. However, the Company will provide a short response to the Solar Projects' core arguments on this topic.

It is well established that " every rate made, demanded, or received by any public utility must be just and reasonable…"[11] and that "[i]n Pennsylvania, just and reasonable rates must reflect the principles of cost causation."[12] As demonstrated below, both the Gross Generator Rating and the bi-directional peak options to measure Billing Demand align with cost-causation principles. Citizens' proposals in this rate case reflect the Company's compulsory efforts to align their rates with the principles of cost causation in light of new Commission precedent and changing dynamics on the grid. An update to the tariff is necessary to ensure that the costs imposed by large customer-generators are not unreasonably shifted to the rates of other customers who do not have on-site generation.

On brief, the Solar Projects contend that both of the Company's proposals would unfairly impose costs on customer-generators that they did not cause.[13] This is false. Distribution costs are incurred to serve all customers connected to the distribution system, regardless of whether they are solely consumers of power or also export power to the

[11] 66 Pa. C.S. §1301(a).

[12] *Philadelphia Indus. & Com. Gas Users Grp. v. Pennsylvania Pub. Util. Comm'n*, No. 128 C.D. 2024, 2025 WL 2177932, at *1 (Pa. Cmwlth. 2025) (emphasis omitted). See also *Lloyd v. Pa. Pub. Util. Comm'n*, 904 A.2d 1010, 1015 (Pa. Cmwlth. 2006).

[13] SP Main Brief at 19.

distribution grid.[14] The fact that a customer-generator exports more power to the grid than it consumes does not negate the costs created by its use of the distribution system.[15] As Mr. Gorman stated, "The important consideration is not the direction of the power flow; the important consideration is the assets to be built, operated and maintained to meet the customer's needs […]."[16] The Company incurs costs to support customer-generators' use of the system whether they import or export energy to the system (or both). Measuring Billing Demand in a way that does not contemplate use of the distribution system when exporting energy conflicts with cost-causation principles and shifts costs from customer-generators to other customers.[17] Put simply, if the Company designs and maintains equipment to support a 500 kW power export from a customer's location, it should not, for ratemaking purposes, treat that customer as if it were only using 50 kW of power flow. Because distribution billing for Rate Schedules GLP-1 and GLP-3 in Citizens' current tariff only accounts for imports, any customer-generator that exports more power than it consumes from the distribution grid is shifting distribution costs to other customers. This shift occurs both inter-class and intra-class. Both the original and revised proposals to update the Billing Demand definition constitute efforts to correct this risk of cost shifts and align with Commission precedent set in the UGI Order.

[14] Citizens' Statement No. 1R at 17.

[15] *Id*.

[16] *Id*.

[17] *Id.* at 18.

As mentioned above, the Solar Projects take particular aim at the Gross Generator Rating component of the Company's original proposal, even though that proposal has been updated by the Non-Unanimous Settlement. The Solar Projects claim that customer-generators' actual output will never equal Gross Generator Capacity (the maximum potential use of the system) and, therefore, the use of Gross Generator Capacity to measure billing demand is not based on actual use of the system and thus not in line with cost-causation principles.[18] Additionally, the Solar Projects claim that it is unfair to use a fixed measurement for exports but not for imports.[19] However, these arguments are in error.

First, the Gross Generator Rating identifies generation output that the Company must be prepared to serve.[20] The Solar Projects contend that actual generation output from solar facilities will be less than nameplate capacity 99.8% of the time, but fail to realize that the Company must plan for its system to be reliable for 100% of hours each year, even that 0.2% of the time when the generation resource achieves its nameplate capacity.[21] The Company must size its equipment to be prepared for that power flow. Although some net metering customers have onsite load which offsets their use of the distribution system, Citizens' must plan for periods where that load is inoperable during the peak generation hours. The Company has no control over whether the customer is, or

[18] SP Main Brief at 21-22.

[19] *Id.* at 28

[20] Citizens' Statement No. 4R at 25.

[21] SP Main Brief at 22.

is not, using its on-site facilities and must incur costs to be prepared to accept 100% of the nameplate capacity at any time.[22] Citizens' has the obligation to provide safe and reliable service to all of its customers, not just to the customer-generators.

Second, the Solar Projects' criticisms are narrowly tailored to solar generation.[23] However, as discussed by Mr. Johnson, other generation sources have different load factors and consumption, and therefore not all customer-generators will have Gross Generator Capacity significantly exceeding peak imported demand for the customer's account.[24] Under the AEPS Act, Citizens' must be prepared to serve the needs of all customer-generators with various fuel sources,[25] and measuring Billing Demand with Gross Generator Capacity is one option to fairly reflect costs incurred for many types of distributed energy resources.

Finally, a method similar to the Gross Generator Capacity has been found to be reasonable by the Commission and was approved by the Commission in the UGI Order. As summarized by the Commission in the UGI case, UGI proposed "to determine a customer's SPLI [supply peak load impact] based upon the 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. UGI stated that customers with an SPLI below 100kW will be classified as GSR-1 customers while

[22] Citizens' Statement No. 4R at 27, 35, 41.

[23] *Id.* at 16, 20.

[24] *Id.* at 20.

[25] *Id.* at 35

customers with a SPLI greater than or equal to 100 kW will be classified as GSR-2 customers."[26] Citizens' original proposal was merely aligning its practices with this new Commission precedent.

Despite the validity of the Gross Generation Capacity as a means for determining Billing Demand, Citizens' adopted an alternative proposal in the Non-Unanimous Settlement. In Mr. Lucas' Direct Testimony, he criticized the Gross Generation Capacity method because it looked solely at the Gross Generation Capacity in isolation and did not consider the customer's native load, which may consume some of the on-site generation.[27] The Company's Rebuttal Testimony discussed using 15-minute bi-directional demand in place of the Gross Generation Capacity because the bi-directional demand would offset the customer's native load, but also cited to several challenges to be addressed before implementing the bi-directional demand method.[28] However, as Mr. Johnson noted, both approaches are consistent with cost-causation.[29] For purposes of settlement, Citizens' is willing to traverse the hurdles to implement the bi-directional demand.

Apparently, nothing short of maintaining the status quo will satisfy the Solar Projects. In line with cost-causation, however, customer-generators should pay a just, reasonable and fair portion of the costs for the distribution system that they use as their "virtual storage bank" for excess power. Customer-generators use the system both when

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[26] UGI Order at 24.

[27] Solar Projects' Statement No. 2 at 9.

[28] Citizens' Statement No. 4R at 25-26.

[29] *Id.*

importing and exporting energy, therefore any allocation of costs should consider both imports and exports of energy to the distribution system. The two methods of measuring Billing Demand discussed in the Citizens' rate case – Gross Generator Rating as proposed in the initial rate case filing and bi-directional flow peaks as agreed to in the settlement petition – both contemplate bi-directional use of the distribution system, and therefore allocate costs based on that use, which is aligned with cost-causation principles and is thus just and reasonable.[30]

**2. The Company's proposed tariff modifications are non-discriminatory.**

The Solar Projects deem Citizens' proposed billing demand unreasonably discriminatory as between utility customers, claiming the billing demand will treat net-metering customers differently from supply-only customers under the same rate schedule.[31] The Solar Projects' additionally assert that the billing demand's reallocation of distribution demand charges will specifically harm customer-generators while benefitting non-customer generators.[32] Section 1304 of the Code provides that "[no] public utility shall establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service."[33] The Solar Projects, though, mischaracterize Citizens' tariff modifications and in turn create a fallacy of perceived discrimination.

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[30] Citizens' Statement No. 1R at 19 (explaining that either "nameplate maximum capacity" or "actual data" are both reasonable approaches).

[31] SP Main Brief at 25.

[32] *Id.*

[33] 66 Pa. C.S. § 1304.

In order to comport with recent Commission precedent[34] and widely-accepted cost-causation principles, Citizens' proposal adjusts its definition of billing demand to include power flowing in either direction, not just to the end user. The Commission's decision in UGI's default service proceeding indicated that customer-generators can and should be classified for generation purposes according to their peak electricity received from or exported to the distribution system.[35] Therefore, Citizens' billing demand proposal ensures demand is measured bi-directionally, while safeguarding demand thresholds for classifying customers as GSSR-1 or GSSR-2 at their existing levels. This proposal is designed to ensure that all customers—customer-generators and non-customer-generators alike—pay a fair share of distribution system costs for their respective uses of the distribution system.

Citizens' 400 kWh threshold for classifying customers to the GSSR-1 or GSSR-2 rate schedule already exists, so classifying customer-generators based on their export load with the exact same metric used to classify end use customers based on their consumptive load cannot be considered unreasonably discriminatory.[36] To the contrary, Citizens' tariff modifications actually work to ensure all customers using the distribution system pay for such use of the distribution assets regardless of the direction of the electricity delivered on the system.

In contrast, the Solar Projects apply a results-driven assessment of the tariff changes, characterizing any outcome to their disadvantage as unreasonable discrimination, rather

[34] UGI Order.

[35] *Id.*

[36] Citizens' Statement 4R at 37-38.

than acknowledging the real-world operational impacts of customer-generators.[37] If any approach risks undue discrimination, it is the treating of imports and exports *differently*, when equipment must be purchased, sized, and maintained regardless of directional flow. As explained in Citizens' Main Brief, the modern distribution grid is bi-directional and expected to accommodate new technologies. In this instance, allocation of cost responsibility should reflect the bi-directional power flow. The Solar Projects have failed to demonstrate why treating imports and exports *the same* is unduly discriminatory but treating them *differently* would be just and reasonable.

Additionally, higher costs are not synonymous with unreasonable costs under the Code. The Solar Projects' Main Brief references the additional costs these entities would incur if the Commission approves Citizens' proposal. While the Commission may be sensitive to the circumstances faced by a nonresidential utility customer, the Commission has also held that "the protection of individual economic interests is not an objective of the regulatory scheme" and that a proposed tariff revision resulting in high costs "does not render the proposed tariff unlawful." [38] Here, higher costs for one category of ratepayers is not the intention of the revised billing demand, though it may be the by-product in some instances. Such an incidental effect of a tariff modification revised to comply with the

[37] *See* SP Main Brief at 20.

[38] *Irvin and Aneta Jordan v. The United Telephone Company of Pennsylvania*, Docket No. C-00946430, Initial Decision issued December 22, 1995, at 41-21; See also *Building Owners and Managers Association of Pittsburgh, Inc. v. Bell Telephone Company of Pennsylvania*, Docket No. C-00924288, Order entered May 12, 1995, at 8, 26 (citing *Crown American Corporation v. Pa. P.U.C.*, 76 Pa. Commonwealth Ct. 305, 463 A.2d 1257 (1983)).

progression of Commission regulations cannot work to render the modification unreasonable under the Code.

Of final note, the Solar Projects mistakenly cite to Citizens' previously proposed 3-year phase-in program for the new billing demand definition, claiming it is not a solution to the alleged "unlawful discrimination."[39] This proposed phase-in was suggested to reflect gradualism as the customer-generators were moving to a just and reasonable distribution rate.[40] The proposal was only applicable to Citizens' initial tariff modification proposal and does not apply to the settlement proposal under which parties are now functioning.

The Solar Projects fundamentally misunderstand the billing demand proposal. It does not function to allocate more than any customer-generator's fair share, but instead guarantees the costs associated with operation of the distribution system are accounted for and attributed to those customer-generators who utilize the EDC's distribution system. The Solar Projects' claims of undue discrimination under the Code are an inaccurate characterization of Citizens' proposed billing demand and are, therefore, unfounded.

**3. The Commission should apply the principles from its UGI Order here for both default service and distribution rates.**

The Solar Projects argue that the Commission should not apply the findings from its UGI Order here because this is a rate case filed pursuant to Section 1308(d) of the Public Utility Code, rather than a Default Service Plan ("DSP") proceeding authorized by Section 2807(e) of the Code.[41] The Solar Projects claim Citizens' billing demand

[39] SP Main Brief at 29.

[40] Citizens' Statement No. 4R at 22.

[41] *See* SP Main Brief at 33-36.

proposal would be properly brought in the context of a DSP,[42] but the Solar Projects' attempted distinction of the statutory authorities for a DSP and a base rate case is a distinction without a difference.

In the UGI Order, the Commission applied the fundamental statutory tenets of just and reasonable service[43] and nondiscriminatory rates,[44] rendering its findings relevant to UGI's case. The Solar Projects argue that the UGI case is "completely different"[45] because it involved a different utility territory, evidentiary record, and statutory criteria for approval. To the contrary, Citizens' is very similarly positioned with respect to UGI. Both Citizens' and UGI are small EDCs facing an influx of distributed energy resources on their respective systems. Like UGI, Citizens' seeks to protect its small residential and small commercial customer base from absorbing cost subsidies resulting from treating large-scale customer-generators solely as energy consumers without accounting for the distribution system impacts of their exported energy. The relevant factual circumstances between the two proceedings are almost identical, and the same legal reasoning should apply.

Importantly, the statutory criteria for the DSP and a distribution rate case overlap. The Solar Projects claim the "UGI DSP has little, if any, bearing on the instant rate case."[46] However, Chapter 13 of the Code—which addresses just and reasonable, non-

[42] *Id*. at 36.

[43] 66 Pa. C.S. § 1301.

[44] 66 Pa. C.S. § 1304.

[45] *See* SP Main Brief at 37.

[46] *Id*.

discriminatory rates—formed part of the basis for the UGI decision. Chapter 13 is the same statutory authority Citizens' utilizes here to support the approval of its Billing Demand for distribution rates and for the GSSR classification.[47] The fact of the matter is that the UGI Order addressed almost identical issues to the issues in this proceeding. The Solar Projects have cited to no authority showing that a Commission decision in a DSP proceeding applying the Chapter 13 principle of just and reasonable rates and cost causation is rendered "inapplicable" to a rate case because of the procedural differences between a rate case and a DSP proceeding.

Further, the billing demand proposal does not change fundamental elements of Citizens' 2024 DSP. The same procurement process and rate structures apply here as they do in the 2024 DSP.[48] Even if the fundamental elements of the 2024 DSP were changing, the Commission has allowed DSP changes to occur outside of the full DSP litigation. DSPs can be amended mid-term, as Citizens' and Wellsboro did with the issue of distribution losses in their prior DSPs.[49] Importantly, all active parties to the 2024 DSP proceeding have also participated in this rate case proceeding and agree with the billing

[47] Citizens' Main Brief at 35.

[48] *See, e.g.,* Citizens' Statement No. 4SR at 2-3; *see also Joint Default Service Plan for Citizens' Electric Company of Lewisburg, PA and Wellsboro Electric Company For the Period June 1, 2025 Through May 31, 2029*, Docket Nos. P-2024-3049357 and P-2024-3049359 (Order entered Jan. 23, 2025).

[49] *See* Opinion and Order, *Joint Default Service Plan for Citizens' Electric Company of Lewisburg, PA and Wellsboro Electric Company For the Period June 1, 2015 Through May 31, 2018*, Docket Nos. P-2014-2425024 and P-2014-2425245 (Order entered Feb. 11, 2016) (approving a Petition for Amendment of the Fourth Default Service Plan).

demand proposal.[50] In the instant case, Citizens' proposed tariff change affects *both* default service and distribution rates, and it is sensible to address the definition change all at once.

The Solar Projects' attempt to draw a bright line between DSP and rate case proceedings also ignores the broad scope of issues often addressed in distribution rate cases.[51] Distribution rate cases are intensive, detailed, and rigorous proceedings that include many seemingly "tangential" topics. In fact, various tariff rule changes apart from base rate increases are often proposed in distribution rate cases by the utility and intervenors alike.[52] In the current case, Citizens' has faced a myriad of questions from intervenors, covering topics as varied as deposits, payment arrangements, credit card

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[50] *See* Citizens' Joint Petition for Non-Unanimous Settlement.

[51] For example, Smart Remote Methane Detectors and Community Engagement were discussed in Philadelphia Gas Works' 2025 base rate case. *Pa PUC, et al v. Philadelphia Gas Works*, Docket No. R-2025-3053112, et al., Opinion and Order, September 3, 2025. Requiring the utility to send communications to residential gas consumers who are paying natural gas suppliers rates that exceed the price-to-compare was discussed in Columbia Gas of Pennsylvania's 2025 base rate case. *Pa PUC, et. al. v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2025-3053499, et al., Recommended Decision, October 3, 2025.

[52] For example, PGW proposed to add language to clarify the use of advanced or "smart" metering equipment in their 2025 rate case. *Pa PUC, et al v. Philadelphia Gas Works*, Docket No. R-2025-3053112, et al., PGW Statement No. 6 at 18. In UGI's 2024 rate case, UGI proposed two tariff changes related to Rate IS: adding clarifying language which requires manual interruptible customers to maintain the ability to transfer the fuel source of its interruptible equipment from natural gas to an alternate fuel manually, and the elimination of tariff-defined take-or-pay minimum annual bill volumes for Rate IS. *Pa PUC, et al v. UGI Utilities, Inc. – Gas Division*, Docket No. R-2024-3052716, et al., UGI Statement No. 8 at 21. *See also Pa. PUC et al. v. National Fuel Gas Distribution Corporation*, Docket No. R-2025-3052742, ¶ 3 (Order entered Jun 5, 2025) (authorizing new purchased gas rates within the context of a base rate case).

fees, and more. Similarly, the Company can rightly pursue tariff changes that impact its GSSR tariff rule, particularly as the proposed changes also impact its distribution rates.

The Solar Projects have not identified any credible evidence to support the proposal to refile Citizens' proposed tariff changes in a default service proceeding. They have enjoyed ample time and opportunity for discovery, testimony (both written and live), and settlement negotiations. Requiring Citizens' to refile the billing demand proposal as part of a separate DSP proceeding would result in an unnecessary expenditure of resources, especially considering the issues have been fully investigated in this proceeding. Refiling would also result in more projects proceeding under the existing rules, in conflict with the Commission's findings in the UGI Order.[53] To avoid this unreasonable result, the Commission should reject the Solar Projects' arguments and apply the principles and findings from its UGI DSP decision to Citizens' billing demand proposal.

#### 4. The Solar Projects' customer confusion arguments are a red herring that should be disregarded.

In their Main Brief, the Solar Projects criticize the Company's billing demand proposal as a "solution in search of a problem."[54] They claim that Citizens' presented no substantive testimony on how the billing demand proposal would reduce customer confusion and should, for that reason, be rejected.

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[53] *See* UGI Order at 60 (finding that including large customer generators in the same default service class as residential and small commercial customers results in unreasonable cross-subsidization).

[54] *See* SP Main Brief at 32.

In their attempt to develop an argument against the Company's tariff changes based on customer confusion, the Solar Projects erroneously position customer confusion as a primary driver for the proposal when it was simply an additional reason to adopt a unified definition that would apply to both generation and distribution aside from the primary cost causation concerns. But even if customer confusion was the primary driver underlying the Company's proposed tariff change, a uniformly applicable definition of "billing demand" accounting for both generation and distribution services would minimize customer confusion associated with the charges.[55] The settlement proposal, which measures billing demand by power flow in either direction, maintains current thresholds and is particularly easy to understand. Additionally, the customers affected by this change are very limited, with only 15 non-residential customer-generators impacted by the proposed change for distribution purposes.[56] As addressed in Citizens' Main Brief, customer-generators are sophisticated customers, which also mitigates against customer confusion.[57] Also, Citizens' customer service personnel and leadership are local and available to any customers impacted by the proposed changes. To the extent necessary, Citizens' is well-positioned to address any questions that may arise from those customers.

With regard to the impacts on other residential and commercial customers, the Commission should place far greater weight on the positions of I&E, OCA and OSBA, each of which support the Non-Unanimous Settlement approving the Company's

[55] *See* SP Main Brief at 30; *see also* Citizens' Statement No. 4R at 25.

[56] Solar Projects' Statement No. 2SR at 11.

[57] Citizens' Main Brief at 30.

proposed Tariff changes.[58] Against these factual circumstances, it would strain credibility to weigh the Solar Projects' musings on customer confusion above the Company's experience with its own customer base and the positions of the Public Advocates on the Non-Unanimous Settlement. The Solar Projects' customer confusion argument is a distraction disguised as a legitimate concern and should be rejected.

## B. APPLICATION TO GENERATION SUPPLY SERVICE RATE CLASSIFICATION

### 1. Contrary to the Solar Projects' suggestion, allowing customer-generators to remain on GSSR-1 would shift capacity and transmission costs to other GSSR-1 customers.

In their Main Brief, the Solar Projects argue that customer-generators *reduce* costs for GSSR-1 customers by reducing the amount of capacity costs assigned to the wholesale supplier.[59] The Main Brief relies on Mr. Lucas' analysis on Surrebuttal, in which he concludes that a large customer-generator could provide some reduction in system capacity costs.[60]

Mr. Lucas' testimony is based on a fundamental misunderstanding of how Citizens' DSP operates. Mr. Johnson's Supplemental Rejoinder demonstrated the obvious flaws in the Solar Projects' theory. There is no avoided capacity or transmission value to the other default service customers from the customer-generators' exports when it is accounted for under the GSSR-1 classification.[61] The transmission and capacity costs for the GSSR-1

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[58] *See* Joint Petition at 1.

[59] SP Main Brief at 24-25 ("The avoided cost value of solar generation is higher than the GSSR-1 PTC.")

[60] Solar Projects' Statement No. 2-SR at 41-42.

[61] Citizens' Statement No. 4SRJ at 2-3.

class are set each year based on the capacity and transmission obligations for the class and the PJM rates. They do not change based on the kWh delivered by Citizens' wholesale supplier for the GSSR-1 class. If anything, the large customer-generators are shifting capacity and transmission costs to the other GSSR-1 customers when they get their "banked" energy returned. Any customer on the GSSR-1 rate can claim that they took actions during the peak hours to reduce the system-wide capacity and transmission obligations for the following year; however, the fixed-price rate design of the GSSR-1 rate means that the customer does not receive a pass-through of that benefit.

Even assuming Mr. Lucas' analysis on Table 5 of his Surrebuttal was correct, resulting in a slightly reduced total cost per MWh, this analysis does not address the *cost shifts* that occur when the end-of-year payout occurs in a mismatched class. Failing to distinguish the customer-generators between the GSSR-1 and GSSR-2 default service classes means that all the cash out is assigned to the GSSR-1 class, which consists of residential and small commercial customers. Citizens' explained in its Main Brief why larger customer-generators are more appropriately classified with GSSR-2 customers who have similar characteristics.

Put simply, the Solar Projects are only considering one side of the equation. While the Solar Projects argue for the capacity benefits of solar, those benefits are not guaranteed—but even if they were able to reliably trim capacity costs for Citizens', the Solar Projects fail to address the fact that substantial cash outs at year-end for large customer-generators disadvantages small customers by dividing the kWh-based expenses over a smaller pool. This is one of the reasons why it is critical to classify customer-

generators appropriately—so the cash out that net producers receive at the end of the year (which they will receive, whether on GSSR-1 or GSSR-2) impacts the non-customer-generators in the appropriate class. As stated elsewhere herein and in the Company's Main Brief, the goal is to classify "like with like." Customers or customer-generators with power flows of 400 kW are running significant operations— orders of magnitude larger than the typical GSSR-1 user.[62] They presumably have a level of sophistication not found with the typical resident or local pizza shop.[63] Placement on GSSR-2 makes sense for both of these groups. The Company respectfully urges the Commission to exercise its authority to make reasonable classification determinations for customers, in furtherance of the Code's requirement that one group does not subsidize another.[64]

**2. Citizens' GSSR-2 is a retail rate under the AEPS Act and the Commission's Regulations**

Throughout their Main Brief, the Solar Projects continually claim that the rate paid by GSSR-2 customers is a "wholesale" rate rather than a "retail" rate.[65] This assumption is a cornerstone of the Solar Projects' legal edifice, because the Solar Projects argue that any customer-generator receiving reimbursement for excess energy at the GSSR-2 rate is not receiving full retail value, and the foundation of that contention is that GSSR-2 rates are

[62] Citizens' Statement No. 4R at 29.

[63] Citizens' Main Brief at 30.

[64] 66 Pa.C.S. § 2807(e)(7); *Philadelphia Suburban Tramp. Co. v. Pa. Pub. Util. Comm'n*, 281 A.2d 179 (Pa. Cmwlth. 1971) ("The question of whether the classification utilized by the utility is reasonable is a question of fact to be determined by the finder of the fact, namely the [Commission].")

[65] SP Main Brief at 1, 2, 9, 11, 14, 17, 49, 51.

not "retail" rates. However, this assumption lacks basis. It directly contradicts Commission precedent, a plain reading of the Public Utility Code, and the function of Pennsylvania's wholesale and retail energy markets.

In the UGI proceeding, the Commission addressed the question of whether UGI's GSR-2 rate, which offers hourly priced service ("HPS") to large customers in a similar manner as Citizens' GSSR-2 rate, constitutes a retail rate under the AEPS Act and the Commission's Regulations. In its UGI Order, the Commission found that UGI's GSR-2 rate "is a retail rate offered to all customers with a peak demand or supply impacts greater than 100 kW, under which large customer-generators will receive full retail value for their excess generation."[66] Notwithstanding the Solar Projects' arguments to the contrary, the Commission must reach the same conclusion and confirm that Citizens' GSSR-2 is a retail rate for net metering purposes.

The Electricity Generation Customer Choice and Competition Act, codified in Chapter 28 of the Public Utility Code, outlines the wholesale/retail distinction. For example, the Code defines an electric generation supplier ("EGS"), in part, as a person or organization that "that sells to **end-use customers** electricity or related services utilizing the jurisdictional transmission or distribution facilities of an electric distribution company or that purchases, brokers, arranges or markets electricity or related services for sale to **end-use customers**" utilizing those jurisdictional facilities. An "end-use customer" is explicitly defined in the Code as a "retail electric customer," which is a

[66] UGI Order at 66.

"direct purchaser of electric power."[67] Similarly, a default service provider is defined in the Code as providing generation service to "retail electric customers."[68]

In contrast, "wholesale" rates are generally defined as sales for resale.[69] The Federal Energy Regulatory Commission ("FERC") has jurisdiction over wholesale electricity transactions and markets.

As noted in Citizens' Main Brief, Mr. Johnson stated:

> The GSSR-2 is a retail rate charged to retail customers. The GSSR-2 contains a passthrough of several wholesale cost elements, including the LMP, the PJM capacity charge and the PPL transmission charge; however, it is a retail rate that has been approved by the Commission.[70]

Further supporting GSSR-2 as a retail rate is the fact that both GSSR-1 and GSSR-2 customers pay Gross Receipts Tax ("GRT") on their bills, pursuant to the Commission-approved tariff.[71] GRT is designed to exempt sales for resale, and it is charged to end-users

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[67] 66 Pa. C.S. § 2803; Retail electric customer is defined as: "A direct purchaser of electric power. The term excludes an occupant of a building or facility where the owners/operators manage the internal distribution system serving such building or facility and supply electric power and other related power services to occupants of the building or facility; where such owners/operators are direct purchasers of electric power; and where the occupants are not direct purchasers."

[68] 66 Pa. C.S. § 2803.

[69] *See, e.g.,* 16 U.S. Code § 824(a)-(d) (establishing Federal regulation over the "sale of electric energy at wholesale in interstate commerce" and defining "sale of electric energy at wholesale" as "a sale of electric energy to any person for resale").

[70] Citizens' Statement No. 4R at 31.

[71] Citizens' Electric Company of Lewisburg, PA, Electric-PA P.U.C. No. 14, at 38, 39A ("Citizens' Tariff"), available at https://citizenselectric.com/wp-content/uploads/2025/06/Tariff-171_2025-06-01a.pdf ("The Pennsylvania gross receipts tax rate in effect during the billing month shall apply to charges under the GSSR-2.").

(that is, retail purchasers) of electric power.[72] In short, GRT is a retail tax paid by retail end-users.

As a further note, time-of-use rates and real-time pricing are clearly retail products as defined by the Code. Citizens' introduced the GSSR-2 in 2014.[73] Under current rules, the GSSR-2 would already be used for a net metering request from any account that has a pre-generation demand of 400 kW or higher. The Commission's 2008 Final Omitted Rulemaking Order regarding net metering under the AEPS Act recognized that time-of-use generation rates can form the basis for the "full retail value" of banked excess exported power from customer-generators.[74] The Commission's regulations also acknowledge that a load profile can be approved if time-of-use rates are applied to net metered accounts.[75] A

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[72] *See, e.g.,* Pennsylvania Department of Revenue, Corporation Tax Bulletin 2020-01, *Telecommunications and Electric Gross Receipts Tax – Sale for Resale* (Last revised Feb. 11, 2021), available at https://www.pa.gov/content/dam/copapwp-pagov/en/revenue/documents/taxlawpoliciesbulletinsnotices/taxbulletins/ct/documents/ct_bulletin_2020-01.pdf. The Bulletin states, "With respect to sales for resale, the Commonwealth Court of Pennsylvania has held that a taxpayer claiming a sale for resale exemption must be able to substantiate that its counterparty actually resold the commodity in a transaction that ultimately results in GRT being paid." (citing *American Elec. Power Supply Corp. v. Commonwealth of Pa.*, 160 A.3d 950, 958-959 (Pa. Cmwlth. 2017), *exceptions denied*, 184 A.3d 1031 (Pa. Cmwlth.2018), *aff'd.* 199 A.3d 880 (Pa. 2018)).

[73] *See Joint Petition of Citizens' Electric Company of Lewisburg, PA and Wellsboro Electric Company for their Default Service Program for the Period June 1, 2015 through May 31, 2018,* Docket Nos. P-2014-2425024 and P-2014-2425245 (Order entered Feb. 27, 2015) ("DSP IV Order").

[74] *Final Omitted Rulemaking Order*, Docket No. L-00050174 (Order entered May 22, 2008), at 20 ("Final Omitted Rulemaking Order"). ("If the transmission or generation rate designs incorporate time-of-use rates, the weighted average rates should reflect the rates in effect during the time that the customer-generator delivered its generation to the EDC.").

[75] 52 Pa. Code § 75.13(j).

retail rate reflecting the hourly LMP and a load profile reflecting the customer-generator's actual hourly output is the most accurate form of retail time of use pricing that is available.

Consequently, the Solar Projects' argument that GSSR-2 is a "wholesale" rate are in error. Their claim amounts to an assertion that any rate that changes hourly based on the spot market is not a retail rate—a position firmly at odds with Citizens' DSP, Commission precedent, and the way the market operates. This argument by the Solar Projects should be explicitly rejected by the Commission.

### 3. The claim that Citizens' performed no quantitative analysis to support its proposal was taken grossly out of context and is contradicted by the evidence.

On brief, the Solar Projects claim that Citizens' failed to provide any quantitative analysis in support of its concerns about DSP procurement cost shifts.[76] Specifically, the Solar Projects state, "By Citizens' own account, its procurement concerns are backed by **no** quantitative analysis."[77] This is a grossly misleading characterization of the Company's testimony and analysis, because it takes Mr. Johnson's testimony out of context and ignores relevant analysis provided in testimony and discovery—including analysis furnished in the very same discovery response being cited by the Solar Projects.

The Solar Projects' claimed "admission" that the Company performed "no quantitative analysis" regarding DSP procurement concerns was Mr. Johnson's stated assumption that "basic market principles suggest that as the total volume of energy purchased decreases, the price-per-unit will increase," and that this will result in lowered

[76] SP Main Brief at 39, 42-43.

[77] *Id.* at 43 (emphasis in original).

"buying power" of the DSP "while concentrating non-volumetric… costs across a smaller total quantity purchased." As discussed below, this analysis covers only one component of the Company's general concerns with how customer-generators may interact with default service procurement and pricing.

While the Solar Projects disingenuously cherry-pick a quote from Mr. Johnson, a review of the record confirms that Citizens' conducted appropriate analysis of operational challenges. In the same discovery response quoted by the Solar Projects, Mr. Johnson clearly states that the Company has undertaken analysis on the impact of customer-generators on default service costs. He stated:

> [T]he Company has analyzed the impact of net metered energy on default service costs in two different ways:
> 1) The direct cost of purchased net-metered energy compared to the cost of purchasing the same volume of energy through the DSP.
> 2) The potential for net-metered generation to mitigate PJM Capacity, Transmission, and RTEP costs.[78]

Mr. Johnson also provided supporting attachments, including a ten-year history of PJM Capacity and Transmission peak hours and hourly solar outputs. He also summarized the results of these analyses in the body of his discovery response. Later, in Rebuttal Testimony, Mr. Johnson pointed to this same discovery response when explaining the relative coincidence of solar power production and PJM peak hours.[79]

As Mr. Johnson explained in his Surrebuttal Testimony, Citizens' uses a different default service procurement methodology than UGI uses.[80] As a result, the risks created by

[78] Exhibit KL-17 (showing the Company's updated discovery response to SP-II-5).

[79] Citizens' Statement No. 4R 27-28.

[80] Citizens' Statement No. 4SR at 2-3.

the large customer-generators are slightly different than those explained by UGI. This does not mean, however, that there are not risks. More importantly, and as explained in detail in Citizens' Main Brief, retaining the existing structure where large customer-generators can be classified as GSSR-1 accounts violates Section 2807(e)(7).

In sum, the Company has conducted reasonable analysis in making its assertions in testimony and on brief. The Solar Projects' selective quoting of the Company's explanation on this topic is misleading and should be disregarded by the ALJ and the Commission.

#### 4. The current price of the Company's Supplier Adder is not related to the impact of customer-generators on the Company's GSSR-1.

In Citizens' DSP, a "Supplier Adder" is a component of the price paid by both GSSR-1 and GSSR-2 customers.[81] The Supplier Adder is a per-kWh cost that is part of GSSR customers' retail price; it is part of the winning DSP supplier's bid, and it is designed to cover the supplier's costs to deliver default service to the wholesale meter and the Citizens' or Wellsboro Aggregate Bus.[82] The Supplier Adder component of the price is fixed for the duration of the wholesale contract.[83]

On brief, the Solar Projects argue that the Company's current low Supplier Adder (currently a negative per-kWh price which reduces customer bills) "undercuts its speculative assertions that increased net-metered customer-generation would increase

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[81] Citizens' Statement No. 4SR at 3-6.

[82] *Joint Petition of Citizens' Electric Company of Lewisburg, PA and Wellsboro Electric Company for Approval of Default Service Plan and Waiver of Commission Regulations for the Period June 1, 2025 Through May 31, 2029*, Docket No. P-2024-3049357, et al. Recommended Decision, December 23, 2024 at 19.

[83] Citizens' Statement No. 4SR at 3.

default service costs."[84] The Solar Projects proceed to argue that "it is clear that default service bids will be lowered, not increased, if net-metered customer-generators continue to be incentivized to generate electricity."[85]

This assertion by the Solar Projects is misplaced and cannot be reconciled with the timing of the Company's recent default service proceeding. It is unreasonable to draw conclusions from the current Supplier Adder when the suppliers who bid in the Company's last default service proceeding had access only to historic load information as of January 2025. As explained by Mr. Johnson on Rejoinder, this data preceded most of the recent influx of solar projects in Citizens' service territory.[86] In fact, four of Mr. Nolt's projects would not have been included in this historic load data at all.

Mr. Johnson provided two reasons for the last request for proposal ("RFP") producing a negative Supplier Adder: first, "the hourly pricing at the Citizens' location is generally lower than the hourly pricing at PJM West hub;" and second, "the wholesale supplier is able to use Financial Transmission Rights ('FTRs') for [Citizens'] default service load" enabling them "to make money at PJM that offsets their costs to provide the wholesale supply for our load."[87] There is no evidence to support the Solar Projects' belief that adding more customer-generators to the Citizens' territory will further reduce the Supplier Adder. Again, the Solar Projects' lack of factual understanding, despite more-

[84] SP Main Brief at 41.

[85] *Id.* at 42.

[86] Citizens' Statement No. 4RJ at 8.

[87] *Id.* at 9.

than-adequate opportunities for discovery in this matter, results in self-serving conjecture. The drop in Supplier Adder price does not make it "clear that default service bids will be lowered," as argued in the Solar Projects' Main Brief, particularly since most of the new projects were not yet online when suppliers were making bids.

**5. The Solar Projects' hyperbolic outrage over the Company's position that customer-generators would be incentivized to essentially peak shave their exports is not grounded in fact and should be given no weight.**

In their Main Brief, the Solar Projects spend a significant amount of time attacking (and misconstruing) a simple statement made by Mr. Johnson regarding incentives for customer-generators. In his Rebuttal Testimony, Mr. Johnson provided his assessment of certain economic incentives under the GSSR-1 default service rate compared with incentives under GSSR-2. Mr. Johnson essentially observed that net-metered projects could benefit from scaling back exports on peak days under the GSSR-1, but the GSSR-2's use of customer-specific capacity and transmission tags removes this incentive such that customer-generators benefit only from producing power during those days, not withholding it. Specifically, Mr. Johnson stated:

> Net exporting customer-generators are paid at the end of the energy-year at the PTC, which includes transmission and capacity costs determined by the Company's contribution to annual PJM peak hours. Exporting during peak hours reduces the Company's costs, thus reducing the value of export credits. Net-metered generation is non-dispatchable and, as Mr. Nolt states in his testimony, is able to "go offline immediately," so a customer-generator could reduce or eliminate output during peak hours to maximize the value of future export credits. In short, rather than incentivizing customer-generators to export during peak hours for benefit of all ratepayers in the class, the GSSR-1 rate structure, coupled with net metering code requirements, provide a

> financial incentive for customer-generators to deny exports during peak hours at the cost of non-exporting ratepayers.[88]

Importantly, Mr. Johnson's testimony identifies an undesirable economic incentive that can be removed by classifying large customer-generators under the GSSR-2 rate. While Mr. Johnson explains that tools for large customer-generators to act on the incentive to withhold exports during peak loads are available, the benefit of removing such incentive exists whether the referenced behavior has actually manifested or not.

The Solar Projects apparently find this to be an outrageous assessment, calling it a "far-flung apprehension" and calling Mr. Johnson's arguments "red-herrings" that are "defy common business sense," and would "manipulate the capacity market." In an effort to show the improbability of a customer-generator taking action to "manipulate the capacity market" to even a "miniscule" degree, the Solar Projects list three separate steps that a customer-generator would need to take.[89] However, only one of these steps is really a step at all, making the Solar Projects' "three-step process" look like a lot of words and little substance. The three steps are as follows:

- Step 1, "[b]e served on the GSSR-1 tariff and produce annual excess electricity," is how the projects owned or operated by the Solar Projects are already planned.
- Step 2 is to "[p]redict the PJM capacity market." The Solar Projects make this sound like a deep mystery, but it is exactly what large customers do constantly within PJM's territory.[90]

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[88] Citizens' Statement No. 4R at 28-29.

[89] SP Main Brief at 46-47.

[90] The full text of Step 2 is: "Predict the PJM capacity market by shutting down their generation systems for hours on hot summer afternoons, which could require manual switch-flipping and acceptance of additional wear-and-tear on facilities components." SP Main Brief at 47.

- Finally, Step 3, "Sit and wait," is not really a step to be taken – it simply describes the fact that there is a time delay between Step 2 and the ultimate selection of peak hours on the PJM system, and a further time delay until the effect of the 5CP translates into retail rates.

As a result, the Solar Projects' three steps essentially boils down to one step (Step 2) – cutting power deliveries to the grid on the hottest hours of hot days by either reducing energy production or increasing behind-the-meter load. The Solar Projects' Main Brief oddly treats "predicting the PJM capacity market" as if it were some kind of sorcery; in fact, as Mr. Johnson explained in Rejoinder, there is readily available data that enables customers to make informed decisions and predictions for peak-shaving and other responsive actions.[91] Day-ahead data is provided by PJM, and LMP data is available from electronic services throughout the day, that include peak hours projections. As Mr. Johnson stated, "It is not simply a price signal that is completely opaque to the customer when it is happening. Monitoring the information that is available from PJM and third parties can provide the customer-generator with the directional trend for the pricing (up or down) so they can respond."[92] Mr. Johson additionally clarified that the incentive does not relate to manipulation of capacity or transmission pricing, but rather the customer generator's ability to reduce its capacity and transmission obligations.[93]

[91] Citizens' Statement No. 4RJ at 4-5.

[92] *Id.*

[93] Citizens' Statement No. SRJ at 5-6 (observing that "GSSR-2 customers' transmission and capacity costs are based on their individual contribution to the Company's peaks, so well-aligned load and/or exports during peak hours can reduce or even eliminate transmission and capacity costs for the coming energy year").

Put another way, for a decades-long investment, taking consistent action to ensure good pricing the following year is not radical—it is rational. Projects producing 400 kW to 3,000 kW of power flow onto the grid are sophisticated projects and significant investments.[94] As noted in testimony, "If larger customers can predict those hours with relative accuracy to peak shave, then the customer-generators or their consultants can develop similar strategies for their operations."[95]

In summary, the Solar Projects misconstrue the testimony from Mr. Johnson, an experienced engineer and utility operator, simply making observations about the comparative *economic incentives* of GSSR-1 and GSSR-2. Johnson never claimed there was "manipulation" of the capacity market; nor did he claim that any existing net metering projects are reducing production at peak hours. Rather, his testimony simply demonstrated objectively that there could be financial incentive for GSSR-1 customer-generators to reduce production (or increase load) at peaks, whereas GSSR-2 aligns incentives in such a way that customer-generators have a financial incentive to produce at peak hours. This does not determine how a particular customer-generator will act, but it is information the Company must consider in proposing just and reasonable rate designs and other tariff proposals.

[94] Citizens' Statement No. 4R at 38-39 (describing level of sophistication that accompanies large customer-generator projects).

[95] Citizens' Statement No. 4RJ at 5.

### 6. Citizens' Proposal is consistent with Act 129.

On brief, the Solar Projects contend that Citizens' billing demand proposal violates Act 129 of 2008 (Energy Efficiency and Conservation Act) because the price changes more than quarterly. Act 129 requires default service providers to "offer residential and small business customers a generation supply service rate that shall change no more frequently than on a quarterly basis."[96] Because the GSSR-2 rate is based on the LMP, the Solar Projects claim that, to the extent the Company's proposed definition of Billing Demand causes any GLP-1 or GLP-3 customers with registered peak loads of under 25 kW to be assigned to GSSR-2, it would violate the statute.

The Solar Parties argument fails because Act 129 is silent on rate classification and defers the development of such mechanisms to the Commission.[97] To that end, the Commission's Regulations state, in Section 54.187(h), "Default service rates may not be adjusted more frequently than on a quarterly basis for all customer classes with a maximum registered peak load up to 25 kW, to ensure the recovery of costs reasonably incurred in acquiring electricity at the least cost to customers over time."[98] With regard to customer-generators that would not register peak loads above 25 kW based on energy consumption, but are placing substantially higher amounts of power onto the grid, the Commission's UGI Order– affirmed that EDCs can incorporate the customer generator's exports to determine whether the customer is a "small business customer" for purposes

[96] *See* 66 Pa. C.S. § 2807(e)(7).

[97] *See* UGI Order at 60, 62-63.

[98] 52 Pa. Code § 54.187(h)

of assigning a default service rate.[99]. As discussed herein, *supra*, forcing large generation projects into the GSSR-1 class risks unjust, unreasonable, and unduly discriminatory rates for other GSSR-1 customers. To comport with the statute, true "small business" customers served on a classification designed for "small business" activity will, indeed, be offered a rate that changes no more than quarterly; but large customer-generators, whose electric profiles are quite unlike small business activity (with dramatically higher use of the distribution system) should be placed in the GSSR-2 rate classification. Thus, the Company's proposal is consistent with Act 129's small business requirement and aligns with Commission precedent in the UGI Order.

Under the Company's proposal, the "registered peak demand" for a customer-generator will be the actual bi-directional demand.[100] That bi-directional demand will be registered by the new (or reprogrammed) meter. A customer-generator with a bi-directional demand of 25 kW or less will remain on the GSSR-1. Thus, there is no conceivable violation of Act 129.

Finally, the new projects coming online in Citizens' territory have no load history by which to define them. Mr. Nolt explained during cross-examination that the new projects would have a new meter placed at the site and confirmed that they would have no historical billing demand prior to coming online.[101] When a large, sophisticated customer-generator project is installed, it is reasonable for the Company to assume in its

[99] *See* UGI Order at 60, 62-63.

[100] The Commission has the discretion to determine that registered peak demand can be established through a defined term, such as "Gross Generator Capacity."

[101] Tr. at 210.

initial classification that the customer does not meet the "small business" definition of under 25 kW, considering the Company has to plan for placement of 400 to 3,000 kW of flow onto the distribution grid (depending on the size of the large customer-generator's generation system).

### C. APPLICATION TO DISTRIBUTION SERVICE CHARGE CALCULATION

#### 1. Mr. Lucas' arguments regarding the billing demand ratchet are flawed and inapplicable.

In their Main Brief, the Solar Projects appear to object to the Billing Demand section in Citizens' current Rate Schedules GLP-1 and GLP-3, arguing that it is not just and reasonable to apply the alternative Minimum Billing Demand of 50% of the highest monthly demand of the last 11 months. The Solar Projects claim that the demand "ratchet" would "be exacerbated by" the Company's proposed Billing Demand calculation.[102]

The Solar Projects raised their objection to the existing Billing Demand provisions for GLP-1 and GLP-3 for the first time in their Surrebuttal Testimony, opining that the Commission should "investigate" these provisions.[103] Mr. Lucas admitted during cross-examination that he did no analysis of how eliminating this provision would impact the other GLP-1 and GLP-3 customers. At a minimum, he

[102] SP Main Brief at 54-58. In Citizens' tariff, a customer's "minimum Billing Demand" is 50% of its maximum measured demand during the preceding 11 months. *See, e.g.,* Citizens' Tariff at 44.

[103] Solar Projects' Statement No. 2-SR at 7.

conceded that the demand charges for GLP-1 and GLP-3 would likely be higher if there were fewer billing units.[104]

In reality, the Solar Projects criticize the existing demand ratchet as an attempt to buttress their objection to any change to the distribution cost responsibility for customer-generators, especially one that uses a customer-generator's Gross Generator Rating—a proposal no longer on the table from the Company. As explained in Section III.A.1 *supra*, the Company believes use of Gross Generator Rating to measure billing demand is a reasonable approach, but it is no longer proposing that approach in the Non-Unanimous Settlement. Thus, the billing demand (and any related ratchet) will continue to be based on actual power flows.

Other than opposing use of Gross Generator Rating in the definition, the Solar Projects do not offer a proposed solution or alternative proposal. The SP Main Brief provides a brief critique of the ratchet concept generally.[105] However, the Solar Projects acknowledge in their Main Brief that the current demand ratchet "is at least based on the customer's actual power flows."[106] But the Solar Projects fail to mention that the Company's updated proposal will, if enacted, *continue* to be based on actual power flows and will only increase the accuracy of such measurements by incorporating bi-directional power flow into the billing demand calculation. Thus, the Solar Projects' arguments are irrelevant to what is being proposed in this proceeding; their arguments

[104] Tr. at 225-227.

[105] SP Main Brief at 54-55.

[106] *Id.* at 55.

are also confusing, because they do not provide any proposal to change the ratchet, either in their Main Brief or in Direct Testimony. The Solar Projects bear the burden of proof regarding any changes to the existing tariff and have failed to meet that burden.[107]

Consequently, as an existing part of the Company's Commission-approved tariff, and as a matter not raised by the Solar Projects in Direct Testimony, the Company respectfully requests that the ratchet remain in place, modified only by the Billing Demand definition now proposed by the Company.

**2. Citizens' proposal is consistent with the "full retail value" requirements of the AEPS Act.**

On page 48 of the Solar Projects' Main Brief, the Solar Projects make the claim that "Citizens' net metering proposal violates Section 5 of the AEPS Act which requires that customer-generators be compensated for excess generation at full retail value."[108] While the AEPS Act certainly mandates "full retail value," the Solar Projects errantly substitute their own definition for the Commission's, and based on their definition, interpret the Company's proposal as failing to meet that benchmark.

As a threshold matter, the AEPS Act does not define "full retail value." However, the Act explicitly delegates authority to the Commission to develop technical and net

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[107] *See e.g., Pa. PUC v. Philadelphia Electric Company*, Docket No. R-891364, et al., 1990 Pa. PUC LEXIS 155 (Order dated May 16, 1990); *see also Pa. PUC v. Breezewood Tel. Co.*, Docket No. R-901666, 1991 Pa. PUC LEXIS 45, at *10 (Order dated Jan 31, 1991) (stating "the Commission has indicated that where a party proposes an adjustment to a ratemaking claim of a utility, the proposing party does bear the burden of presenting some evidence or analysis tending to demonstrate the reasonableness [sic] of the adjustment.").

[108] 73 P.S. § 1648.5. The Commission has authority under 66 Pa.C.S. § 501(a) to grant a waiver of 52 Pa. Code § 54.187, if the Commission finds it necessary.

metering interconnection rules.[109] Consequently, under that authority, the Commission established parameters for "full retail value" via its net metering regulation. Subsection 75.13(d) states, in relevant part:

> (d) An EDC and DSP shall credit a customer-generator at the full **retail kilowatt-hour rate**, which shall include generation, transmission and distribution charges, for each kilowatt-hour produced by a Tier I or Tier II resource installed on the customer-generator's side of the electric revenue meter, up to the total amount of electricity used by that customer during the billing period. If a customer-generator supplies more electricity to the electric distribution system than the EDC and DSP deliver to the customer-generator in a given billing period, the excess kilowatt hours shall be carried forward and credited against the customer-generator's kilowatt-hour usage in subsequent billing periods at the full retail rate. **Any excess kilowatt hours that are not offset by electricity used by the customer in subsequent billing periods shall continue to accumulate until the end of the year**….[110]

The Regulations then provide in Subsection 75.13(e):

> (e) At the end of each year, the DSP shall compensate the customer-generator for any remaining excess kilowatt hours generated by the customer-generator that were not previously credited against the customer-generator's usage in prior billing periods at the DSP's **price to compare** rate.[111]

The Commission adopted the regulations addressing net metering and the "full retail value" after receiving substantial public comments, including on the specific issue of how to implement the full retail value.[112]

Under Citizens' tariff, customer-generators are compensated for their excess generation at the price-to-compare ("PTC") as instructed by the Regulations. The PTC is

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[109] 73 P.S. § 1648.5.

[110] 52 Pa. Code § 75.13(d) (emphasis added).

[111] 52 Pa. Code § 75.13(e).

[112] *See generally* Final Omitted Rulemaking Order at 5-24.

defined in the Commission's Regulations as "[a] line item that appears on a retail customer's monthly bill for default service. The PTC is equal to the sum of all unbundled generation and transmission related charges to a default service customer for that month of service."[113]

In short, the PTC is the rate the customers of a particular class pay for generation and transmission services—this is the same rate at which customer-generators are compensated for excess generation at the end of the delivery year.[114] The PTC of both GSSR-1 and GSSR-2 are kWh-based rates. For Citizens' GSSR-1 customers, the PTC is a fixed rate that changes on a periodic basis (once every six months). For GSSR-2 customers, the PTC is an hourly rate. All GSSR-2 customers pay this same rate per kWh, though that rate is updated hourly based on the PJM spot market. This kWh-based, PTC rate serves as the "full retail value" under the AEPS Act because it reimburses all kWh-based charges.

In their Main Brief, the Solar Projects claim Citizens' violates this provision, but the Solar Projects essentially create their own definition of retail rate.[115] First, they definitionally exclude LMP rates. However, as demonstrated in Section III.A.4, *supra*, GSSR-2 is clearly a retail rate. Second, they also argue that the Regulation's reference to crediting at the "retail kilowatt-hour rate, which shall include generation, transmission and distribution charges," means all generation, transmission, and distribution charges must be paid out as part of the PTC-based cash out.[116] However, this is an incorrect reading of the

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[113] 52 Pa. Code § 54.182.

[114] 52 Pa. Code § 75.13(e).

[115] SP Main Brief at 48-51.

[116] *See* SP Main Brief at 50-51 ("[T]he Commission's regulations require that utilities compensate customer-generators monthly on a per kWh basis at the full retail rate,
(cont'd footnote)

Regulation. If the Solar Projects' interpretation were accurate, all demand-based charges and customer-based charges would somehow need to be "netted"—a concept that makes little sense when crediting consumption-based (*i.e.*, kWh-based) production. This is not how Citizens' or any other EDC would handle the cash-out process for an hourly default service rate.

The Solar Projects' view of the monthly netting and full retail rate cashout also conflicts with Commission precedent. In the UGI Order, the Commission approved UGI's DSP, noting that it "provides that large customer-generators will receive the full retail GSR-2 value for their excess generation."[117] Consistent with the Regulation, UGI provides a credit for the *kWh-based PTC rates*. That is exactly how Citizens' current tariff operates for a customer with load exceeding 400 kW that wants to install customer-generation, and how the tariff will operate for all customer-generators with bi-directional demand of 400 kW or more after the Billing Demand definitional change is approved.[118] Because the Company is not proposing to change the basis of netting or cash outs (only the measurement of Billing Demand) and relies on an already-adopted interpretation of full retail rate, its approach is entitled to deference.

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including all generation, transmission and distribution charges…. It is arguable whether annual payouts at the PTC comply with the statutory mandate to compensate customer-generators for their excess at the full retail value on an annual basis, but in any event, Citizens' proposes to not even offer its PTC to customer-generators with Billing Demand over 400kW….")

[117] UGI Order at 60-61.

[118] Citizens' Statement No. 4R at 29.

### 3. Citizens' crediting of kWh-based distribution costs for GSSR-2 net metering customers does not violate the AEPS Act.

The AEPS Act, Section 5, requires that "[e]xcess generation from net-metered customer-generators shall receive full retail value for all energy produced on an annual basis."[119] As explained above, Citizens' reimburses all kWh-based charges at the end of the delivery year in compliance with the AEPS Act. However, the Solar Projects claim that the Company's approach violates the AEPS Act. The Solar Projects claim that the "plain meaning of 'energy' includes both kilowatt- and kilowatt-hour-based rates."[120] In essence, the Solar Projects are arguing that the Commission's Regulations violate the AEPS Act and have been in violation of that Act since adoption in 2008.

The Solar Projects' argument is not supported by any evidence. The Solar Projects argue that the General Assembly intended a broader meaning of the word "energy" that must include "capacity".[121] However, the Solar Projects cannot support their claim; further, the concept of netting demand-based charges makes no sense. In fact, Citizens' defines the word "energy" to mean exactly what the Commission determined in 2008—it means kWh.

The Solar Projects are proposing to change the current interpretation of the net metering statute that Citizens' and many other parties have been using for many years. As such, the Solar Projects bear the burden of proof on this issue. Yet, they have failed to meet that burden, providing no evidence or testimony to support the definition of

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[119] 73 P.S. 1648.5

[120] SP Main Brief at 59.

[121] *Id.* at 13, 58-60.

"energy" that is being proposed in their Main Brief. If the Solar Projects had done so, the Company would have also provided testimony in response.

More importantly, the Solar Projects have not supported their definition of "energy" beyond that it is a "general term" and that the General Assembly "intended a broader meaning than the Commission's regulations provide" because more precise words were available.[122] However, this approach defies both the Commission Regulations and common sense. The relevant language of Section 5 of the AEPS Act is "**Excess generation** from net-metered customer-generators shall receive full retail value for all **energy produced** on an annual basis."[123] The context of this statement is generation—the production of energy. While energy is not specifically defined, it is something that is "produced"—a term that fits neatly with the idea of energy as a commodity, not including capacity charges and distribution services, which cannot be "produced." The AEPS Act elsewhere refers to energy as something that is generated by facilities (Section 6, "regarding facilities generating energy from alternative energy sources"); as something that can have an alternative source or be "derived" from various sources (Section 2, "Energy derived from: (1) Waste coal. (2) Distributed generation systems…); and that can be derived from various locations (Section 4, "energy derived from alternative energy sources located outside the geographical boundaries of this Commonwealth").

The Commission adopted the plain meaning of "energy" in this context in its Regulations at 52 Pa. Code § 75.13(d), which states that "[a]n EDC and DSP shall credit

[122] SP Main Brief at 59.

[123] 52 Pa. Code § 75.13(d) (emphasis added).

a customer-generator at the full **retail kilowatt-hour rate**, which shall include generation, transmission and distribution charges." Put another way, the retail kilowatt-hour rate—the *energy* rate—must be credited to customer generators at the full rate, even if other charges are bundled in with that kWh-based rate.

As previously mentioned, the Commission adopted the kWh for kWh netting and cashout process in 2008 after reviewing comments from many parties regarding how to interpret the statute. As the Commonwealth Court recently concluded, the PUC is clearly empowered under the AEPS Act to determine how excess generation is measured, credited and compensated under the Act.[124] In addition to being binding on Citizens', the Commission's current regulations are entitled to deference on appeal.

Further, the treatment for GSSR-2 net metered customers is consistent with the distribution netting treatment for GSSR-1 net metered customers. GLP-1 and GLP-3 distribution customers do not receive netting against monthly customer charges or demand-based charges even when they are classified as GSSR-1 customers. Similarly, residential customers on the GSSR-1 do not currently receive netting against the monthly customer charges.

#### 4. The Solar Projects' argument that the impacts of Citizens' tariff change on distribution rates violates cost causation relies on the fundamental misunderstanding that customers are only responsible for incremental cost increases.

In a final attempt to block the modification of Billing Demand applicable to distribution rates for GLP-1 and GLP-3 customer-generators, the Solar Projects falsely

[124] *Hommrich v. Pa. Pub. Util. Comm'n*, No. 463 M.D. 2022, slip op. at 24 (Pa. Commw. Ct. Aug. 13, 2025) (Attached for reference as Appendix R-1).

claim Citizens' billing demand proposal would result in distribution rate impacts violating cost causation principles. The Solar Projects also argue that the Company "failed to provide any cost-of-service analysis showing incremental distribution costs from customer-generation."[125] The Solar Parties further claim the Company's proposal would "impose demand-based distribution charges on purely hypothetical demand that will be far in excess of the customer-generator's actual demand for electricity drawn from or placed onto the Citizens' distribution system."[126] Finally, the Solar Projects overgeneralize the billing demand proposal, arguing it would treat and charge "two customers with the same measured peak demand differently just because one customer chooses to install behind-the-meter generation,"[127] and thus characterize it as violating cost causation principles. As discussed below, these arguments lack merit and should be denied.

First, the Solar Projects' arguments concerning "incremental" costs to the distribution system fundamentally misunderstand Pennsylvania's ratemaking principles, resulting in errant cost causation claims that are not based on a comprehensive, practical understanding of distribution system planning and cost incurrence. The Solar Projects misrepresent a Citizens' statement that newly installed load or generation "do not always result in incremental cost increases to operate and maintain the system" by conveniently omitting the remainder of the statement, namely: "[…] however, the new obligations may

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[126] SP Main Brief at 55.

[127] *Id.* at 58.

support changing the account's *proportionate cost responsibility* for the shared distribution resources."[128] In utility ratemaking, utilities must propose (for Commission authorization) a means for ensuring each rate class pays its proportionate costs of the assets dedicated to its provision of public utility service.[129] Rate classes are grouped according to similar usage levels and other characteristics.[130] As Citizens' witness Mr. Gorman stated in his Rejoinder Testimony, Pennsylvania does not recognize incremental or marginal costs as the basis for distribution rates, but instead, recognizes embedded costs.[131] This approach means all customers pay a just and reasonable amount for their proportionate use of the overall system, not based on whether there happens to be (or appears to be) "headroom" in the system when they choose to connect. Consequently, rates are established so that Citizens' charges a fair rate to all customers based on their use of the overall distribution system. It isn't necessary for Citizens' to analyze the "incremental" costs for a customer-generator because Pennsylvania does not follow incremental cost ratemaking.

Second, the Solar Projects' criticism that Citizens' will use "hypothetical" demands for customer-generators is no longer factually accurate under the Non-Unanimous Settlement. Citizens' will measure bi-directional billing demand (which impacts GSSR classification and distribution charges). The UGI Order indicated that customer-

[128] *Id.* Emphasis added (citing Exhibit KL-8).

[129] *See* Citizens' Main Brief at 18.

[130] *Id.*

[131] See Citizens' Rejoinder Statement No. 1RJ at 2:16.

generators should be classified for generation purposes according to their peak electricity received from *or exported to* the EDC's distribution system.[132] In its Main Brief, Citizens' explained fully the factual and legal basis for pursuing the same approach for distribution billing. This approach is just, reasonable, and non-discriminatory, because the Company must install, manage, and maintain all equipment in the distribution system for use by its customers at all times.

Finally, the Solar Projects' attempt to manufacture a false similarity between two customers with the same native usage but fundamentally different characteristics (one with on-site generation and one without on-site generation) must fail.[133] The two customers are not similar in their use of Citizens' distribution system. As Mr. Johnson explained, a customer who installs on-site generation with capacity exceeding the historic account generation demand for that account "is placing a new obligation on Citizens' and on the distribution system by exporting more energy than it previously imported, and then expecting the return of the 'banked' excess supply on-demand."[134] In addition, Citizens' system planning for the two customers is different, which justifies any difference that occurs in distribution rates due to properly measuring the revised bi-directional demand for the account with generation.

The Solar Projects' arguments are crafted to achieve one goal—maintaining the status quo. Despite his lack of distribution system planning experience, Mr. Lucas makes

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[132] *Id.* at 20.

[133] *See* Citizens' Statement No. 4R at 30.

[134] *Id.* at 23; *see also id.* at 30.

numerous assumptions regarding how Citizens' distribution system is designed and operated. Citizens' crafted this proposal by carefully combining Commission guidance with the tangible experience of witness Mr. Johnson in the planning and operation of distribution systems, especially the Citizens' distribution system. The Solar Projects advance overly generalized theories of witness Mr. Lucas and erroneously apply those theories to cost-causation principles.[135] The Solar Projects lack evidence, a clear understanding of cost-causation principles as applied in Pennsylvania, and any quantifiable suggested solutions. Their cost-causation argument should, therefore, be rejected.

[135] *See* SP Main Brief at 55.

## IV. CONCLUSION

**WHEREFORE,** Citizens' Electric Company of Lewisburg, PA, respectfully requests that the Pennsylvania Public Utility Commission approve the rate increase and other proposals set forth in Tariff-Electric Pa. PUC No. 14 as modified by the Non-Unanimous Joint Petition for Settlement.

Respectfully submitted,
McNEES WALLACE & NURICK LLC

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*Counsel to Citizens' Electric Company of Lewisburg, PA*

Dated: October 17, 2025

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

| | | |
|---|---|---|
| David N. Hommrich, | : | |
| | : | |
| Petitioner | : | |
| | : | |
| v. | : | No. 463 M.D. 2022 |
| | : | Argued: April 9, 2025 |
| Commonwealth of Pennsylvania, | : | |
| Pennsylvania Public Utility | : | |
| Commission, | : | |
| | : | |
| Respondent | : | |

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE STACY WALLACE, Judge
HONORABLE MATTHEW S. WOLF, Judge

OPINION BY JUDGE WOJCIK FILED: August 13, 2025

Before this Court is an Application for Partial Summary Relief (ASR) filed by Petitioner David N. Hommrich (Hommrich) and Intervenors Kriebel Minerals, Inc. (Kreibel) and ERD Energy, LLC (ERD) (collectively, Petitioners) seeking declarations that certain regulations promulgated by the Pennsylvania Public Utility Commission (PUC) on alternative energy (Regulations)[1] are inconsistent with the Alternative Energy Portfolio Standards Act (AEPS Act)[2] and, therefore, are invalid and unenforceable. After careful review, we deny the ASR.

[1] The Regulations are codified in Title 52, Chapter 75 of the Pennsylvania Code, 52 Pa. Code §§75.1-75.72.

[2] Act of November 30, 2004, P.L. 1672, *as amended*, 73 P.S. §§1648.1-1648.8.

## I. Background

Hommrich, who is the sole owner of a solar power project located in Mercer County, Pennsylvania, and frequent petitioner in alternative energy litigation, initiated this action by filing, *pro se*, a petition for review (PFR) in the nature of a complaint for declaratory relief in this Court's original jurisdiction, which he later amended (Amended PFR).[3] Kreibel, a natural gas company operating in the Commonwealth of Pennsylvania, and ERD, its equipment supplier (together, Intervenors), which are owned and operated by the same individuals, were permitted to intervene. Intervenors have adopted Hommrich's Amended PFR in its entirety with an additional prayer for relief. *See* Intervenors' Application for Intervention, Request for Relief ¶78.

The gravamen of the Amended PFR challenges Regulations pertaining to the interconnection of "alternative energy systems"[4] and requires statutory interpretation of the AEPS Act. Interconnection is the mechanism through which a source of generation connects and delivers power to an electrical distribution system. *See* Amended PFR, ¶7; Answer to Amended PFR, ¶7. Petitioners are approved "customer-generators" as defined under Section 2 of the AEPS Act[5] that own and/or

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[3] In response to the PFR, the PUC filed preliminary objections (POs), which were mooted by the amendment. PUC filed new POs to the Amended PFR, which this Court overruled by order and opinion dated March 1, 2024. We directed the PUC to file an answer to the Amended PFR.

[4] An "alternative energy system" is defined as "[a] facility or energy system that uses a form of alternative energy source to generate electricity and delivers the electricity it generates to the distribution system of an electric distribution company or to the transmission system operated by a regional transmission organization." Section 2 of the AEPS Act, 73 P.S. §1648.2.

[5] A "customer-generator" is defined as:

> A nonutility owner or operator of a net metered distributed generation system with a nameplate capacity of not greater than 50

**(Footnote continued on next page…)**

operate net metered[6] distributed generation systems, which generate electricity from alternative energy sources.[7] Customer-generators are customers of electric distribution companies (EDCs) and generate electricity that flows into the EDCs'

> kilowatts if installed at a residential service or not larger than 3,000 kilowatts at other customer service locations, except for customers whose systems are above three megawatts and up to five megawatts who make their systems available to operate in parallel with the electric utility during grid emergencies as defined by the regional transmission organization or where a microgrid is in place for the primary or secondary purpose of maintaining critical infrastructure, such as homeland security assignments, emergency services facilities, hospitals, traffic signals, wastewater treatment plants or telecommunications facilities, provided that technical rules for operating generators interconnected with facilities of an electric distribution company, electric cooperative or municipal electric system have been promulgated by the Institute of Electrical and Electronic Engineers and the [PUC].

73 P.S. §1648.2.

[6] "Net metering" refers to:

> The means of measuring the difference between the electricity supplied by an electric utility and the electricity generated by a customer-generator when any portion of the electricity generated by the alternative energy generating system is used to offset part or all of the customer-generator's requirements for electricity. Virtual meter aggregation on properties owned or leased and operated by a customer-generator and located within two miles of the boundaries of the customer-generator's property and within a single electric distribution company's service territory shall be eligible for net metering.

Section 2 of the AEPS Act, 73 P.S. §1648.2.

[7] The term "alternative energy sources" includes energy sourced from solar; wind; hydropower; geothermal; biomass; biologically derived methane gas; fuel cells; waste coal; coal mine methane; energy efficiency; and distributed generation systems. Section 2 of the AEPS Act, 73 P.S. §1648.2.

distribution systems. The AEPS Act provides for the retail compensation for any excess electricity generated by any AEPS-qualified generating system owned or operated by a customer-generator. To deliver the energy into the EDCs' distribution systems, customer-generators must first interconnect with the EDCs' distribution systems. Absent an interconnection, customer-generators' alternative energy systems cannot deliver and sell excess energy to an EDC.

According to Petitioners, the Regulations have allowed EDCs to cause customer-generators, like Petitioners, to bear all costs involved in the planning, design, development, and implementation of distribution system improvements, including interconnection, that enable EDCs to purchase excess energy generated from alternative energy sources. Petitioners assert that the AEPS Act does not obligate customer-generators to pay for these costs, but rather it requires them to be paid by ratepayers as a cost of generation supply. Petitioners claim that their business interests are adversely impacted by the Regulations. Petitioners maintain that the challenged Regulations are invalid because they are contrary to the AEPS Act and precedent limiting the PUC's authority in these matters. Petitioners seek declarations interpreting the AEPS Act and invalidating and/or limiting the Regulations. *See* Amended PFR, Requests for Relief A-I; Intervenors' Application for Intervention, Request for Relief ¶78(a).

PUC filed an answer to the Amended PFR denying material allegations. On July 19, 2024, Petitioners filed the ASR and accompanying Memorandum of Law. The PUC filed an answer and brief in response.

Petitioners seek partial summary relief narrowed to the following six requests:[8]

- Declare that excess energy purchased from customer-generators by EDCs pursuant to Section 5 of the AEPS Act, 73 P.S. §1648.5, constitutes the purchase of a "resource" as that term is described in Section 3(a)(3)(ii) of the AEPS Act, 73 P.S. § 1648.3(a)(3)(ii). *See* Amended PFR, Request for Relief A.

- Declare that the costs to interconnect to EDCs' distribution systems, which enables EDCs to purchase electricity generated from alternative energy sources, are "direct or indirect resource costs" subject to the mandatory cost recovery mechanism in Section 3(a)(3)(ii) of the AEPS Act, 73 P.S. §1648.3(a)(3)(ii). As such, those costs must be recovered from ratepayers on a full and current basis pursuant to an automatic energy adjustment clause under Section 1307 of the Public Utility Code, 66 Pa. C.S. §1307, as a cost of generation supply under Section 2807 of the Public Utility Code, 66 Pa. C.S. §2807. *See* Amended PFR, Request for Relief B.

- Declare that the AEPS Act does not give the PUC a legislative grant of authority to promulgate regulations for cost recovery pursuant to Section 3(a)(3)(ii) of the AEPS Act, 73 P.S. §1648.3(a)(3)(ii), and that Section 75.67 of the Regulations, 52 Pa. Code §75.67, governing "alternative energy cost-recovery," impermissibly alters the clear language of the AEPS Act and is, therefore, invalid and unenforceable. *See* Amended PFR, Request for Relief C.

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[8] Petitioners have abandoned Requests for Relief E through G in their Amended PFR. *See* Petitioners' ASR, at 2 n.1. They have tabled Request for Relief H, seeking a declaration that

> [c]ustomer-generators may utilize third-party contractors, under confidentiality commitments with an EDC, to provide both impact studies and design and construction services in order to facilitate a timely and cost-effective interconnection, so long as the cost or timeline of the third-party option results in a lower cost or a shorter timeline for the customer-generator[,]

because additional factual development is necessary and summary relief is not appropriate at this time. *Id*.

- Extend these holdings by declaring that any other PUC Regulations allowing EDCs to charge customer-generators for distribution system improvement costs associated with the interconnection of a renewable energy systems are invalid and unenforceable as contrary to the AEPS Act. *See* Amended PFR, Request for Relief D.

- Declare as invalid the current PUC practice of allowing EDCs to impose costs on customer-generators in the form of a Contribution in Aid of Construction (CIAC), a Public Utility Code concept wholly absent from the AEPS Act, and another example of the PUC improperly allowing the imposition of costs on customer-generators. *See* Amended PFR, Request for Relief I.

- Declare that Sections 75.13(d) and (e) of the Regulations, 52 Pa. Code §75.13(d) and (e), are unauthorized by and contrary to the AEPS Act, and therefore invalid and unenforceable. *See* Intervenors' Application for Intervention, Request for Relief ¶78(a).

ASR at 1-2.

## II. Discussion
### A. Applicable Legal Standards

In ruling on ASRs, this Court has explained:

> An [ASR] may be granted if a party's right to judgment is clear, and no material issues of fact are in dispute. When ruling on an [ASR], we must view the evidence of record in the light most favorable to the non-moving party and enter judgment only if there is no genuine issue as to any material facts and the right to judgment is clear as a matter of law.

*Gregory v. Pennsylvania State Police*, 185 A.3d 1202, 1205 (Pa. Cmwlth. 2018) (citations and quotations omitted).

When a regulation is challenged, we consider:

> It is axiomatic that all regulations "must be consistent with the statute under which they were promulgated." *Slippery Rock Area School District v. Unemployment Compensation Board of Review*, 983 A.2d 1231, 1241 ([Pa.] 2009). "A statute is the law and trumps an

> administrative agency's regulations." [*Commonwealth v.*] *Kerstetter*, 62 A.3d [1065,] 1069 [(Pa. Cmwlth. 2013), *aff'd*, 94 A.3d 991 (Pa. 2014)]. Similarly, "[w]here there is a conflict between the statute and a regulation purporting to implement the provisions of that statute, the regulation must give way." *Commonwealth v. Colonial Nissan, Inc.*, 691 A.2d 1005, 1009 (Pa. Cmwlth. 1997).
>
> "[W]hen an agency adopts a regulation pursuant to its legislative rule-making power, as opposed to its interpretive rule-making power, it is valid and binding upon courts as a statute so long as it is (a) adopted within the agency's granted power, (b) issued pursuant to proper procedure, and (c) reasonable." *Tire Jockey Service, Inc. v. Department of Environmental Protection*, 915 A.2d 1165, 1186 ([Pa.] 2007). When analyzing whether a regulation is adopted within an agency's granted power, a court should consider, *inter alia*, whether the regulation is "consistent with the enabling statute" because "clearly, the [General Assembly] would not authorize agencies to adopt regulations inconsistent with the enabling statutes." *Marcellus Shale Coalition v. Department of Environmental Protection*, 216 A.3d 448, 459 . . . (Pa. Cmwlth. 2019) (internal quotation marks omitted). Thus, when "a regulation presents 'an actual conflict with the statute,' we cannot reasonably understand the regulation to be within the agency's ambit of authority, and the statute must prevail." *Id*. (quoting *AMP Inc. v. Commonwealth*, 814 A.2d 782, 786 (Pa. Cmwlth. 2002), *aff'd*, 852 A.2d 1161 ([Pa.] 2004)).

*Victory Bank v. Commonwealth*, 219 A.3d 1236, 1242 (Pa. Cmwlth. 2019), *aff'd*, 240 A.3d 95 (Pa. 2020) (emphasis added; footnote omitted).

Similar to claims made in *Hommrich v. Pennsylvania Public Utility Commission*, 231 A.3d 1027, 1033 (Pa. Cmwlth. 2020) (*Hommrich I*), Petitioners' arguments here largely "center[] over whether the PUC has the authority to enact the challenged [R]egulations and whether those [R]egulations contradict the AEPS Act." This calls for a straightforward analysis, as "[s]uch issues may be resolved

based on comparison of statutory interpretation and regulatory provisions as a matter of law." *Id*. (citing *Marcellus Shale Coalition v. Department of Environmental Protection*, 193 A.3d 447, 460 (Pa. Cmwlth. 2018), *appeal quashed*, 198 A.3d 330 (Pa. 2018)).

"'To determine whether a regulation is adopted within an agency's granted power, we look for statutory language authorizing the agency to promulgate the legislative rule and examine that language to determine whether the rule falls within the grant of authority.'" *Hommrich I*, 231 A.3d at 1034 (quoting *Marcellus Shale Coalition v. Department of Environmental Protection*, 216 A.3d 448, 459 (Pa. Cmwlth.), *appeals quashed*, 223 A.3d 655 (Pa. 2019)). "We consider 'the purpose of the statute and its reasonable effect' and whether 'the regulation is consistent with the enabling statute.'" *Id*. (quoting *Marcellus Shale*, 216 A.3d at 459). The General Assembly would not authorize an agency "to adopt binding regulations inconsistent with the applicable enabling statutes." *Id.* (citation and quotation omitted). "When . . . a regulation presents an actual conflict with the statute, we cannot reasonably understand the regulation to be within the agency's ambit of authority, and the statute must prevail." *Id.* (citation and quotation omitted). Administrative agencies do not have the power to make laws, only to prescribe rules and regulations to carry out the law. *Id*. at 1035.

In some instances, the General Assembly confers broad regulatory power upon an agency. *Hommrich I*, 231 A.3d at 1035. "If the statute makes a clear grant of authority, then neither a court nor the agency can disregard the clearly expressed intent of the General Assembly." *Marcellus Shale Coalition v. Department of Environmental Protection*, 292 A.3d 921, 936 (Pa. 2023). Although the General Assembly has conferred broad powers to agencies in other chapters

relating to alternative energy, as this Court has previously recognized, the powers "conferred to the PUC under the AEPS Act are much narrower." *Hommrich I*, 231 A.3d at 1035.

The statutory language of the AEPS Act is the starting point. When examining statutory language, we follow the rules of statutory construction in the Statutory Construction Act of 1972 (Statutory Construction Act), 1 Pa. C.S. §1501-1991. As our Supreme Court has recently explained:

> [Section 1921(a) of] [t]he Statutory Construction Act provides that the object of all statutory interpretation "is to ascertain and effectuate the intention of the General Assembly." 1 Pa. C.S. §1921(a). Generally, the plain language of the statute provides the best indication of legislative intent." *Miller v.* [*County*] *of Centre*, []173 A.3d 1162, 1168 ([Pa.] 2017). If the statutory language is clear and unambiguous in setting forth the intent of the General Assembly, then "we cannot disregard the letter of the statute under the pretext of pursuing its spirit." *Fletcher v.* [*Pennsylvania Property & Casualty Insurance Guarantee Association*], []985 A.2d 678, 684 ([Pa.] 2009) (citing 1 Pa. C.S. §1921(b)). In this vein, "we should not insert words into [a statute] that are plainly not there." *Frazier v. Workers'* [*Compensation*] *Appeal* [*Board*] *(Bayada Nurses, Inc.)*, 616 Pa. 592, 52 A.3d 241, 245 (2012). When the statutory language is ambiguous, however, we may ascertain the General Assembly's intent by considering the factors set forth in Section 1921(c) of the Statutory Construction Act, 1 Pa. C.S. §1921(c), and other rules of statutory construction. *See* [*Pennsylvania School Boards Association*]*, Inc. v.* [*Public School Employees Retirement Board*], []863 A.2d 432, 436 ([Pa.] 2004) (observing that "other interpretative rules of statutory construction are to be utilized only where the statute at issue is ambiguous"). "We also presume that 'the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable,' and that 'the General Assembly intends the entire statute to be effective and certain.'" *Berner v. Montour* [*Township*] *Zoning*

> *Hearing* [*Board*], []217 A.3d 238, 245 ([Pa.] 2019) (quoting 1 Pa. C.S. §1922(1)-(2)).
>
> Section 1921(b) of the Statutory Construction Act, which provides that "when the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit," is crucial to our analysis here. If the statute or rule . . . are not ambiguous, then we cannot apply the presumptions set forth in Section 1922 of the Statutory Construction Act. "A statute is ambiguous when there are at least two reasonable interpretations of the text under review." *Warrantech Consumer* [*Products Services*]*, Inc. v. Reliance* [*Insurance*] *Co. in Liquidation*, []96 A.3d 346, 354-55 ([Pa.] 2014). "This Court has consistently held that . . . interpretive rules of statutory construction are to be utilized only where the statute [or rule] at issue is ambiguous." [*Pennsylvania School Board Association*], 863 A.2d at 436.

*Commonwealth v. Green*, 291 A.3d 317, 327-28 (Pa. 2023).

Legislative rules that are properly enacted are presumed to be reasonable, and reviewing courts will accord them a "particularly high measure of deference." *Marcellus Shale*, 292 A.3d at 927 (citation omitted). While this Court may not substitute its own judgment for that of an agency, we will defer to a regulation an agency has promulgated pursuant to its interpretative powers where the regulation is reasonable and "genuinely tracks the meaning of the underlying statute." *Id*. at 929 (citation omitted); *accord Tire Jockey*, 915 A.2d at 1190. Indeed, when "faced with interpreting statutory language," we "afford great deference to the interpretation rendered by the administrative agency overseeing the implementation of such legislation." *Winslow–Quattlebaum v. Maryland Ins. Group*, 752 A.2d 878, 881 (Pa. 2000). However, "no deference is due where an agency exceeds its legal authority, or its interpretation is clearly erroneous." *Marcellus Shale*, 292 A.3d at 929 (citations omitted). "While an agency's interpretation of an ambiguous statute

it is charged with enforcing is entitled to deference, courts' deference never comes into play when the statute is clear." *Seeton v. Pennsylvania Game Commission*, 937 A.2d 1028, 1037 (Pa. 2007). With these legal standards in mind, we address each of Petitioners' requests for relief.

## B. Requests for Relief
### *Amended PFR, Requests for Relief A, B, and C*

Petitioners' first three requests focus on Section 3(a)(3)(ii) of the AEPS Act, 73 P.S. §1648.3(a)(3)(ii), which dictates who pays, and how, for the costs associated with the purchase of electricity generated from alternative energy sources. Because these requests for relief are interrelated and interdependent, we address them together.

Petitioners maintain that excess energy purchased from customer-generators by EDCs pursuant to Section 5 of the AEPS Act, 73 P.S. §1648.5, are "resource" purchases as described in Section 3(a)(3)(ii) of the AEPS Act, 73 P.S. §1648.3(a)(3)(ii), which include "the purchase of electricity generated from alternative energy sources." As resources, Petitioners advance that "any direct or indirect costs" must be recovered as a cost of generation supply under Section 3(a)(3)(ii) of the AEPS Act. Costs incurred by EDCs – whether direct or indirect – can only be recovered from ratepayers through the automatic energy adjustment clause in Section 3(a)(3)(ii). Although the PUC may not agree with the General Assembly's decision to compensate customer-generators for excess energy at full retail value and costs under the AEPS Act, that is how it operates and was intended to operate. The PUC's role is to implement the business model chosen by the General Assembly to encourage growth and investment in renewable sources of energy. Therefore, Petitioners ask this Court to declare that excess energy purchases

under Section 5 of the AEPS Act qualify as resource purchases under Section 3 of the AEPS Act and, as such, constitute direct and indirect costs that must be recovered on a full and current basis through an automatic energy adjustment clause under Section 1307 of the Code, 66 Pa. C.S. §1307, as a cost of generation supply under Section 2807 of the Code, 66 Pa. C.S. §2807.

If the Court agrees with the foregoing statutory analysis, Petitioners ask this Court to also declare the Regulation at 52 Pa. Code §75.67, governing "alternative energy cost-recovery," invalid and unenforceable for two reasons. First, this Regulation conflicts with Section 3 of the AEPS Act because it alters the statutory language to make automatic adjustment clause recovery optional rather than mandatory through the use of "may" instead of "shall." This improperly allows the imposition of interconnection costs on customer-generators rather than ratepayers. Second, the AEPS Act does not grant the PUC a legislative grant of authority to promulgate regulations for cost recovery pursuant to Section 3 of the AEPS Act.

To begin, under Section 5 of the AEPS Act, EDCs are mandated to purchase all excess energy from net-metered customer-generators. Specifically:

> *Excess generation from net-metered customer-generators shall receive full retail value for all energy produced on an annual basis*. *The* [*PUC*] *shall develop technical and net metering interconnection rules for customer-generators* intending to operate renewable onsite generators in parallel with the electric utility grid, consistent with rules defined in other states within the service region of the regional transmission organization that manages the transmission system in any part of this Commonwealth. The [PUC] shall convene a stakeholder process to develop Statewide technical and net metering rules for customer-generators. The [PUC] shall develop

> these rules within nine months of the effective date of this act.

73 P.S. §1648.5 (emphasis added). Excess generation, also known as surplus power, occurs when a customer-generator produces more electricity than needed for all excess energy produced. *Id*.; *Hommrich I*, 231 A.3d at 1034.

Section 3 of the AEPS Act, 73 P.S. §1648.3, governs the cost recovery for the purchase of electric distribution by EDCs to comply with the AEPS Act. Specifically, Section 3(a)(3) of the AEPS Act states:

> (3) All costs for:
>
> (i) the purchase of electricity generated from alternative energy sources, including the costs of the regional transmission organization, in excess of the regional transmission organization real-time locational marginal pricing, or its successor, at the delivery point of the alternative energy source for the electrical production of the alternative energy sources; and
>
> (ii) payments for alternative energy credits [(AECs)],
>
> in both cases that are voluntarily acquired by an [EDC] during the cost recovery period on behalf of its customers shall be deferred as a regulatory asset by the [EDC] and fully recovered, with a return on the unamortized balance, pursuant to an automatic energy adjustment clause under [Section 1307 of the Public Utility Code,] 66 Pa. C.S. §1307 (relating to sliding scale of rates; adjustments) as a cost of generation supply under [Section 2807 of the Public Utility Code,] 66 Pa. C.S. §2807 (relating to duties of [EDCs]) in the first year after the expiration of its cost-recovery period. After the cost-recovery period, ***any direct or indirect costs*** *for the purchase by electric distribution of* ***resources to comply with this section***, including, but not limited to, *the purchase of electricity generated from alternative energy sources*, payments for [AECs], cost of credits banked, payments to any third party administrators for performance under this act and costs levied by a

> regional transmission organization to ensure that alternative energy sources are reliable, ***shall be recovered*** *on a full and current basis pursuant to an* ***automatic energy adjustment clause*** *under 66 Pa. C.S. §1307 as a cost of generation supply under 66 Pa. C.S. §2807.*

73 P.S. §1648.3(a)(3) (emphasis added).

Section 3 of the AEPS Act expressly incorporates by reference Sections 1307 and 2807 of the Public Utility Code, 66 Pa. C.S. §§1307 and 2807. In turn, Section 2807(e)(3.5) of the Public Utility Code cross references Section 3 of the AEPS Act:

> [T]he provisions of this section shall apply to any type of energy purchased by a default service provider to provide electric generation supply service, including energy or alternative energy portfolio standards credits *required to be purchased under* [*Section 3 of the AEPS Act*] . . . .

66 Pa. C.S. §2807(e)(3.5) (emphasis added). Because Section 3 of the AEPS Act and 66 Pa. C.S. §§1307 and 2807 "relate to the same persons or things," *i.e.*, EDC recovery of the costs of purchasing AECs, these provisions are *in pari materia* and must be construed together, if possible, as one statute. Section 1932 of the Statutory Construction Act, 1 Pa. C.S. §1932.

Complementing the PUC's power to create an AEC program to implement Section 3 as required by the AEPS Act, Section 1307 of the Code grants the PUC authority, "*by regulation or order,*" to "prescribe for any class of public utilities . . . a mandatory system for the automatic adjustment of their rates[.]" 66 Pa. C.S. §1307(b) (emphasis added). Meanwhile, Section 2807 of the Code provides for customer choice in the electric power supply market and requires EDCs, as "the default service provider," to "provide electric generation supply service to [a] customer pursuant to a [PUC]-approved competitive procurement plan." 66 Pa. C.S. §2807(e)(3.1). Section 2807 of the Code authorizes the PUC to

supervise, evaluate, and approve EDC cost recovery of energy supply, including AECs required by the AEPS Act:

> • "The default service provider shall file a plan for competitive procurement with the [PUC] and obtain [PUC] approval of the plan . . . ." 66 Pa. C.S. §2807(e)(3.6).
>
> • "At the time the [PUC] evaluates the plan and prior to approval, in determining if the default electric service provider's plan obtains generation supply at the least cost, the [PUC] shall consider the default service provider's obligation to provide adequate and reliable service to customers and that the default service provider has obtained a prudent mix of contracts . . . ." 66 Pa. C.S. §2807(e)(3.7).
>
> • "[T]he [PUC] may modify contracts or disallow costs only when the party seeking recovery of the costs" is found to be at fault for failure to comply with the plan or fraud, collusion or market manipulation. 66 Pa. C.S. §2807(e)(3.8).
>
> • "The default service provider shall have the right to recover on a full and current basis, pursuant to a reconcilable automatic adjustment clause under section 1307 (relating to sliding scale of rates; adjustments), all reasonable costs incurred under this section and a [PUC]-approved competitive procurement plan." 66 Pa. C.S. §2807(e)(3.9).

Drawing upon these statutory grants of authority and responsibility, the PUC conducted rulemaking to implement Section 3 of the AEPS Act and provide for EDC cost recovery related solely to the ensuring that a certain portion of the electricity that is sold to customers is generated from alternative energy sources. The PUC adopted the challenged Regulation, 52 Pa. Code §75.67, after notice and comment and reasoned deliberation. Section 75.67 of the Regulations governs alternative energy cost recovery and provides:

(a) A default service provider ***may*** recover from default service customers the following reasonable and prudently incurred costs for compliance with the [AEPS A]ct:

(1) The costs of electricity generated by an alternative energy system, purchased by a default service provider, and delivered to default service customers for purposes of compliance with §75.61 (relating to EDC and EGS obligations).

(2) The costs of [AECs] purchased and used within the same reporting period for purposes of compliance with §75.61.

(3) The costs of [AECs] purchased in one reporting period and banked for use in later reporting periods, consistent with §75.69 (relating to banking of [AECs]).

(4) The costs of [AECs] purchased in the true-up period to satisfy compliance obligations for the most recently concluded reporting period, consistent with §75.61(e).

(5) Payments to the [AECs] program administrator for its costs of administering an [AECs] program, consistent with §75.64 (relating to alternative energy credit program administrator).

(6) Payments to a third party for its costs in operating an [AECs] registry, consistent with §75.70 (relating to the alternative energy credit registry).

(7) The costs levied by a regional transmission organization to ensure that alternative energy sources are reliable.

(8) The costs of alternative compliance payments made under §75.66 (relating to force majeure).

* * * *

(d) The costs of compliance with the [AEPS Act] ***shall be recovered through an automatic adjustment*** clause within the meaning of 66 Pa. C.S. §1307 (relating to sliding scale of rates; adjustments) and consistent with §54.187 (relating to default service rate design and the recovery of reasonable costs) according to the following standards:

(1) Costs incurred by a default service provider during the cost-recovery period shall be deferred as a regulatory asset and fully recovered with a return on the unamortized balance during the first full 12-month reporting period after the expiration of the cost-recovery period in the EDC service territory where it is acting as the default service provider.

(2) Costs incurred by a default service provider after the expiration of a cost-recovery period shall be recovered during the reporting period in which they are incurred, except as provided for in paragraph (7).

(3) The default service implementation plan shall include a schedule of rates for the recovery of these costs as required under 66 Pa. C.S. §1307(a).

(4) A default service provider shall file a report with the [PUC] within 30 days of the conclusion of each reporting period that includes the information identified in 66 Pa. C.S. §1307(e)(1).

(5) The [PUC] will hold public hearings on the substance of these reports, and other matters pertaining to this subject, as required by 66 Pa. C.S. §1307(e)(2).

(6) The [PUC] will order the default service provider to provide refunds to or recover additional costs from default service customers consistent with 66 Pa. C.S. §1307(e)(3).

(7) The costs of [AECs] purchased by the default service provider during the true-up period under section 3(e)(5) of the act (73 P.S. §1648.3(e)(5)) shall be

> recovered during the reporting period in which these costs are incurred.

52 Pa. Code §75.67(a), (d) (emphasis added).

Upon review, Section 3 of the AEPS Act provides that "any direct or indirect costs for the *purchase* by electric distribution *of resources to comply with this section* . . . shall be recovered on a full and current basis pursuant to an automatic energy adjustment clause under 66 Pa. C.S. §1307 as a cost of generation supply under 66 Pa. C.S. §2807." 73 P.S. §1648.3(a)(3)(ii) (emphasis added). By its plain language, Section 3 is limited to costs for the "purchase" by EDCs of resources "*to comply with this section*," meaning Section 3. *Id*. (emphasis added). Section 3 of the AEPS Act deals with an EDC's duty to purchase certain percentages of their total energy supply from alternative sources and to demonstrate compliance by accumulating AECs. Section 3 makes clear that qualified alternative energy is a component of a mix of energy supply contracts EDCs purchase to meet their default service obligations. Contrary to Petitioners' assertions, Section 3's reference to "resources" refers to alternative energy resources purchased to satisfy Section 3's requirements, not an EDC's obligation to pay for excess generation at the full retail value under Section 5 of the AEPS Act.

Further, Section 3 incorporates both Sections 1307 and 2807 of the Public Utility Code, providing the regulatory pathway for EDCs to recover their Section 3 costs. Section 2807 of the Public Utility Code applies, by its own terms, "to any type of energy purchased by a default service provider to provide electric generation supply service, including energy . . . *required to be purchased* under . . . the [AEPS] Act." 66 Pa. C.S. §2807(e)(3.5) (emphasis added). Consequently, costs associated with interconnection are not "direct or indirect costs" of compliance with Section 3 of the AEPS Act.

Section 75.67(d) of the Regulations closely tracks the statutory language providing that the "[t]he costs of compliance with the [AEPS A]ct shall be recovered through an automatic adjustment clause within the meaning of 66 Pa. C.S. §1307 (relating to sliding scale of rates; adjustments) and consistent with §54.187 (relating to default service rate design and the recovery of reasonable costs)." 52 Pa. Code §75.67(d). The Regulation permits EDCs to recover costs of compliance with Section 3 of the AEPS Act via the statutory and regulatory mechanisms established pursuant to Section 1307 and 2807 of the Public Utility Code.

Petitioners take issue with Section 75.67 of the Regulations, particularly subsection (a), which provides that a "default service provider ***may*** recover from default service customers the following reasonable and prudently incurred costs for compliance with the [AEPS A]ct . . . ." 52 Pa. Code §75.67(a) (emphasis added). Petitioners claim that the PUC impermissibly altered the clear language of the statute by swapping out the "shall" with "may." As the PUC explains, Section 3 of the AEPS Act merely provides that costs "shall be recovered" pursuant to Sections 1307 and 2807 of the Code. However, it does not provide that EDCs shall recover every cost they claim. This interpretation is supported by Sections 1307 and 2807 of the Public Utility Code because those sections require an EDC to present costs to the PUC for approval as part of a competitive procurement process. *See* 66 Pa. C.S. §§1307, 2807. Therefore, not all costs are approved. Any costs that are approved by the PUC are recovered from ratepayers on a full and current basis pursuant to an automatic energy adjustment clause under 66 Pa. C.S. §1307 as a cost of generation supply under 66 Pa. C.S. §2807.

Such an interpretation is reasonable and not inconsistent with the plain language of the AEPS Act. The PUC, as the administrative body charged with implementing the AEPS Act and the Code, is entitled to substantial deference in the performance of its duties, and its interpretation of the law should not be overturned unless it is clear that such construction is erroneous, which Petitioners have not demonstrated here. *See Pennsylvania Power Co. v. Public Utility Commission*, 932 A.2d 300, 306 (Pa. Cmwlth. 2007) (extending deference to the PUC's interpretation of the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§2801-2812).

Moreover, to conclude otherwise and accept the interpretations advanced by Petitioners would lead to an absurd result. As the PUC explains, although Petitioners currently limit their argument to interconnection costs as being an indirect cost of alternative energy, the logical extension of their position is that *all* costs associated with project development -- construction, financing, and operation of a customer-generator system -- would similarly qualify as indirect costs. This runs counter to two statutory construction principles: (1) "[t]hat the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable"; and (2) "[t]hat the General Assembly intends to favor the public interest as against any private interest." 1 Pa. C.S. §1922(1), (5). Further, requiring ratepayers to fully subsidize the development of alternative energy projects would also run counter to Section 1301 of the Public Utility Code, 66 Pa. C.S. §1301, which provides "[e]very rate made, demanded, or received by any public utility . . . shall be just and reasonable, and in conformity with regulations or orders of the [PUC]." For these reasons, we deny the relief requested as set forth in Requests for Relief A, B, and C in the Amended PFR.

***Amended PFR, Requests for Relief D and I***

Next, Petitioners claim that any PUC Regulation that allows an EDC to charge a customer-generator for costs associated with the interconnection of a customer-generator's alternative energy system is invalid under the AEPS Act. Specifically, Petitioners challenge Section 75.39(e)(4) of the Regulations, 52 Pa. Code §75.39(e)(4),[9] which requires a customer-generator to pay for studies or improvements for the interconnection of an alternative energy system, as unlawful and contrary to the AEPS Act. They also object to the PUC practice of allowing EDCs to impose costs on customer-generators. Thus, Petitioners ask this Court to invalidate the PUC Regulations and practices that allow EDCs to charge customer-generators for distribution system improvement costs related to interconnection.

However, as Petitioners themselves recognize, the declarations sought under Requests for Relief D and I are wholly dependent upon the success of their claims under Requests for Relief A through C. Having determined that Petitioners are not entitled to relief on Requests for Relief A, B, and C, Petitioners are similarly

[9] Section 75.39(e)(4) provides:

> Upon completion of the interconnection facilities study, and with the agreement of the interconnection customer to pay for the interconnection facilities and distribution upgrades identified in the interconnection facilities study, the EDC shall provide the interconnection customer with a standard small generator interconnection agreement within 5 business days.

52 Pa. Code §75.39(e)(4).

not entitled to relief on these dependent claims.[10] We, therefore, deny the relief requested as set forth in Requests for Relief D and I in the Amended PFR.

***Intervenors' Application for Intervention, Request for Relief ¶78(a)***

Lastly, Petitioners claim they are entitled to the Request for Relief ¶78(a) presented by Intervenors in their Application to Intervene, which concerns how and when customer-generators are paid by EDCs for excess energy. Specifically, Petitioners challenge the PUC's Regulation codified at 52 Pa. Code §75.13(d) and (e), which establishes that EDCs accumulate excess energy supplied until the end of the reporting year (June 1-May 31), after which the EDCs pay the customer-generators. According to Petitioners, the AEPS Act does not grant the PUC rule-making authority over this aspect of the Act. Rather, Section 5 of the AEPS Act granted the PUC the narrow authority to issue "technical and net metering interconnection rules." Regulating when and how customer-generators are paid for the excess energy they produce does not qualify as such a rule. Therefore, this Court should declare 52 Pa. Code §75.13(d) and (e) invalid and unenforceable.

In 2007, the General Assembly amended Section 5 of the AEPS Act by adding this provision: "Excess generation from net-metered customer-generators shall receive full retail value for all energy produced on an annual basis." 73 P.S. §1648.5. Prior to the amendment, customer-generators were compensated based on a "monthly standard at the avoided cost of wholesale power." *See In Re Implementing of Act 35 of 2007: Net Metering and Interconnection*, 103 Pa. P.U.C. 91, 2008 WL 6690078 (Pa. P.U.C., filed July 2, 2008). The payment provision

[10] We further note that there appears to be disputed issues of fact concerning tariffs and CIACs, which favors denying summary relief. *See* Respondents' Brief at 16; see also *Gregory*, 185 A.3d at 1205.

appears in the same section directing the PUC to develop "technical and net metering interconnection rules" for customer-generators, which was not altered. *Id*.

Following the statutory amendment, the PUC made corresponding changes to its Regulations. Specifically, Section 75.13(d) and (e) of the Regulations provide:

> (d) An EDC and [default service provider] shall credit a customer-generator at the full retail kilowatt-hour rate, which shall include generation, transmission and distribution charges, for each kilowatt-hour produced by a Tier I or Tier II resource installed on the customer-generator's side of the electric revenue meter, up to the total amount of electricity used by that customer during the billing period. If a customer-generator supplies more electricity to the electric distribution system than the EDC and [default service provider] deliver to the customer-generator in a given billing period, the excess kilowatt hours shall be carried forward and credited against the customer-generator's kilowatt-hour usage in subsequent billing periods at the full retail rate. Any excess kilowatt hours that are not offset by electricity used by the customer in subsequent billing periods shall continue to accumulate until the end of the year. For customer-generators involved in virtual meter aggregation programs, a credit shall be applied first to the meter through which the generating facility supplies electricity to the distribution system, then through the remaining meters for the customer-generator's account equally at each meter's designated rate.
>
> (e) *At the end of each year*, the [default service provider] shall compensate the customer-generator for any remaining excess kilowatt hours generated by the customer-generator that were not previously credited against the customer-generator's usage in prior billing periods at the [default service provider]'s price to compare rate.

52 Pa. Code §75.13(d), (e) (emphasis added). The IRRC approved the changes, noting they implemented the General Assembly's amendment and were consistent

with statutory authority. *See* PUC Brief, Exhibit 3 (IRRC Approval Order, Regulation No. 57-264 (#2724), 11/6/08).

Section 5 of the AEPS Act authorizes the PUC to develop "technical *and net metering* interconnection rules." 73 P.S. §1648.5 (emphasis added). Regulations promulgated pursuant thereto are lawful if they were "(a) adopted within the agency's granted power, (b) issued pursuant to proper procedure, and (c) reasonable." *Marcellus Shale*, 292 A.3d at 927. As this Court held in *Hommrich I*, 231 A.3d at 1037, the General Assembly did not task the PUC with redefining statutory terms and eligibility standards. However, unlike the regulation at issue in *Hommrich I*, the challenged Regulation here does not redefine terms or eligibility standards. Rather, the Regulation provides necessary guidance on net metering, specifically, how excess generation is measured, credited, and compensated at the full retail rate on a yearly basis, consistent with the terms of the AEPS Act. By its very definition, "net metering" is "[t]he means of measuring the difference between the electricity supplied by an electric utility and the electricity generated by a customer-generator when any portion of the electricity generated by the alternative energy generating system is used to offset part or all of the customer-generator's requirements for electricity." Section 2 of the AEPS Act, 73 P.S. §1648.2. Customer-generators are entitled to receive compensation for the "excess generation," *i.e.*, the difference between the electricity generated by a customer-generator and electricity supplied by the utility, "at the full retail value . . . *on an annual basis*." 73 P.S. §1648.5 (emphasis added). Although Petitioners advocate for monthly or even quarterly revenue, Section 5 of the AEPS Act clearly provides

for compensation on an annual basis.[11] 73 P.S. §1648.5. Upon review, the Regulation falls within the ambit of the PUC's regulatory authority under the AEPS Act and tracks the statutory language. For these reasons, we deny the relief requested in Intervenors' Application for Intervention, Request for Relief ¶78(a).

## III. Conclusion

Based on the foregoing, we deny Petitioners' ASR.

*Michael H. Wojcik*

MICHAEL H. WOJCIK, Judge

Judge Fizzano Cannon did not participate in the decision of this case.

[11] We further note that Section 5's "annual basis" provision corresponds with Section 3(e)(5) of the AEPS Act, which provides that the alternative energy credits program shall be based on a 12-month "reporting period" from June 1 through May 31. 73 P.S. §1648.3(e)(5); *see* Section 2 of the AEPS Act, 73 P.S. §1648.2 (defining "reporting period').

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

| | | |
|---|---|---|
| David N. Hommrich, | : | |
| | : | |
| Petitioner | : | |
| | : | |
| v. | : | No. 463 M.D. 2022 |
| | : | |
| Commonwealth of Pennsylvania, Pennsylvania Public Utility Commission, | : | |
| | : | |
| Respondent | : | |

**O R D E R**

AND NOW, this 13th day of August, 2025, Petitioner's Application for Summary Relief is **DENIED**.

*Michael H. Wojcik*
MICHAEL H. WOJCIK, Judge

Order Exit
08/13/2025

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

| | | |
|---|---|---|
| David N. Hommrich, | : | |
| Petitioner | : | |
| | : | |
| v. | : | No. 463 M.D. 2022 |
| | : | Argued: April 9, 2025 |
| Commonwealth of Pennsylvania, | : | |
| Pennsylvania Public Utility | : | |
| Commission, | : | |
| Respondent | : | |

BEFORE: HONORABLE RENÉE COHN JUBELIRER, President Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE ANNE E. COVEY, Judge
HONORABLE MICHAEL H. WOJCIK, Judge
HONORABLE LORI A. DUMAS, Judge
HONORABLE STACY WALLACE, Judge
HONORABLE MATTHEW S. WOLF, Judge

CONCURRING AND DISSENTING OPINION
BY JUDGE WALLACE FILED: August 13, 2025

I would hold, based on the plain statutory text, that excess alternative energy purchased from net metered customer-generators under Section 5 of the Alternative Energy Portfolio Standards Act (AEPS Act)[1] is a "resource" as that term appears in Section 3(a)(3)(ii) of the AEPS Act,[2] and I would grant summary relief with respect to Request for Relief A. I otherwise join the Majority's thoughtful opinion, denying

[1] Act of November 30, 2004, P.L. 1672, *as amended*, 73 P.S. § 1648.5.

[2] 73 P.S. § 1648.3.

summary relief as to the remaining requests. Therefore, I respectfully concur and dissent.

s/ Stacy Wallace
STACY WALLACE, Judge