PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held February 20, 2025

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair, Statement, Concurring in Result Only
Kathryn L. Zerfuss
John F. Coleman, Jr.
Ralph V. Yanora

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	P-2024-3049343 G-2024-3049351
Penn Renewables, LLC	C-2024-3049618
v.	
UGI Utilities, Inc. – Electric Division	

OPINION AND ORDER

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BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Penn Renewables, LLC (Penn Renewables), filed on December 13, 2024, to the Recommended Decision (R.D.) of Administrative Law Judges (ALJs) Dennis J. Buckley and Alphonso Arnold III, issued on December 3, 2024, in the above-captioned proceeding. The ALJs recommended that the Commission approve, without modification, the Joint Petition for Non-Unanimous Settlement (Joint Petition, Non-Unanimous Settlement, or Settlement), filed by UGI Utilities, Inc. – Electric Division (UGI or the Company), the Office of Consumer Advocate (OCA), and the Office of Small Business Advocate (OSBA) (collectively, the Joint Petitioners or Settling Parties) in this matter.[1] Replies to Exceptions were filed on December 18, 2024, by UGI and the OCA.

For the reasons stated, *infra*, we shall: (1) deny the Exceptions of Penn Renewables; (2) adopt the Recommended Decision of the ALJs, without modification; and (3) grant the Joint Petition and approve the Non-Unanimous Settlement, without modification, consistent with this Opinion and Order.

I. Introduction and Background

UGI is a wholly owned subsidiary of UGI Corporation. UGI is a public utility, as defined in Section 102 of the Public Utility Code (Code), 66 Pa.C.S. § 102, and serves as an electric distribution company (EDC) and a default service provider, as those terms are defined in Section 2803 of the Code, 66 Pa.C.S. § 2803. UGI provides electric distribution service to approximately 62,000 customers in portions of Luzerne and Wyoming Counties. UGI is among the smallest EDCs whose customers are provided a

[1] Penn Renewables is the only party in this proceeding not to join the Non-Unanimous Settlement.

choice regarding their retail electric generation supplier (EGS). The Company has served as the default provider of electric generation service (*i.e.*, the default service provider) for its electric distribution system since the expiration of its generation rate cap in 2002. As such, UGI is obligated to arrange for and provide default service to all customers within its service territory who do not select an EGS or who return to default service after being served by an EGS that becomes unable or unwilling to serve. UGI St. 1 at 1; UGI Exh. JRT-2, Attachment A at 15; UGI Exh. SCF-5-RJ at 3.

As the default service provider in its service territory, UGI is required to file a default service plan with the Commission that sets forth how it will meet its default service obligations, including a strategy for procuring generation supply, a schedule for implementation, and a rate design to recover the Company's reasonable costs. *See* 66 Pa.C.S § 2807(e)(3.6). UGI's current default service program (DSP) was approved by the Commission on January 14, 2021. *See Petition of UGI Utilities, Inc. – Electric Division for Approval of a Default Service Plan for the Period of June 1, 2021 through May 31, 2025,* Docket Nos. P-2020-3019907, G-2020-3019908 (Final Order entered January 14, 2021, adopting Recommended Decision issued December 11, 2020) (UGI DSP IV). Thus, the UGI DSP IV expires on May 31, 2025.

In this proceeding, UGI seeks approval of its fifth Default Service Program (DSP V, Program, or DSP V Petition), as modified by the Joint Petition. UGI also seeks approval of potential affiliated interest transactions associated with its DSP V, pursuant to Section 2102 of the Code, 66 Pa.C.S § 2102. In its Original DSP V Petition, UGI submitted that its DSP V establishes the terms and conditions under which the Company will acquire default service supplies, including Alternative Energy Portfolio Standards (AEPS) credits, from June 1, 2025, through May 31, 2029 (DSP V Term). UGI also represented that its DSP V employs a prudent mix of electric supplies (*i.e.*, spot market purchases, short-term contracts, and long-term contracts) obtained through competitive bid solicitation processes (*i.e.*, auctions, requests for proposals and/or bilateral

agreements). Consequently, UGI asserted, the Company's default service customers will receive adequate and reliable service at the least cost over time.[2] DSP V Petition at 1.

UGI also represented that through its DSP V Petition, the Company will: (1) implement a procurement schedule designed to obtain these supplies at the least cost; (2) issue Requests for Proposals (RFPs) seeking default supply in accordance with the agreements and forms included with its DSP V Petition; (3) adopt a contingency plan that addresses any procurement target shortfalls; (4) recover all incurred default service costs on a full and current basis through a specified default service rate design; (5) adopt revised tariff rules clarifying the application of its Generation Supply Rate (GSR)-1 and GSR-2 default service rate classifications; and (6) continue the retail enhancement programs adopted in its DSP IV. Finally, UGI explained that it is clarifying its GSR-1 and GSR-2 rate groupings to classify customers according to their supply peak load impact (SPLI). The Company submitted that this approach will better align larger net-metering customer-generators with larger customers that have similar grid impacts.

II. History of the Proceeding

On May 31, 2024, UGI filed its DSP V Petition requesting that the Commission approve the UGI DSP V, as described, *supra*. The DSP V Petition was filed pursuant to Section 2807 of the Code, 66 Pa.C.S. § 2807, and Sections 54.181-54.190 of the Commission's Regulations, 52 Pa. Code §§ 54.181-54.190, and establishes the terms and conditions under which the Company will acquire default service supplies, including AEPS credits, from June 1, 2025, through May 31, 2029 (*i.e.*, the DSP V Term). UGI also requested approval of potential affiliated interest transactions associated with its DSP

[2] According to the Company, this aligns with the Commission's goal for the Default Service Regulations - to ensure that each default service provider delivers adequate and reliable service at the least cost over time, as stated in the Commission's Regulations at 52 Pa. Code § 69.1802. DSP V Petition at 1, n.1.

V pursuant to Section 2102 of the Code, 66 Pa.C.S § 2102. R.D. at 3. The applicable statute requires that the Commission issue its decision on this matter no later than nine months after the filing date of the proposed DSP, or in this case, on or before February 28, 2025. 66 Pa.C.S. § 2807(e)(3.6).

On June 18, 2024, Penn Renewables filed a Formal Complaint (Complaint) at Docket No. C-2024-3049618. R.D. at 3.

In addition to UGI and Penn Renewables, the OCA and the OSBA participated in this proceeding. R.D. at 3.

Notice of UGI's Petition and Prehearing Conference was published in the *Pennsylvania Bulletin* on June 22, 2024. *See,* 54 Pa.B. 3603 (June 22, 2024). R.D. at 4.

No Party requested the scheduling of a public input hearing in this matter. R.D. at 4.

On September 26, 2024, an Order was issued Granting the Joint Motion for Protective Order which adopted UGI's Protective Order, without modification, as agreed to by the Parties. R.D. at 5.

On October 1, 2024, an evidentiary hearing was held. Counsel was present for each of UGI, the OCA, the OSBA, and Penn Renewables. Pre-filed testimonies and exhibits of the Parties were moved and admitted into the record without objection.[3] Mr. Jesse Tyahla, Mr. Stan C. Faryniarz, and Ms. Tracy Hazenstab provided testimony on cross-examination on behalf of UGI. Mr. James L. Crist provided testimony on

[3] *See* R.D. at 7-8 for a list of each Party's testimonies and exhibits that were admitted into the Record.

cross-examination on behalf of Penn Renewables. During the hearing, the Parties stated that UGI, the OCA, and the OSBA had agreed in principle to file a Non-Unanimous Petition for Settlement, with Penn Renewables opposing the Settlement. R.D. at 5.

On October 15, 2024, Main Briefs were filed by UGI, the OCA, and Penn Renewables. R.D. at 6.

On October 22, 2024, the Joint Petition was filed by UGI, the OCA and the OSBA. R.D. at 6.

Reply Briefs were filed on October 25, 2024, by UGI, the OCA, and Penn Renewables. R.D. at 6. Also, on October 25, 2024, Penn Renewables filed a Statement in Opposition to the Joint Petition for Non-Unanimous Settlement. R.D. at 6.

On November 5, 2024, an Order was issued closing the Record. R.D. at 6.

On December 3, 2024, the Recommended Decision of the ALJs was issued. Therein, the ALJs recommended that the Commission approve, without modification, the Non-Unanimous Settlement, dismiss the Complaint of Penn Renewables, and approve the potential affiliated interest transactions associated with UGI's DSP V.

As previously noted, Penn Renewables filed Exceptions to the Recommended Decision on December 13, 2024. On December 18, 2024, Replies to Exceptions were filed by UGI and the OCA.

III. Legal Standards

A. Burden of Proof

In this proceeding, the Company seeks approval of its plan to procure default service supply and, as such, has the burden of proving that its proposed DSP V complies with the legal requirements. The proponent of a rule or order in any Commission proceeding bears the burden of proof, 66 Pa.C.S. § 332(a), and therefore, the Company has the burden of proving its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). That is, the Company's evidence must be more convincing, by even the smallest amount, than the evidence presented by the other parties. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

Upon the presentation by a utility of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the utility shifts to the other parties. If the evidence presented by the other parties is of co-equal value or "weight," the burden of proof has not been satisfied. The Company now has to provide some additional evidence to rebut that of the other parties. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*,

768 A.2d 1217 (Pa. Cmwlth. 2001). However, a party that offers a proposal in addition to what is sought by the original filing bears the burden of proof for such a proposal. *Pa. PUC v. Metro. Edison Co.*, Docket No. R- 00061366, *et al.,* 2007 Pa. PUC LEXIS 5 (Order entered January 11, 2007); *Joint Default Service Plan for Citizens' Electric Co. of Lewisburg, PA and Wellsboro Electric Company for the Period of June 1, 2010 through May 31, 2013 (Citizens' Electric Co.)*, Docket Nos. P-2009-2110798 and P-2009-2110780 (Order entered February 26, 2010).

B. Default Service

The Electricity Generation Customer Choice and Competition Act (Competition Act), 66 Pa.C.S. §§ 2801-2815, as amended by Act 129 of 2008 (Act 129) requires that default service providers acquire electric energy through a "prudent mix" of resources that are designed to: (1) provide adequate and reliable service; (2) provide the least cost to customers over time; and (3) achieve these results through competitive processes that include auctions, requests for proposals, and/or bilateral agreements. 66 Pa.C.S. §§ 2807(e)(3.1), (3.4).

The Competition Act also mandates that customers have direct access to a competitive retail generation market. 66 Pa.C.S. § 2802(3). This mandate is based on the legislative finding that "[c]ompetitive market forces are more effective than economic regulation in controlling the cost of generating electricity." 66 Pa.C.S. § 2802(5). *See, Green Mountain Energy Company v. Pa. PUC,* 812 A.2d 740, 742 (Pa. Cmwlth. 2002). Thus, a fundamental policy underlying the Competition Act is that competition is more effective than economic regulation in controlling the costs of generating electricity. 66 Pa.C.S. § 2802(5).

In addition to the foregoing statutory guidelines, the Commission has enacted default service Regulations, 52 Pa. Code §§ 54.181 to 54.190, and a Policy

Statement, 52 Pa. Code §§ 69.1801 to 69.1817, addressing DSPs. The Regulations first became effective in 2007 and were amended in 2011 to incorporate the Act 129 amendments to the Competition Act. *Implementation of Act 129 of October 15, 2008; Default Service and Retail Electric Markets*, Docket No. L-2009-2095604 (Final Rulemaking Order entered October 4, 2011) (*Act 129 Final Rulemaking Order*). The Commission has directed that EDCs consider the incorporation of certain market enhancement programs into their DSPs in order to foster a more robust retail competitive market. *Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans,* Docket No. I-2011-2237952 (Order entered December 16, 2011) (*RMI IWP Tentative Order*), and *Intermediate Work Plan* (Final Order entered March 2, 2012) (*RMI IWP Final Order*).

C. Settlements

This Commission has a policy of encouraging settlements. *See*, 52 Pa. Code § 5.231(a); *see also*, 52 Pa. Code §§ 69.401, *et seq*., relating to settlement guidelines for major rate cases, and our Statement of Policy relating to the Alternative Dispute Resolution Process, 52 Pa. Code § 69.391, *et seq.* This Commission has stated that results achieved through settlement are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. A full settlement of all the issues in a proceeding eliminates the time, effort, and expense that otherwise would have been used in litigating the proceeding, while a Non-Unanimous Settlement may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole, non-unanimous, or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case.

Default service proceedings are expensive to litigate, and the reasonable cost of such litigation is an expense recovered from customers by default service providers as approved by the Commission. Partial or full, as well as non-unanimous or

unanimous, settlements allow the parties to avoid the substantial costs of fully litigating a proceeding before the Commission, yielding expense savings for a company's customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy.

Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. PUC v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991). The Joint Petitioners have reached a Non-Unanimous Settlement that resolves all issues among the Settling Parties in this proceeding. Because the Joint Petitioners request that the Commission enter an order in this proceeding approving the Non-Unanimous Settlement without modification, they share the burden of proof to show that the terms and conditions of the Non-Unanimous Settlement are in the public interest. *See* 66 Pa.C.S. § 332(a).

IV. Joint Petition for Approval of the Non-Unanimous Settlement

A. Terms and Conditions of the Non-Unanimous Settlement

The Joint Petitioners have agreed to the Non-Unanimous Settlement, which resolves all issues except for an issue contested by Penn Renewables, *infra,* regarding UGI's proposed GSR-1/GSR-2 customer classification. The Joint Petition consists of a twelve page document outlining the terms and conditions of the Non-Unanimous

Settlement. The following Appendices regarding UGI's Revised DSP V were attached to the Joint Petition:

Appendix A *Pro Forma* Tariff that revises UGI's tariff to clarify the application of GSR-1 and GSR-2 default service rate classifications pursuant to the Joint Settlement.

Appendix B UGI's Statement in Support.

Appendix C The OCA's Statement in Support.

Appendix D The OSBA's Statement in Support.

See R.D. at 8.[4]

The essential terms of the Joint Petition for Non-Unanimous Settlement are set forth in Section III of the Joint Petition, in Paragraph Nos. 28 through 35. Joint Petition at 5-6. The essential terms are set forth below and are printed *verbatim*, and for ease of reference, maintain the paragraph numbers and formatting that appear in the Non-Unanimous Settlement.

SETTLEMENT TERMS AND CONDITIONS

A. DSP V PROGRAM TERM

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

B. PROCUREMENT ISSUES

29. UGI Electric will procure a 10 MW around-the-clock ("ATC") block tranche with a five-year term. UGI Electric will procure another 10 MW ATC block tranche with a two-year term on a rolling basis through the term of DSP V

[4] As noted above, and discussed in detail below, only Penn Renewables objected to the Non-Unanimous Settlement.

and into the term of DSP VI. UGI Electric's remaining proposed procurement methodologies for GSR-1 and GSR-2 customers as set forth in UGI Electric's Petition for Approval of a DSP for the period of June 1, 2025 through May 31, 2029 and in UGI Electric St. No. 2, the Direct Testimony of Stan C. Faryniarz, pages 12-23, are approved as filed. The bid documents appended to UGI Electric St. No. 2 as Exhibits SCF-4 through SCF-10 are also approved, with the changes to implement the above modification.

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

31. UGI Electric's 50 percent load cap proposal applicable to fixed-price full requirements ("FPFR") tranches shall be conditional and apply prospectively to future FPFR solicitations after the point where UGI receives at least three independent bids for a FPFR solicitation (i.e., not apply to such initial solicitation where three bids are received but thereafter conditionally apply to all future FPFR solicitations). Absent three or more bids, the load cap shall not apply in such future solicitations.

C. RECONCILIATION ISSUES

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

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

D. GSR-1/GSR-2 CUSTOMER CLASSIFICATION

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

E. STATUTORY FINDINGS

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

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

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

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

Joint Petition at 5-6, ¶¶ 27-35.

In addition to the specific terms set forth above, the Non-Unanimous Settlement contains certain additional general terms and conditions. The Joint Petitioners submitted that the Non-Unanimous Settlement is in the public interest and will provide substantial affirmative public benefits. The Joint Petitioners agreed that the Non-Unanimous Settlement is conditioned upon the Commission's approval of the terms and conditions therein, without modification. The Non-Unanimous Settlement established the procedure by which any of the Joint Petitioners may withdraw from the Settlement and proceed to litigate this case, if the Commission should act to modify the Settlement. In addition, the Joint Petitioners asserted that although the Settlement is proffered to settle the instant proceeding, it may not be cited as precedent in any future

proceeding, except to the extent required to implement the Non-Unanimous Settlement. Further, the Joint Petitioners submitted that the Settlement was made without prejudice to any position which any of the Joint Petitioners might adopt in future proceedings. Joint Petition at 7-8, ¶¶ 50-56.

In view of the above, the Joint Petitioners requested that the Commission enter an Order: (1) approving UGI's DSP V Petition, as modified by the Non-Unanimous Settlement; (2) granting affiliated interest approval for transactions with a UGI affiliate in the event such an affiliate submits a winning bid under the proposed RFP processes set forth in the DSP V; (3) granting any waivers required to implement the DSP V, including a waiver of the Commission's Regulation at 52 Pa. Code § 54.187, if necessary, to allow UGI to acquire and manage default supplies for the GSR-1 and GSR-2 customer groups; (4) authorizing UGI to file tariff sheets substantially in the form of the *pro forma* tariff sheets set forth in Appendix A on or before May 2, 2025 to be effective June 1, 2025; (5) authorizing UGI to file tariff sheets no later than thirty (30) days in advance of June 1 and December 1, beginning June 1, 2025 specifying the applicable GSR-1 group default service rates; (6) re-approving UGI's retail choice market enhancement programs and granting, to the extent required, any affiliated interest approvals necessary for UGI affiliates to participate in such programs; (7) approving UGI's use of an auction manager that will be secured through an RFP process as its independent third party evaluator; (8) making the findings set forth in Paragraph 92 of the DSP V Petition and Paragraph 35 of this Non-Unanimous Settlement; and (9) granting such other relief as the Commission deems appropriate. Joint Petition at 10.

B. Positions of the Parties

1. Joint Petitioners' Support of the Settlement

Each of the Joint Petitioners individually filed a Statement in Support of the Non-Unanimous Settlement. Each Joint Petitioner submitted that the Settlement reflects a carefully balanced compromise of the interests of the Joint Petitioners, that the Settlement is in the best interest of the Company and its customers, that the Settlement is in the public interest, and that the Settlement should be approved, without modification.

This section of this Opinion and Order provides an overview of the Positions of the Joint Petitioners, outlined in their respective Statements in Support, regarding the issues resolved by the Settlement. For a detailed summary of each Party's position on the settled issues, please refer to pages 14 to 26 of the Recommended Decision.

a. UGI

In its Statement in Support, UGI submitted that the Non-Unanimous Settlement reflects a carefully balanced compromise of the interests of all the Joint Petitioners and should be approved, without modification. UGI Statement in Support at 4-5.

UGI touted, *inter alia,* the provisions of the Settlement related to procurement issues. In this regard, UGI explained that it designed its procurement methodologies to improve supplier participation, competition, and overall supplier diversity which, ultimately, will provide more reliable competitive products and achieve price benefits for the Company's default service customers. Thus, UGI submitted that the Settlement resolves all the procurement issues as between the Joint Petitioners and

reflects a carefully crafted compromise of the competing interests present in this proceeding. Specifically, UGI highlighted the agreement that the Company will procure a 10 MW around-the-clock (ATC) block tranche with a five-year term, and that it will procure another 10 MW ATC block tranche with a two-year term on a rolling basis through the term of the DSP V and into the term of the Company's DSP VI. UGI claimed that this provision of the Settlement will enhance rate stability and mirrors similar procurements made by other Pennsylvania EDCs. UGI Statement in Support at 8-12.

UGI also noted the agreement under the Non-Unanimous Settlement that UGI's fifty-percent load cap proposal applicable to fixed-price full-requirements (FPFR) tranches will be conditional, and shall apply prospectively to future FPFR solicitations, after the point where UGI receives at least three independent bids for a FPFR solicitation. UGI argued that this provision of the Settlement reflects a compromise between the Company's and the OCA's respective litigation positions on this issue and addresses the OCA's concerns that a lower load cap may decrease supplier participation. UGI Statement in Support at 13-14.

Additionally, UGI highlighted the resolution of the reconciliation issues achieved by the Settlement, arguing that these commitments extend the rate stability of longer-term amortization, and avoid administrative complexity, thereby addressing the OCA's concerns. Further, UGI submitted that the provisions of the Non-Unanimous Settlement related to the requested statutory findings included in Paragraph 35 of the Settlement are just, reasonable, and in the public interest, and should be approved without modification. UGI Statement in Support at 14-15, 18-19.

b. OCA

In its Statement in Support, the OCA submitted that the Non-Unanimous Settlement is supported by substantial evidence in the record. According to the OCA, as

a result of the Settlement, UGI will meet its statutory responsibilities to procure a default service portfolio that is designed to ensure service at the least cost over time. The OCA claimed that when weighed against the risks and costs of litigation, the Settlement is in the public interest and should be approved. OCA Statement in Support at 2, 16.

Like the Company, the OCA highlighted the resolution of the procurement issues that is achieved by the Settlement. Namely, the OCA argued that the Settlement will ensure reliable electricity supply and will follow an established contract duration strategy for load supply contracts. The OCA took the position that this will provide a benefit to consumers by protecting them from the shock of price fluctuations. According to the OCA, the procurement plan set forth in the Settlement will result in greater rate stability than would have been achieved under UGI's original proposal. As such, the OCA argued that these Settlement provisions should be adopted. OCA Statement in Support at 2-8.

The OCA also touted, *inter alia*, the load cap and the resolution of the reconciliation issues under the Settlement. The OCA submitted that the Non-Unanimous Settlement represents a reasonable compromise on the load cap issue that helps promote competition through diverse bids and reduces counterparty risk by limiting exposure to a single wholesale supplier. In the OCA's view, the load cap provisions agreed upon by the Joint Petitioners are in the public interest and should be approved by the Commission. Additionally, the OCA claimed that, with respect to the GSR-1 customer group, UGI's agreement to utilize a 12-month amortization period for over- or under-collections balances, reconciled for each six-month period, is in the public interest. According to the OCA, this provision of the Settlement avoids the administrative complexity associated with determining the residential rate impact of a reconciliation balance. In turn, the OCA submitted that this will extend the rate stability benefit of a longer-term amortization to all rate periods. OCA Statement in Support at 13-15.

c. OSBA

In its Statement in Support, the OSBA stated that it supports the Joint Petition and requested that the Commission approve the Joint Petition in its entirety. The OSBA explained, *inter alia,* that it supports the procurement changes proposed by the Joint Petition. The OSBA submitted that these provisions of the Settlement will provide the Company's small business customers with reasonable and stable electricity pricing. OSBA Statement in Support at 2-5.

2. Penn Renewables' Opposition to the Settlement

As discussed in detail in Section V of this Opinion and Order, *infra,* Penn Renewables opposed the Non-Unanimous Settlement because of the Company's proposal to classify GSR-1/GSR-2 customers according to their SPLI. As such, Penn Renewables filed a Statement in Opposition to the Settlement. Therein, Penn Renewables submitted that the Settlement is not just, reasonable, or in the public interest. According to Penn Renewables, any portion of the Settlement that reclassifies Penn Renewables' projects as GSR-2, or that changes the price-to-compare (PTC) calculation for GSR-2 customers must be denied. Accordingly, Penn Renewables took the position that because the Settlement would endorse UGI's proposal, and would incorporate the Company's reasoning for changing its GSR-1/GSR-2 customer classification, it must be rejected. Penn Renewables Statement in Opposition at 1-8. *See also* R.D. at 25-26.

C. Recommended Decision

The ALJs found that UGI's DSP V, as modified by the Joint Petition, provides a default service plan which meets the requirements of Section 2807 of the Code, 66 Pa.C.S. § 2807, and the Commission's Regulations at 52 Pa. Code §§ 54.181-54.190. According to the ALJs, the Non-Unanimous Settlement is in the

public interest because, under the terms of the Settlement, UGI will be positioned to obtain an adequate electric generation supply to serve default service customers using an acceptable acquisition and pricing methodology. Accordingly, the ALJs recommended that the Commission grant the Joint Petition and approve the Non-Unanimous Settlement, without modification, and that it approve UGI's DSP V, as modified by the Settlement. R.D. at 1-2, 42.

D. Disposition of the Non-Unanimous Settlement

As noted in Section III.C, *supra,* the Commission has articulated its general policy favoring settlements. *See*, 52 Pa. Code § 5.231(a); *see also*, 52 Pa. Code §§ 69.401, *et seq*. Additionally, while we do not find it necessary to disfavor or reject a settlement because it is non-unanimous, we also note that there are sound policy reasons to ensure appropriate due process for non-settling parties that do not support the proposed settlement or who wish to continue litigation. The use of a non-unanimous settlement raises the obvious concern that the Commission continue to respect the non-settling parties' right to notice and the opportunity to be heard. Therefore, where a non-unanimous settlement is proposed to resolve litigation, the agency's review of the entire matter should ensure that the evidence and arguments presented by non-settling parties receive full and fair consideration. *See Pa PUC, et al. v. Peoples Natural Gas Company LLC*, Docket No. R-2023-3044549 (Order entered September 12, 2024). (*Peoples Natural Gas*).

Considerations which may ensure fairness to all the parties include, *inter alia*, independent assessment by the Commission as to whether the non-unanimous settlement is reasonable and in the public interest; fact-finding hearings to determine whether the settlement is in the public interest and supported by substantial evidence; and the range of interests represented in the non-unanimous settlement. The Commission's procedures already provide for many of these safeguards including, *inter alia*: (1) the

Commission's independent review and determination regarding whether the settlement is reasonable and in the public interest; (2) the non-settling party's opportunity to object to the settlement; (3) the non-settling party's opportunity to fully litigate contested issues; and (4) the non-settling party's opportunity for fact-finding hearings on the terms of settlement and contested issues. *Peoples Natural Gas.*

We note that a proceeding's procedural history is significant since it reveals whether and how all the parties were afforded due process. Applying this to the instant proceeding, Penn Renewables, the only party to this proceeding who opposed the Non-Unanimous Settlement, had the opportunity to file opposition to the Settlement. Additionally, with regard to the lone contested issue in this proceeding, discussed in Section V of this Opinion and Order, UGI, the OCA, and Penn Renewables have each had the opportunity to file written testimony and briefs setting forth their respective positions on the litigated issue, in addition to having the opportunity to file Exceptions to the ALJs' recommendation thereto. Accordingly, we find that all parties to this instant proceeding have been afforded the appropriate due process through the full and fair notice and opportunity to be heard.

Upon review of the Non-Unanimous Settlement, we find that UGI's DSP V, as modified by the Partial Settlement, is in the public interest because it includes and/or addresses all of the elements prescribed by Section 2807 of the Code, the applicable Commission Regulations, and the Commission's policies for Default Service Plans. Specifically, we find that UGI's proposed Default Service Supply Procurement Plan, for the DSP V Program Period, pursuant to the Petition, as modified by the terms of the Non-Unanimous Settlement, consists of a prudent mix of spot market purchases, short-term contracts, and long-term purchase contracts designed to ensure adequate and reliable service at the least cost to customers over time. In addition, AEPS credits are provided for in a competitive fashion, and a contingency plan that addresses any procurement target shortfalls is properly established. 66 Pa.C.S. §§ 2807(e), (f).

We concur with the ALJs' finding that the Non-Unanimous Settlement is in the public interest and should be approved, without modification. The Non-Unanimous Settlement reflects a carefully-balanced compromise of the interests of all of the Joint Petitioners. UGI Statement in Support at 4. Additionally, we find that the terms contained therein will benefit residential customers, small and medium commercial customers, and large commercial and industrial customers.

Notwithstanding the lone contested issue, discussed in Section V of this Opinion and Order, the Non-Unanimous Settlement results in savings of time and expenses for all Parties involved by avoiding the necessity of further administrative proceedings and possible appellate court proceedings. In addition to the avoidance of litigation and associated costs, the beneficial aspects of the Non-Unanimous Settlement include: (1) a four-year DSP V term to minimize future litigation expenses and reduce administrative costs; (2) the agreement that UGI will procure a 10 MW ATC block tranche with a five-year term and that the Company will procure another 10 MW ATC block tranche with a two-year term on a rolling basis through the term of its DSP V and into the term of its DSP VI; (3) the agreement that UGI's fifty-percent load cap applicable to FPFR tranches shall be conditional and shall apply prospectively to future FPFR solicitations after the point where UGI receives at least three independent bids for a FPFR solicitation; (4) the agreement that UGI will continue to procure supplies for GSR-2 customers (customers with a SPLI of 100 kW or higher) through the spot market; (5) the agreement that with regard to the GSR-1 customer group, UGI will utilize a twelve-month amortization period for over- or under-collections balances, reconciled for each six-month period; (6) the consensus regarding the GSR-2 reconciliation process; (7) the agreement among the Joint Petitioners that UGI will classify GSR-1 and GSR-2 customers according to their SPLI[5]; and (8) the agreement that the DSP V, as modified

[5] As discussed in Section V of this Opinion and Order, we shall approve this proposal.

by the Joint Petition, satisfies the requirements of Section 2807(e)(3.7) of the Code, 66 Pa.C.S. § 2807(e)(3.7).

For the foregoing reasons, we concur with the ALJ's conclusion that it is in the public interest to approve the terms and conditions of the Non-Unanimous Settlement, without modification. R.D. at 42. Accordingly, we shall adopt the ALJs' recommendation to grant the Joint Petition and approve the Non-Unanimous Settlement.

V. Contested Issue – GSR-1/GSR-2 Customer Classification

A. Background

As previously noted, the lone contested issue in this proceeding is UGI's proposed methodology for assigning customers to the GSR-1/GSR-2 rate based upon their SPLI.

Historically, UGI has classified default service customers between the GSR-1 and GSR-2 procurement groups based solely upon their peak demand. UGI explained that if a customer's peak demand was below 100 kW, the customer was classified as a GSR-1 customer. Conversely, if a customer's peak demand was 100 kW or greater, the customer was classified as a GSR-2 customer and received spot market default supply service. UGI also explained that this historical default service classification based upon demand has existed because the Company had not previously experienced significant levels of customer generation impacting default supply procurement. However, according to UGI, within the past year, the Company has

experienced "an influx" of net metering applications from large customer-generators.[6] UGI M.B. at 2, 14.

UGI explained that it evaluated the impacts of these large customer-generators coming onto the Company's distribution system and how this would impact default service procurements and prices, given that until this time, the Company only previously had small customer-generators connecting. The Company determined that if large customer-generators were to be included in the GSR-1 group, then: (1) their output would decrease GSR-1 group load and tranche size; (2) there is substantial question as to the level of output and timing of when these projects will become operational; and (3) these large customer-generators have the ability to leave default service at any time and participate in the wholesale market, thereby creating an attrition risk if projects opt to leave GSR-1 service and shop their output elsewhere. UGI argued that each of these factors would substantially increase risk for wholesale suppliers, causing higher bid premiums and likely reducing the number of competitive bidders. The Company submitted that these factors would cause higher prices for GSR-1 residential and small commercial customers and would also require GSR-1 customers to pay higher prices for excess customer-generator supply than they would otherwise pay, resulting in default service rates that are not at the "least cost over time" as required by statute. Therefore, UGI explained that it decided to classify customers for default service

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[6] A customer-generator is a retail electric customer that is a non-utility owner or operator of a net metered distributed generation system with a nameplate capacity of not greater than 50 kW if installed at a residential service, or not larger than 3,000 kW at other customer service locations, except for customers whose systems are above 3 MW and up to 5 MW 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. 52 Pa. Code § 75.1. Customer-generators participate in a program known as net metering, which is a billing mechanism that allows residential and commercial customers who generate their own electricity from renewable resources to feed excess electricity back into the grid and to be compensated for the excess. 52 Pa. Code § 75.12; *See also*, Penn Renewables St. 1 at 6-7.

purposes based according to their SPLI, which, it noted, includes a review of the impact based on peak demand or peak generation. UGI M.B. at 2, 14-17.

UGI proposed to determine a customer's SPLI 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 a SPLI below 100 kW will be classified as GSR-1 customers, while customers with a SPLI that is greater than or equal to 100 kW will be classified as GSR-2 customers. The Company stated that this approach would include reviewing net metering customer-generators based upon their net SPLI. The Company added that both a non-residential customer with a peak demand of 100 kW or above, and a non-residential customer-generator with a peak injection into the Company's distribution grid of 100 kW or above, will be classified as GSR-2 customers because both have respective SPLIs of 100 kW or above. UGI St. 2 at 27-28; OCA St. 1-R at 7-8. According to the Company, this proposal prudently groups large customer-generators with large load customers for default service purposes and avoids disparate impacts on small customers. UGI M.B. at 2.

Penn Renewables is a solar development company that utilizes solar voltaics and whose business plan is to develop many small scale, distribution level solar arrays throughout the Commonwealth of Pennsylvania. Penn Renewables has over 300 solar arrays in development across the Commonwealth, including twelve arrays under development in UGI's service territory. Penn Renewables St. 1 at 3-4. Penn Renewables submitted that UGI, through its DSP V, proposes to change the rates for customer-generators that currently, because their demand is less than 25 kW, are considered GSR-1. Penn Renewables M.B. at 14. Penn Renewables opposed UGI's proposal, arguing, *inter alia,* that UGI's effort to "deliberately change" the classification of customer-generators that wish to participate in the net metering provisions and associated benefits provided by the Alternative Energy Portfolio Standards Act of 2004,

73 P.S. §§ 1648.1 – 1648.8 and 66 Pa.C.S. § 2814 (AEPS Act) will "discourage and thwart" the introduction of net metered solar energy projects into the Company's distribution system. Penn Renewables claimed that, as an alternative, UGI should not change the GSR-2 threshold to 100 kW or greater, but rather to 3,000 kW (*i.e.* 3 MW) or greater, because this threshold is the practical limit provided for in the AEPS Act for projects at "other customer service locations." Penn Renewables M.B. at 1; Penn Renewables R.B. at 21.

The OCA supported the Company's proposal, arguing that it will ensure fair treatment of GSR-1 customers and that it aligns with PJM's locational marginal pricing (LMP)[7] construct. Conversely, the OCA submitted that Penn Renewables failed to meet its burden of proving that its proposed change to UGI's SPLI criterion is supported by substantial evidence. The OCA opined that Penn Renewables' alternative recommendation to increase UGI's proposed GSR-2 threshold from 100 kW to 3 MW would produce unjust and unreasonable outcomes. OCA M.B. at 6.

[7] LMP is a pricing method used in the electricity markets to reflect the cost of supplying the next increment of electricity at a specific location, considering the demand and the transmission constraints. LMPs vary by location and time and are determined by the cost of producing the next megawatt-hour (MWh) of electricity by the most economical generator available. Physical limitations on the transmission network can lead to congestion, which affects the ability to deliver electricity from cheaper sources to where it is needed. Also included in the LMP are the real power losses that occur as electricity travels over transmission lines. Penn Renewables St. 1 at 17.

B. Proper Classification Threshold for GSR-1 and GSR-2

1. Positions of the Parties

a. UGI

As noted above, UGI stated that its GSR-1 procurement group will consist of both residential and small commercial customers with a SPLI of less than 100 kW, while its GSR-2 procurement group will consist of large commercial and industrial customers with a SPLI of 100 kW or greater. UGI explained the GSR-2 procurement group includes either demand or generation impacts to the Company's supply procurement activities. UGI further explained that the GSR-1 procurement mix includes block and FPFR contracts, while the GSR-2 procurements are from the hourly spot market. According to UGI, it is reasonable and appropriate to classify customers for default supply purposes based upon their supply impacts. UGI M.B. at 1, 12-13.

UGI asserted that it is obligated under the Code, 66 Pa.C.S. § 2807(e)(3.4)(ii), to design its default service plans for all customers to ensure that default service rates are least cost over time. The Company stated that this legal requirement has been a central focus for UGI when preparing its GSR-1 procurement methodology and design. UGI represented that the total GSR-1 procurement load in its service territory is small when compared to the larger EDCs in Pennsylvania. UGI continued that one of the ways that it ensures that the GSR-1 rates are least cost over time is to combine residential and small commercial customers into the GSR-1 group. According to UGI, this will increase the amount of load for wholesale suppliers, which will encourage bidder participation and reduce bid premiums. UGI M.B. at 21.

UGI stated that it made a similar evaluation when deciding how to classify large customer-generators for default service purposes. UGI posited that if large

customer-generators, *i.e.*, those with a SPLI of 100 kW or higher, are included in the GSR-1 procurement group, the electricity that they generate will offset electricity that otherwise would be procured from GSR-1 wholesale suppliers. UGI reasoned that this will harm the GSR-1 residential and small business customers by reducing tranche sizes for FPFR contracts and eventually, if more large customer generation comes online, this will limit the types of products that can be procured. UGI insisted that one of the biggest risks for the GSR-1 procurement group is a reduction in load. UGI M.B. at 22.

UGI further argued that reducing load and tranche size will result in higher risk for wholesale suppliers and higher prices for residential and small commercial GSR-1 customers. UGI reasoned that, with this load reduction then being required to be purchased from large customer-generators at the PTC, the resulting higher GSR-1 procurement prices will lead to a magnified higher cost when applied to excess power purchased at the PTC. UGI averred that these higher prices would violate the statutory requirement, *supra,* to procure default supplies at the least cost over time. UGI M.B. at 22-23. Accordingly, UGI submitted that establishing a classification threshold wherein a customer-generator with a SPLI of 100 kW or greater is placed in the GSR-2 procurement group will result in large customer-generators being placed on the appropriate GSR-2 default service rate with other large customers. *Id.* at 16-17.

b. Penn Renewables

Penn Renewables asserted that through UGI's proposal, the Company has created a "procurement class" based upon the customer's peak system impact, and not its load. Penn Renewables argued that this methodology is essentially applying the maximum of either customer demand or supply as a basis for segregating customers into separate tariffs. Penn Renewables stated that although setting distribution rates based on demand is fairly normal, it is not aware of any EDCs in Pennsylvania that use peak supply to establish commodity rates that are paid to customer-generators. In Penn

Renewables' view, the Commission should reject UGI's proposed methodology. Penn Renewables reasoned that when GSR-2 customer-generators produce power for export, the LMP, and the customer-generator's compensation, declines. Penn Renewables St. 1 at 20-21.

Next, Penn Renewables argued that contrary to the positions of UGI and the OCA, Penn Renewables' projects are not "large." Rather, Penn Renewables characterized the twelve projects it has planned in UGI's service territory as "small, each under 2,000 kW," and typical of all the projects Penn Renewables has under consideration across the Commonwealth. According to Penn Renewables, these projects are exactly the type of project that the Pennsylvania General Assembly encourages, and which will address climate change, provide alternative generation supply choices, and reduce the burden on distribution and transmission systems. Penn Renewables added that small generators, such as those proposed by Penn Renewables, typically do not operate in the wholesale market. Penn Renewables further stressed that on the PJM website, there are currently no listed solar projects operating in the wholesale market that are under 3,000 kW in size. In Penn Renewables' view, it is reasonable to expect that small customer-generators will decide not to enter the UGI market if the Company's proposal is forced upon them. As such, Penn Renewables argued that contrary to UGI's position, customer-generators cannot simply choose to enter or exit a market at will, and UGI's proposal would ensure that customer-generators do not have a reasonable or profitable way to do so. Penn Renewables St. 1-SR at 6-7, 23.

Therefore, Penn Renewables took the position that small alternative energy projects, such as the solar projects being analyzed by Penn Renewables, should have surplus energy credited at the GSR-1 rate, which applies to 99% of UGI's load. Penn Renewables reinforced its claim that UGI's effort to compensate energy from such projects "at the low, variable, unpredictable GSR-2 rate" will result in a lack of such projects being developed. According to Penn Renewables, a Commission Order directing

the Company to compensate net metered customer-generators at the GSR-1 rate is necessary to enable small net metered project development. Finally, Penn Renewables submitted that, in the alternative, if the Commission authorizes UGI to compensate GSR-2 customer-generators based on LMP, then UGI should instead set the threshold for GSR-2 classification at a SPLI of 3,000 kW or greater. According to Penn Renewables, 3,000 kW is the practical threshold that is provided for in the AEPS Act to distinguish between a small customer-generator and a large customer-generator. Penn Renewables R.B. at 21; Penn Renewables St. 1-SR at 33-35.

c. OCA

As noted above, the OCA supported the Company's proposal. The OCA reasoned that UGI's proposed classification threshold will ensure that GSR-1 customers are not adversely affected by large customer-generators. According to the OCA, the Company's proposal is reasonable and will ensure that overall, UGI's default service construct, including its rates and rate classification, are designed to produce least cost over time procurement. OCA M.B. at 9.

On the other hand, the OCA disagreed with Penn Renewables' proposal, in its entirety. At the outset, the OCA submitted that as the proponent of an order approving a change to UGI's GSR-2 classification threshold, Penn Renewables bears the burden of proof. OCA M.B. at 7 (citing 66 Pa.C.S. § 332(a)). The OCA argued that in making its criticism as to UGI's proposed classification threshold, Penn Renewables has disregarded that each Pennsylvania EDC has a different default service procurement grouping that reflects the criteria which make the most logical sense for that specific EDC's customer and load characteristics. The OCA continued that each EDC also has a different peak demand cutoff for small commercial, medium commercial, and large commercial and industrial procurement group designations. The OCA asserted that if an EDC does not use the same classification methodology proposed by UGI, then this is likely because

another methodology better fits that specific EDC's needs and customer characteristics. Similarly, the OCA posited that if other EDCs did not propose a procurement group classification threshold based on both a demand and supply peak threshold, this is likely because their systems do not have as much pending customer-generator capacity relative to their overall customer loads. OCA M.B. at 8.

The OCA also contended that it is a natural consequence of PJM's LMP construct that, all else held equal, price falls when supply increases, and price rises when demand increases. The OCA stated that the LMP in any given hour in a specific location is determined by the intersection point of supply and demand, and all resources are paid, and all loads pay, that same LMP. Therefore, the OCA submitted that Penn Renewables' concern is not a flaw of the compensation mechanism design for exports by customer-generators. Instead, the OCA claimed that this merely reflects the fundamental principles and rules of PJM's LMP construct, in which UGI operates. OCA M.B. at 8-9.

Next, the OCA took the position that adopting Penn Renewables' alternative proposal, wherein UGI would set the GSR-2 classification threshold at 3 MW or greater, would produce results that are unjust and unreasonable, including establishing unjust and unreasonable rates, for the majority of customers within the existing GSR-1 class. In this regard, the OCA reasoned that Penn Renewables' proposal: (1) does not ensure least cost over time procurement; and (2) would result in an unreasonable preference and would yield an unfair advantage for large customer-generators at the expense of small customer-generators. OCA M.B. at 9-10.

More specifically, the OCA asserted that Penn Renewables' proposal would bundle current GSR-1 residential and truly small commercial customers (*i.e.*, those with a SPLI of less than 100 kW) into the same FPFR contract procurements with more sophisticated, large customer-generators. The OCA proffered that this would ultimately impose a negative impact on residential default service customers. First, the OCA argued

that the FPFR suppliers, facing a higher switching risk from large customer-generators, would either build larger risk premiums into their FPFR contract bids or would decline to participate in the FPFR auctions. The OCA added that even the large customer-generators that stay on default service would constitute a volumetric risk for FPFR suppliers because of the uncertainty surrounding the level and profile of on-site generation, which would also prompt such FPFR suppliers to either build larger risk premiums into their FPFR contract bids or to refrain from participating in the FPFR auction. In turn, the OCA posited that because residential customers constitute seventy-three percent of the GSR-1 default service load in UGI's service territory, this would result in higher PTCs and/or more volatile rates for all residential customers in the Company's service territory. OCA M.B. at 9-10, 11-12.

The OCA further argued that the price GSR-2 customers pay for electricity, and how that may differ from the compensation rate for a customer-generator's exports, has no relationship with the criterion UGI has proposed for classifying customers into the GSR-1 and GSR-2 procurement groups. Thus, according to the OCA, raising the threshold for an account to be classified as GSR-2 from 100 kW to 3 MW, if the Commission authorizes UGI to compensate GSR-2 customer-generators based on LMP, is not logical or acceptable. Rather, the OCA contended, Penn Renewables has conflated two unrelated issues and has attempted to substitute one as a remedy for the other, without any justification, and without any regard to the negative effects of such an action on the GSR-1 customers under UGI's current definition of GSR-1. OCA M.B. at 9-10.

Based upon the above, the OCA insisted that Penn Renewables has failed to carry its burden of proof and has failed to produce substantial evidence to demonstrate that its proposal is just, reasonable, or otherwise consistent with the Code. Accordingly, the OCA asserted that the Commission should reject Penn Renewables' proposal and should adopt the Non-Unanimous Settlement, without modification. OCA M.B. at 7, 12.

2. Recommended Decision

The ALJs observed that UGI's DSP V, as modified by the Non-Unanimous Settlement, does not contain a request by UGI to change the Company's GSR-2 threshold from 100 kW or greater to 3 MW or greater. Thus, the ALJs concurred with the OCA's contention that, as the proponent of an order approving a change to UGI's GSR-2 threshold, Penn Renewables bears the burden of proof. According to the ALJs, Penn Renewables' recommendation to alter UGI's proposed SPLI criterion is not supported by either the law or by substantial evidence in the record. Rather, the ALJs found that Penn Renewables' proposal would result in an unreasonable preference and advantage for large customer-generators at the expense of small customer-generators, and would also fail to ensure least cost procurement for GSR customers. Therefore, the ALJs further agreed with the OCA that Penn Renewables has failed to meet its burden of proof in this proceeding. R.D. at 27, 31, 36, 39.

The ALJs also stressed that they were not aware of any provision of the AEPS Act that allows or directs the Commission to unilaterally direct the assignment of a customer to a separate rate class for the purpose of financially supporting a method of generation. According to the ALJs, Penn Renewables' arguments rest heavily on potential uneconomical results in the event that it is assigned to the GSR-2 rate class. However, the ALJs explained, economic impact, even if adverse, is not the litmus test for a rate classification assignment. The ALJs found that Penn Renewables incorrectly attempted to shift the burden of proof relative to this issue to UGI. Rather, the ALJs concluded, UGI is not required to prove that market participants receive optimum economic outcomes. R.D. at 28, 30, 31.

Based on the above, the ALJs concurred with the "OCA's focused analysis and well-reasoned conclusions," summarized, *supra*, which the OCA provided in opposition to Penn Renewables' proposal. As such, the ALJs further concurred with the

agreement between the OCA and the Company that UGI's proposed classification threshold will: (1) appropriately ensure that GSR-1 customers will not be negatively impacted by the market activities of large customer-generators; and (2) will ensure the least cost procurement over time for these customers. R.D. at 36, 38-41.

C. GSR-2 Rate and AEPS Act Compliance

As discussed below, Penn Renewables made several claims related to the calculation and application of the Company's GSR-2 rate. Penn Renewables took the position that UGI's DSP V proposals related to the GSR-2 are not just and reasonable and fail to comply with the requirements of the AEPS Act.

1. Whether the GSR-2 Rate Provides Full Retail Value and is a Retail Rate

a. Positions of the Parties

(1) Penn Renewables

Penn Renewables submitted that UGI's proposed classification violates the AEPS Act. In this regard, Penn Renewables noted that Section 5 of the AEPS Act, 73 P.S. § 1648.5, requires that net metered customer-generators, such as Penn Renewables, be compensated for excess generation at full retail value for all energy produced on an annual basis. Penn Renewables noted that UGI compensates GSR-1 customer-generators at full retail value. However, Penn Renewables argued that, in contrast, the Company's proposed GSR-2 rate mechanism will not produce full retail value and is not a retail rate. Rather, Penn Renewables claimed that the GSR-2 rate is a wholesale rate. Penn Renewables M.B. at 7, 9. In this regard, Penn Renewables submitted that the GSR-2 rate: (1) does not include all applicable retail components,

including customer service charges, transmission or distribution costs, or various regulatory and policy costs that are part of retail rates; (2) does not include a "load following" component; and (3) is based on the LMP, which is a wholesale rate. Penn Renewables St. 1 at 17; Penn Renewables St. 1-SR at 27.

Penn Renewables proffered that while the term "full retail value" is not defined in the AEPS Act: (1) the dictionary definition of "full" is "having in it all there is space for; Holding or containing as much as possible;" (2) the dictionary definition of "retail" is "the sale of goods or articles individually or in small quantities directly to the consumer;" and (3) the dictionary definition of "value" is "fair or proper equivalent in money, commodities, etc., especially for something sold or exchanged; fair price or return." Penn Renewables M.B. at 9 (citing Websters New World Dictionary, 3rd Edition (1991)). Therefore, Penn Renewables contended that full retail value means the cost of every part of providing retail service, and that the only rate mechanism that fits the definition of full retail value is the GSR-1 rate. Penn Renewables continued that full retail value should recover all the costs of providing electricity, including distribution charges, for default service customers, including net metered customer-generators; and that UGI has not provided a sufficient explanation for how full retail value can differ as between two customer groups providing the same service, with the only significant difference being size. Penn Renewables asserted that the AEPS Act is clear, and nothing in the Code contradicts its mandate for how customer-generators are to be compensated. According to Penn Renewables, the only conclusion to be drawn is that the AEPS Act did not intend a different measure of retail value based upon a customer's size, or it would have imposed one. Penn Renewables M.B. at 9-10.

Penn Renewables also stressed that Section 1304 of the Code, 66 Pa.C.S. § 1304, prohibits unreasonable discrimination or disadvantage in rates as between localities or classes of service. However, Penn Renewables argued, UGI has created a structure whose sole purpose is to discriminate between GSR-2 and GSR-1, by providing

a stable transparent, full retail value rate to GSR-1 customers, and a wholesale market based, ever-fluctuating rate to GSR-2 customers. Penn Renewables further alleged that UGI's proposal discriminates within GSR-2, by charging different rates to different customers, one consuming energy and one producing it, with the rate the producer is being paid being far less than the rate the consumer is paying. Penn Renewables M.B. at 8-9. Penn Renewables asserted that the term is "full retail value," not "retail rate," and that the extent of full retail value does not change based on the customer who is receiving it. In Penn Renewables' view, the AEPS Act makes no distinction based on the size of the customer-generator, and UGI's attempt to do so is a blatant violation of the AEPS Act and Section 1304 of the Code. *Id.* at 12.

(2) UGI

In response, UGI claimed that, although the AEPS Act requires that customer-generators receive "full retail value" for their energy, it does not provide that large customer-generators must be placed on any specific default service rate. As such, UGI claimed that because both GSR-1 and GSR-2 are default service rates, the Company's SPLI proposal comports with the requirements of the AEPS Act. UGI also submitted that there is no prohibition on the Company classifying default service customers according to their SPLI. UGI further reasoned that: (1) utilities have discretion to design their rate structure and to determine how to classify customers; (2) under Section 1304 of the Code, 66 Pa.C.S. § 1304, utilities are authorized to establish reasonable classification of rates; and (3) the Commission has broad authority to approve different rate classifications that are based upon reasonable facts. UGI M.B. at 17-18.

UGI argued that contrary to Penn Renewables' claim, the GSR-2 rate is a retail rate. UGI pointed to the testimony of the Company's witness, Ms. Hazenstab, that, *inter alia*, the GSR-2 rate includes numerous rate components that are included in a retail

rate. UGI M.B. at 25-26 (citing UGI St. 3-R at 7). UGI asserted that both the GSR-1 and GSR-2 rates are retail rates which are based on one or more wholesale market products (*e.g.*, load following, block, spot) and which include appropriate recovery of all related PJM costs, Company administrative costs, and taxes. Additionally, UGI noted that, as set forth in Section 2803 of the Code, 66 Pa.C.S. § 2803, an "end use customer" is defined as a retail electric customer. UGI M.B. at 25. UGI added that in its DSP V, the Company will have a separate, full retail value PTC rate for each procurement group. UGI St. 3-RJ at 2.

UGI further claimed that, at the hearing, Penn Renewables' witness, Mr. Crist, "appeared to backtrack" on how he defined a retail rate and whether the GSR-2 rate was a retail rate. According to UGI, Mr. Crist admitted, *inter alia*, that: (1) whether a rate had a load following component did not factor into whether a rate was a wholesale rate or a retail rate; and (2) a retail sale is a sale to an end-use customer. UGI M.B. at 26 (citing Tr. at 108-110). Therefore, UGI argued that the record clearly demonstrates that the GSR-2 rate is a retail rate, and that all of Penn Renewables' statements to the contrary should be rejected. UGI M.B. at 26.

(3) OCA

The OCA rebutted Penn Renewables' argument that the only conclusion to be drawn is that the AEPS Act did not intend a different measure of retail value based upon size, or it would have imposed one. According to the OCA, such a broad and silent restriction should not be assumed to be included in the AEPS Act. Rather, the OCA argued, the plain language of the statute contains no such restriction. OCA R.B. at 3-4. The OCA further submitted that the AEPS Act clearly delegates technical and net metering rules to the Commission. *Id.* at 4 (citing 73 P.S. § 1648.5). In the OCA's view, the restriction that Penn Renewables seeks to impose on UGI does not exist in the AEPS

Act, and Penn Renewables has failed to meet its burden of proof to demonstrate that UGI's DSP V violates the AEPS Act. OCA R.B. at 4.

Similar to UGI, the OCA also submitted that the GSR-2 rate is a retail rate that is offered to all customers with a peak demand or supply impact greater than 100kW, and is not a wholesale rate. OCA R.B. at 4. The OCA highlighted Mr. Crist's testimony at the hearing, wherein he stated that the GSR-2 rate "very well might be a retail rate that applies to 100kw and greater customers." *Id.* at 4-5 (citing Tr. at 110).

2. Whether the GSR-2 Rate is a Default Service Rate

a. Positions of the Parties

(1) Penn Renewables

Penn Renewables submitted that while GSR-1 customers are charged a default service rate based on the actual costs of providing default service, the Company's GSR-2 rate, as proposed in its DSP V, is not a default service rate. According to Penn Renewables, based upon the manner in which UGI proposes to calculate the GSR-2 PTC for customer-generators, there will be no default service rate listed on customer bills. Instead, Penn Renewables argued that customers will be provided with a formula for calculating the GSR-2 PTC, and that this rate changes hourly. Penn Renewables M.B. at 2, 15.

(2) UGI

UGI submitted that Penn Renewables' claim that the GSR-2 rate is not a default service rate ignores years of Commission precedent for UGI, and for the large EDCs in the Commonwealth. In this regard, UGI stressed that it has been providing

default service to customers under the GSR-2 rate since 2010. UGI added that the Commission has approved LMP-based hourly default service rates for each of the large EDCs in the Commonwealth. UGI M.B. at 24-25; UGI St. 3-RJ at 10. Additionally, UGI submitted that, at the hearing, Penn Renewables' witness, Mr. Crist, admitted that the GSR-2 rate was a "default service rate" that has previously been approved by the Commission. UGI M.B. at 25 (citing Tr. at 103). Therefore, UGI contended that the Commission should reject Penn Renewables' argument that the GSR-2 rate is not a "default service rate." UGI M.B. at 25.

(3) OCA

The OCA submitted that Penn Renewables' arguments should be given little weight because they are undercut by Penn Renewables' own witness. Thus, the OCA claimed that Penn Renewables has failed to provide substantial evidence in support of its argument that UGI's GSR-2 rate is not a default service rate. OCA R.B. at 5.

3. Whether the GSR-2 Rate Provides a "kWh for kWh" Crediting

a. Positions of the Parties

(1) Penn Renewables

Penn Renewables noted that, consistent with the Commission's Regulations at 52 Pa. Code § 75.13(f), customer-generators are to be credited at the full retail value on a kWh-for-kWh basis for the electricity they produce and provide into the grid, up to the point where all consumption is netted annually, and thereafter, at the utility's PTC for excess generation. Penn Renewables St. 1 at 13-14.

However, Penn Renewables submitted that UGI's proposed GSR-2 rate does not provide fair compensation at year-end for a customer-generator's excess kWh. In this regard, Penn Renewables argued that while the AEPS Act requires a "kWh for kWh" crediting, UGI's proposal will result in the customer-generator's excess generation being converted to a dollar value each hour, and added up each month, and carried forward at that amount. Therefore, Penn Renewables posited that at the end of the year, there will be no compensation at the PTC for all excess kWh credits. Instead, Penn Renewables claimed that the customer-generator will be compensated at the PJM LMP wholesale rate. Penn Renewables continued that, as a result, for certain hours, a customer-generator could be paying to produce energy that its neighbors are using, but for which they are "certainly not paying a negative rate to UGI." Penn Renewables St. 1 at 18-19; Penn Renewables St. 1-R at 30-32.

(2) UGI

In response, UGI countered that Penn Renewables' argument that GSR-2 customers will not be compensated at the PTC at the end of the year for excess kWh credits is incorrect. UGI posited that Penn Renewables appears to misunderstand the nature of the PTC for GSR-2 customers. The Company explained that it is, in fact, giving GSR-2 customer-generators credit for all excess kWh as a function of the hour in which the excess generation occurs. UGI explained that it then nets such credit against any hours of net consumption in a manner which provides a compensation at full retail value to the customer-generator. According to UGI, this approach permits a detailed tracking and an awareness of excess generation by converting those generation hours to a dollar value throughout the PJM year at the time they occur, rather than at the end of the PJM year. Thus, UGI insisted that, contrary to Penn Renewables' assertion, GSR-2 customer-generators will be compensated at the PTC for all excess kWh that they produce. UGI M.B. at 28; UGI St. 3-RJ at 9.

4. Whether the GSR-2 Rate is a Single Rate Option

a. Positions of the Parties

(1) Penn Renewables

Penn Renewables highlighted that Section 54.187(c) of the Commission's Regulations, 52 Pa. Code § 54.187(c), states, in pertinent part, that "a default service customer shall be offered a single rate option, which shall be identified as the PTC and displayed as a separate line item on a customer's monthly bill." Penn Renewables asserted that although the term "single rate option" is not defined in the Commission's Regulations, these Regulations do equate the single rate option with the PTC and require that it be displayed as a line item on the customer's bill. According to Penn Renewables, all the Commission Regulations that apply to a PTC also apply to a single rate option. In Penn Renewables' view, the clear intent of the PTC is to show a customer which price they are paying, such that they can compare it to alternative providers. Penn Renewables reasoned that default service should be transparent and predictable. Penn Renewables St. 1-R at 29.

However, Penn Renewables took the position that UGI's GSR-2 rate is not a "single rate option," as required by 52 Pa. Code 54.187(c). Rather, Penn Renewables argued, given that the GSR-2 rate is an hourly rate, it is also a variable rate. As such, Penn Renewables submitted that based upon the manner by which UGI proposes to calculate the GSR-2 PTC for customer-generators, there will be no default service rate listed on customers' bills, and customers instead will be provided with a formula for calculating the PTC in any given hour. According to Penn Renewables, because this rate will change every hour, and will not be known or transparent, customer-generators will have no opportunity to adjust output based upon the payment they will receive or make – negative or positive. Penn Renewables alleged that UGI's failure to: (1) provide

a single rate option; (2) provide that hourly changing PTC to customer-generators on their bills, and not in time for customers to know in any given hour how they will be compensated; and (3) UGI's failure to record the PTC on the customer bill at all, all violate the Commission's Regulations. Penn Renewables M.B. at 15; Penn Renewables St. 1 at 25, 27; Penn Renewables St. 1-SR at 29.

(2) UGI

UGI rebutted that the "single rate option" Regulation at 52 Pa. Code § 54.187(c) applies to all default service customer groups and rate options. According to UGI, if Penn Renewables argument that the GSR-2 rate is not a "single rate option" were true, then this would mean that no EDC can offer an hourly default service rate, because hourly default service rates are not a single rate option. However, UGI countered that this clearly cannot be the case given that: (1) the Commission has approved the hourly default service rates not only for UGI, but also for each of the large EDCs in the Commonwealth; and (2) the Commission has determined that hourly default service rates are reasonable for large customers. UGI M.B. at 35.

Next, UGI asserted that the GSR-2 rate, as defined in the Company's tariff, recovers all energy costs for the GSR-2 procurement group, and is the PTC for GSR-2 customers, once adjusted for the state tax adjustment surcharge (STAS). As such, UGI insisted that the GSR-2 rate is a single rate option. UGI added that, pursuant to the Company's proposal, all GSR customers with a SPLI greater than or equal to 100kW will have this single rate as their default service option. UGI also posited that Penn Renewables' witness, Mr. Crist, who presented Penn Renewables' position on this issue, may have confused a "single rate option" with a "fixed rate." UGI submitted that although the GSR-2 is not a fixed rate, and individual hourly calculations comprise the GSR-2 rate, Mr. Crist's assertion that the GSR-2 rate is not compliant with the Commission's Regulations at 52 Pa. Code 54.187(c) is incorrect. UGI further stressed

that the GSR-2 rate has been applicable to UGI's large default service customers since the Company's initial DSP I proceeding. According to UGI, the Commission has repeatedly allowed, and even required, hourly-priced default service for larger customers. UGI M.B. at 36; UGI St. 3-RJ at 10.

Additionally, UGI submitted that Penn Renewables' argument, that the GSR-2 PTC should be on the customer's bill, should also be denied. UGI pointed out that EDCs have been offering hourly default service for many years, and the Commission has never required that EDCs include the PTC on the bill for hourly priced default service. Therefore, UGI asserted that the Commission should reject Penn Renewables' position on this issue. UGI M.B. at 36.

5. Additional Related Arguments of Penn Renewables

a. Positions of the Parties

(1) Penn Renewables

Penn Renewables argued that the Pennsylvania General Assembly passed the AEPS Act in order to incentivize production of clean and renewable energy by establishing a published, infrequently changing, payment at full retail value that was not premised on renewable resources being dispatched by the utility, *i.e.*, turned on or off depending on the wholesale cost of power (*i.e.*, the LMP). However, Penn Renewables contended that contrary to the goals of the General Assembly, the GSR-2 rate is not a stable rate. In support of this position, Penn Renewables argued: (1) that the GSR-2 rate is driven by the LMP and the hourly change in the price of electricity; and (2) the price will depend, not only on wholesale prices, but also on the state of a customer-generator (*i.e.*, its load or supply), as well as the amount of energy being consumed or supplied. Penn Renewables St. 1-R at 11, 28.

Penn Renewables also noted that in accordance with Section 54.187(d) of the Commission's Regulations, 52 Pa. Code § 54.187(d), rates charged for default service may not decline as the kWh of electricity used by a default service customer in a billing period increase. However, Penn Renewables claimed that the Company's proposed classification will result in a GSR-2 rate that fails to comply with this Regulation. Namely, Penn Renewables argued that UGI's proposed pricing formula for the net-metered compensation is based on the PJM nodal price, which reduces when there is increased self-generation on the system, and if the generator has any network service peak load value (NSPL) based demand allocations. Therefore, Penn Renewables submitted that, as a result of the Company's proposal, when producing power for export, the price received by a GSR-2 customer-generator will decrease as output increases. Penn Renewables M.B. at 17, proposed FOF 24; Penn Renewables St. 1 at 20-21, 25-26.

Penn Renewables further argued that UGI does not treat line losses in accordance with the AEPS Act. More specifically, Penn Renewables submitted that although the AEPS Act requires that customer-generators be compensated for the electric energy they produce, "at the delivery point" (*i.e.*, the meter), UGI includes line losses in the calculation of the compensation for excess energy because that is how wholesale transactions are constructed. According to Penn Renewables, line losses "should not be part of the equation at all because customer-generators are required to be compensated for excess generation, per kWh at the meter." In Penn Renewables' view, it is clear the vast majority of that energy will be consumed by customers on the UGI distribution system and will not flow to PJM. Penn Renewables further reasoned that even if the energy were exported to PJM, the law requires compensation for all the energy. Penn Renewables R.B. at 19; Penn Renewables St. 1 at 21-22; Penn Renewables St. 1-SR at 5-6.

(2) UGI

In response, UGI submitted that each of the above positions of Penn Renewables should be disregarded. UGI St. 3-RJ at 9-10. First, the Company argued that, although Penn Renewables' witness, Mr. Crist, has posited that large customer-generators should receive a "stable rate," there is no requirement in the AEPS Act, Act 129, or the Commission's Regulations that require EDCs to provide large customer-generators with stable default service rates. UGI highlighted that the Company has offered the GSR-2 rate to customers for over fifteen years. UGI further submitted that this rate complies with the Commission's Regulations and Commission precedent. UGI M.B. at 36.

Next, UGI averred that contrary to Penn Renewables' arguments, customer-generator rates do not decrease when output increases. UGI M.B. at 32. In rebutting the position of Penn Renewables, UGI noted the following testimony of the Company's witness, Mr. Faryniarz:

> Please refer to Exhibit SCF-3-RJ – PENN III-8, which is a table Penn Renewables requested from UGI Electric as a follow up to PENN I-2. This, table with a detailed workup of an hourly settlement example, contains the GSR-2 PTC rate calculation under different scenarios for large customers consuming power and large customer-generators exporting power at varying levels (specifically columns 4, and 6-7 from the left). Notice how in row 1 for each of these columns, three cases of generation are profiled, one for 100 kWh of net export (column 6), another for 200 kWh of net export (column 7), and for 1000 kWh of net export (column 4). Now, please review the GSR-2 PTC rate calculated in each of those scenarios in row 23 of the table. The PTC rate for 100 kWh of exported generation is calculated to be $0.0353/kWh. When output doubles to 200 kWh under the same conditions including hourly LMP, the corresponding PTC rate for exported generation increases to $0.0386/kWh. When output increases to 1000 kWh under the same conditions, the PTC

> rate for exported generation increases to $0.0412/kWh. This exhibit entirely contradicts Mr. Crist's assertion, and I would contend that it is his exhibit that purportedly supports his assertions that represents the "misdirection (that) should be ignored."

UGI M.B. at 32; UGI St. 2-RJ at 7-8 (citing Penn Renewables St. 1-SR at 20).

Additionally, in response to Penn Renewables' argument that the Company does not treat line losses in accordance with the AEPS Act, UGI asserted that because of the nature of the proposed PTC-2 calculation, customer-generators are compensated for line losses. Namely, UGI claimed that default service supply is calculated by aggregating customer metered load (retail load) and adding line losses to support settlement through the PJM wholesale market. As such, UGI continued, default service customers pay for line losses as a component of their total supply package. However, UGI stated that for net metering customers, line losses are included as part of compensation and are not a deduction from compensation, such that net metering customers benefit from the line loss inclusion in the rate calculation. UGI St. 2-R at 28-29; UGI St. 3-RJ at 9-10.

6. Recommended Decision

The ALJs disagreed with Penn Renewables' interpretation of the AEPS Act. The ALJs stated that, although they concluded that Penn Renewables is correct that the AEPS Act is meant to promote alternative energy, Penn Renewables has erroneously interpreted the AEPS Act to require *de facto* subsidization of alternative energy sources. The ALJs stated that regardless of how Penn Renewables describes its solar photovoltaic technology, there has been no showing that the Penn Renewables' alternate generation is entitled to the cross-subsidization assignment to the GSR-1 rate class. The ALJs concluded that Penn Renewables' attempt to impose the burden of demonstrating harm to

other customers onto UGI is a burden that UGI is not required to meet beyond that evidence that UGI provides. R.D. at 29-30.

The ALJs further concluded that Penn Renewables' position, presented through the testimony of a single witness, Mr. Crist, was based on "critically flawed" assumptions resulting from a "fundamental misunderstanding" of UGI's proposal. Therefore, the ALJs found the testimony of Mr. Crist to be unpersuasive. On the other hand, the ALJs found that the responses UGI provided to each of Penn Renewables' arguments, as summarized above, were supported by substantial evidence in the record. According to the ALJs, UGI "repeatedly and effectively contradicted" the testimony of Mr. Crist. R.D. at 30, 31, 34, and 36.

D. Recommended Decision - Overall Recommendation of the ALJs Regarding the Contested Issue

Based on the above, the ALJs found that Penn Renewables failed to prove, by a preponderance of the evidence, that UGI's proposed DSP V, as modified by the Non-Unanimous Settlement, violates the Code, any Commission Regulation, or any statute or precedent applicable to default service plans, including the AEPS Act. Therefore, the ALJs recommended that the Commission adopt UGI's proposed methodology for assigning customers to the GSR-1/GSR-2 rate based upon their SPLI. In turn, the ALJs recommended that the Commission: (1) reject Penn Renewables' proposed alterations to UGI's DSP V; and (2) dismiss Penn Renewables' Complaint filed in this proceeding. R.D. at 42.

E. Exceptions, Replies, and Dispositions

1. Penn Renewables Exception Nos. 1, 2, 4 and 6, Replies, and Disposition

a. Penn Renewables Exception No. 1

In its Exception No. 1, Penn Renewables argues that the ALJs incorrectly assigned the burden of proving that UGI's entire proposal was unjust and unreasonable to Penn Renewables, rather than to UGI. Penn Renewables avers that UGI has the burden of proof regarding the complaint filed against the proposed changes to the default service rate mechanism for GSR-2 and to UGI's proposed changes to the classification methodology that will move customer-generators into GSR-2 and its new mechanism. According to Penn Renewables, this matter is not about a customer complaining about an existing rate or service. Exc. at 5-6 (citing 66 Pa.C.S. § 315(a)). Penn Renewables states that UGI's filing proposes to change the rates for customer-generators, which will impact the rate that GSR-2 customers will pay or be paid. Because this matter is not about an existing rate, Penn Renewables contends that the burden of proof falls squarely on UGI and that the ALJs' conclusion, that Penn Renewables failed to carry its burden of proving the justness and reasonableness of its proposed alternative to the UGI filing, is contrary to the law. In addition, Penn Renewables submits that it introduced ample evidence to demonstrate the unreasonableness and illegality of UGI's proposed change. Exc. at 6-7.

b. Penn Renewables Exception No. 2

In its Exception No. 2, Penn Renewables avers that the ALJs erred by stating that the only litigated issue to be resolved is UGI's proposed methodology for assigning customers to either the GSR-1 or GSR-2 procurement classes, and the Recommended Decision is incomplete because the ALJs failed to address the statutory violations of UGI's entire proposal and whether UGI's proposed default rate for GSR-2

customers complies with the requirement that customer-generators be paid at full retail value for excess generation. Penn Renewables avers that UGI intends to compensate entities it refers to as large customer-generators at a rate other than the PTC of the GSR-1 procurement class, which would make any proposed net metering project non-viable. Penn Renewables contends that UGI's proposal to transfer customer-generators away from the procurement class to which they would otherwise belong under the present tariff (GSR-1), to a re-fashioned procurement class (GSR-2), will provide less compensation. Penn Renewables insists that initiating this change, in order to address alleged concerns that including these customers in GSR-1 would harm other customers after Penn Renewables submitted applications for twelve net metering projects, is not authorized by the Code nor the AEPS Act. Exc. at 7-9 (citing 66 Pa.C.S. § 1304; 73 P.S. § 1648.1, et seq.).

c. Penn Renewables Exception No. 4

In its Exception No. 4, Penn Renewables argues that ALJs failed to consider that UGI's request to change the classification methodologies for GSR-1 and GSR-2 violates the Code and the Commission's Regulations. Penn Renewables contends that UGI proposed to change the classification methodology for its GSR-1 and GSR-2 procurement groups from maximum registered peak load to SPLI and to move the threshold for the classification to 100 kW instead of the current 25 kW. Furthermore, Penn Renewables submits that UGI failed to prove that its proposal is deserving of a waiver of the Commission's Regulations or to address that its proposal is in violation of the Code. Exc. at 12-13.

d. Penn Renewables Exception No. 6

In its Exception No. 6, Penn Renewables claims that the ALJs' recommendation incorrectly accuses Penn Renewables of trying to shift the burden of

proof on economic impact to UGI because Penn Renewables demonstrated that UGI's plan harms Penn Renewables to the benefit of other customers. More specifically, Penn Renewables reiterates the testimony of its witness, Mr. Crist, as well as its arguments from the underlying proceeding. Furthermore, Penn Renewables claims that UGI failed to prove that its proposed rate for GSR-2 will not harm those customers assigned to it. Penn Renewables avers that UGI only focused on trying to eliminate any possibility that default service costs for residential customers would see any impact from net metering, even though residential customers receive benefits from net metering. Exc. at 14-15.

e. Replies

(1) UGI Reply Exceptions

In reply to Penn Renewables' Exception No. 1, UGI states that Penn Renewable's focus on the burden of proof is irrelevant because the Company demonstrated that its proposal to classify default service customers by SPLI is just, reasonable, and in the public interest. UGI avers that both parties bear the burden of proof as to certain issues in this proceeding. UGI submits that, as the Petitioner, it has the burden of proof with respect to its proposals in this proceeding; however, UGI further submits that Penn Renewables bears the burden of proof with respect to its proposal to increase the GSR-2 threshold from 100 kW to 3 MW. UGI R. Exc. at 5.

UGI argues that it met its burden of proof regarding its proposal to classify default service customers by their SPLI by presenting evidence of the harms to residential and small commercial customers of including large customer-generators in the GSR-1 procurement group, and demonstrating that its proposal results in default service rates that are the least cost over time. Reiterating its arguments in the underlying proceeding, UGI contends that the evidence it presented was based on facts and expert witness

testimony, which outweighed the opinions and speculative arguments offered by Penn Renewables. UGI R. Exc. at 6-7. Moreover, UGI reinforces its position that Penn Renewables did not meet its burden of proof regarding its proposal to increase the GSR-2 threshold from 100 kW to 3 MW if UGI's proposal to classify default service customers according to their SPLI is adopted. UGI posits that Penn Renewables is trying an "end run" around its proposal to attempt to allow certain Penn Renewables facilities to receive higher compensation for excess generation under the GSR-1 rate, to the detriment of residential and small commercial GSR-1 customers. UGI R. Exc. at 8-9.

In reply to Penn Renewables' Exception No. 2, UGI states that the ALJs properly addressed the litigated issue in this proceeding. UGI avers that the method for classifying customers between the GSR-1 and GSR- 2 default service rates is the only litigated issue in the proceeding, and that all the other issues raised by Penn Renewables are simply arguments related to whether UGI's proposed methodology is just, reasonable, and lawful. Contrary to Penn Renewables' argument that the Recommended Decision does not address whether UGI's proposed default service rate for GSR-2 customers complies with the statutory requirement that customer-generators be paid at the full retail value for excess generation, UGI contends that the ALJs addressed this argument at pages 28-29 of the R.D., wherein the ALJs disagreed with Penn Renewables' interpretation of the AEPS Act and recommended that the Commission reject the argument that large customer-generators would not receive full retail value under the GSR-2 default service rate. In addition, UGI submits that in making its arguments under its Exception No. 2, Penn Renewables' appears to imply that it is entitled to the GSR-1 PTC rather than the GSR-2 PTC because there are currently no GSR-2 customer-generators on UGI's system. However, UGI avers that there is no statutory or regulatory support for such an argument. Furthermore, UGI avers that, contrary to Penn Renewables' position, the Company's proposal avoids rate discrimination against residential and small commercial customers because, without the adoption of this proposal, these customers will pay higher default service rates that will be caused by and for the benefit of large customer-generators.

Rather, UGI submits that its proposal is not discriminatory because it classifies all customers on the same basis for default service supply purposes because all customers and customer-generators will be classified into GSR-1 or GSR-2 based on their respective SPLI. UGI R. Exc. at 10-11.

In reply to Penn Renewables' Exception No. 4, UGI contends that its proposal does not violate the Code or the Commission's Regulations. UGI avers that Penn Renewables' argument that UGI proposed to move the threshold for GSR-2 classification to 100 kW, instead of the current 25 kW, is incorrect because UGI's classification between the GSR-1 and GSR-2 procurement groups has been 100 kW since the conclusion of UGI's DSP II proceeding in September of 2013. UGI explains that it is not moving the classification threshold from 25 kW to 100 kW; rather, it is expanding the 100 kW threshold to include both supply and demand impacts to ensure that large customer-generators are grouped with other large customers for default supply purposes. Regarding Penn Renewables' argument that the Commission's Regulations require that customers with less than 25 kW of demand receive quarterly default service rates, UGI states the Commission's Regulations provide flexibility for EDCs to classify customers into default service groups, and that, while not necessary, UGI requested a waiver of all necessary regulations to implement its default service plan. UGI R. Exc. at 14-15.

In reply to Penn Renewables' Exception No. 6, UGI submits that residential and small commercial customers will experience significant harm if UGI's proposal is not adopted. UGI avers that Penn Renewables' alleged harms refer to potentially lower rates for excess power generated under the GSR-2 rate. Further, UGI argues that the harms to residential and small commercial GSR-1 customers of adopting Penn Renewables' position far outweigh harms to large customer-generators, and it is unreasonable for residential and small commercial GSR-1 customers to pay higher default service rates so that large utility scale customer-generators will receive higher rates for their excess generation. In addition, UGI reiterates that it has had a GSR-2 default service rate for

large customers for many years, and this GSR-2 rate does not present harms for large default service customers and will not harm large customer-generators. UGI R. Exc. at 16-17.

(2) OCA Reply Exceptions

In reply to Penn Renewables' Exception Nos. 1, 2, 4, and 6, the OCA states that the ALJs' recommendation applies the appropriate legal standards. The OCA submits that Penn Renewables neither cites to statute nor case law to support its assertion that it does not carry the burden of proof as a proponent of a rule or order, beyond its citation to 66 Pa.C.S. § 332(a). Also, the OCA avers that UGI's filing does not propose a change to UGI's proposed GSR threshold, but Penn Renewables proposed a change to UGI's proposal regarding the classification for GSR-1 and GSR-2 customers. Accordingly, the OCA remains of the opinion that, as the proponent of a rule or order, Penn Renewables bears the burden of proof. The OCA submits that Penn Renewables, rather than satisfying its burden of proof, attempts to argue that the ALJs committed an error of law and attempts to shift the burden of proof to UGI. OCA R. Exc. at 1-2.

Furthermore, the OCA asserts that Penn Renewables' attempt to shift the burden of proof is unreasonable, and Penn Renewables' arguments are not supported by substantial evidence. The OCA states that no party argued that Penn Renewables is required to show that the entirety of UGI's DSP V is unjust and unreasonable. The OCA summarizes the "crux of the issue," as follows: "Penn Renewables proposed a change to UGI's customer classifications that was not in UGI's original filing and then asserted that UGI must show that UGI's DSP V does not economically harm large customer-generators." OCA R. Exc. at 2. Moreover, the OCA takes the position that the ALJs properly concluded that UGI is not required to prove that market participants receive optimum economic outcomes, and correctly noted that Penn Renewables' arguments were established by conjecture as opposed to substantial evidence. The OCA

submits that Penn Renewables failed to carry its burden of proving that its proposed classification of GSR-1 and GSR-2 customers will not result in the residential customer class subsidizing the large customer-generator class of customers, and did not provide substantial evidence in support of its arguments. *Id*. at 3.

f. Disposition

Upon review, we disagree with Penn Renewables that the ALJs incorrectly assigned the burden of proof in this proceeding. Both UGI and Penn Renewables bear the burden of proof with respect to certain issues. Specifically, while UGI has the burden of proof regarding its proposals in this proceeding, Penn Renewables bears the burden of proof as the proponent of an order adopting its proposal to change UGI's existing customer classification for GSR customers by increasing the GSR-2 threshold from 100 kW to 3 MW. Section 315(a) of the Code, 66 Pa.C.S. § 315(a), cannot be read to place the burden of proof on the utility with respect to an issue it did not include in its filing, and which it would frequently oppose. 66 Pa.C.S. § 315(a). Rather, the burden of proof must be on the proponent of a rule or order, or the party offering a proposal beyond that sought by the utility in its filing. *See* 66 Pa.C.S. § 332(a); *Pa. PUC v. Metro. Edison Co.*, Docket No. R-00061366, *et al.*, 2007 Pa. PUC LEXIS 5 (Order entered January 11, 2007). We agree with the ALJs that UGI's DSP V filing, as modified by the Non-Unanimous Settlement, does not contain a request by UGI to change the GSR-2 threshold from 100 kW or greater to 3 MW or greater, but rather Penn Renewables offered such a proposal to change UGI's filing. Therefore, Penn Renewables, as the proponent of an order approving a change to the GSR-2, bears the burden of proof for its proposal.

Furthermore, we acknowledge that UGI bears the burden of proof with respect to its proposal to classify default service customers by their SPLI. To that end, we agree that UGI met its burden of proof by presenting substantial evidence of the

harms to residential and small commercial customers of including large customer-generators in the GSR-1 procurement group and demonstrating that its proposal results in default service rates that are least cost over time. *See* UGI R. Exc. at 6; UGI St. No. 2-R at 16-18; UGI St. No. 2-RJ at 10; UGI M.B. at Section VI(C). Moreover, we agree with the ALJs that Penn Renewables did not meet its burden of proof with respect to its proposed alterations to UGI's DSP V to increase the GSR-2 threshold from 100 kW to 3 MW. R.D. at 42. As the ALJs properly concluded, Penn Renewables' recommendation to alter UGI's SPLI criterion is not supported by the law or substantial evidence in the record.

In addition, we agree with the ALJs that there is one litigated issue in this proceeding; that is, the proper method for classifying customers between the GSR-1 and GSR-2 default service rates. R.D. at 26. Penn Renewables incorrectly avers that the several claims and arguments it made regarding the justness, reasonableness, and lawfulness of UGI's proposed methodology for assigning customers to GSR-1 or GSR-2 procurement classes are other "issues." With respect to this litigated issue, the ALJs considered and properly rejected Penn Renewables' argument that large customers would not receive full retail value under the GSR-2 default service rate. R.D. at 29. Penn Renewables failed to provide any statutory or regulatory basis to support its argument that it is entitled to the GSR-1 default service rate rather than the GSR-2 default service rate. In addition, contrary to Penn Renewables' claims, we conclude that UGI's proposal avoids rate discrimination against residential and small commercial customers because, without it, these customers will pay higher default service rates caused by and for the benefit of large customer-generators. *See* UGI R. Exc. at 11. Thus, in our view, rate discrimination does not exist because all customers and customer-generators will be classified on the same basis for default service supply purposes into GSR-1 or GSR-2 based on their respective SPLI.

Moreover, we find that Penn Renewables' argument, that UGI's request to change the classification methodologies for GSR-1 and GSR-2 violates the Code and the Commission's Regulations, to be without merit. On review of the record, Penn Renewables' claim that UGI proposed to move the threshold for classification between the GSR-1 and GSR-2 groups to 100 kW instead of 25 kW is incorrect. The classification between GSR-1 and GSR-2 groups has been 100kW since UGI's DSP II proceeding which concluded in September 2013. UGI is not proposing to move the classification threshold from 25 kW to 100 kW, but it is, rather, expanding the 100 kW threshold to include supply and demand impacts to ensure that large customer-generators are grouped with other large customers for default supply purposes. *See* UGI St. 3 at 3; *See also Petition of UGI Utilities, Inc. – Electric Division for Approval of a Default Service Plan and Retail Market Enhancement Programs for the Period of June 1, 2014 Through May 31, 2017, and Potential Associated Affiliated Interest Transactions*, Docket Nos. P-2013-2357013 and G-2013-2357003, (Final Order entered September 12, 2013, adopting Recommended Decision issued August 27, 2013).

Finally, we disagree with Penn Renewables' claim that UGI's plan harms Penn Renewables to the benefit of other customers, and we agree with the ALJs that UGI is not required to prove that market participants receive optimum economic outcomes. R.D. at 31. As the default service supplier, UGI is required, by statute, to ensure that its default service rates are the least cost over time, non-discriminatory, and designed so that one group of customers is not subsidizing another group. 66 Pa.C.S. §§ 1304, 2807(e). The record indicates that UGI's GSR-1 group of residential and small commercial customers has a small level of load for which it has been historically difficult to obtain a reasonable number of competitive bidders. For example, UGI's witness, Mr. Faryniarz, provided the following testimony on this point:

> The Company's recent auctions for 24-month FPFR supply also resulted in a bare minimum number of suppliers – 3 in the first solicitation of DSP IV and 1 in the second. Although

> I have explained that this can be attributed to a number of different factors, the Company cannot ignore the risk of bidding for a product that may result in low supplier participation. Furthermore, in reviewing the suppliers that have participated in FPFR and block product solicitations in the past 6 solicitations 3 suppliers participated in block product solicitations only. Thus, while I cannot affirmatively conclude that suppliers who bid for block products only historically will simply choose not to participate if block is not available in DSP V, it could result in at least some choosing to do so and, consequently, decrease supplier competition.

UGI Electric St. 2-R at 12-13; *See also* UGI St. 2 at 9-10; UGI Exh. JRT-2, Attachment A at 15.

As such, we agree that increased bid premiums and higher GSR-1 costs resulting from further reducing load and tranche size, as Penn Renewables proposes, would unreasonably result in residential and small commercial GSR-1 customers paying higher default service rates while large utility scale customer-generators receive higher value for their excess generation. We find this to be especially true given that the record is devoid of any evidence that UGI's GSR-2 rate poses a harm to either large default service customers or to large customer-generators.

For these reasons, we shall deny Penn Renewables' Exception Nos. 1, 2, 4, and 6.

2. Penn Renewables Exception No. 3, Replies, and Disposition

a. Penn Renewables Exception No. 3

In its Exception No. 3, Penn Renewables submits that the ALJs erred in finding that the compensation of customer-generators at full retail value for excess

generation constitutes a subsidy. Penn Renewables restates its assertion that the AEPS Act requires that customer-generators be compensated at full retail value for excess generation on an annual basis, and that Penn Renewables is entitled to receive full retail value for its excess generation. Penn Renewables avers that the ALJs' statement that there was no showing that Penn Renewables' alternate generation is entitled to the cross-subsidization assignment to the GSR-1 rate class is incorrect because, under UGI's tariff, Penn Renewables is entitled to participate in the GSR-1 procurement class, and UGI's proposal in this case to remove Penn Renewables from that group is improper. Penn Renewables adds that its facilities meet the definition of "small business" customer under the Commission's Regulations at 52 Pa. Code § 54.2, arguing that the maximum registered peak load of these facilities is less than 25 kW. As such, Penn Renewables insists that it is entitled to receive a quarterly default service rate under the Code and the Commission's Regulations. Exc. at 2, 10.

Penn Renewables contends that the AEPS Act does not authorize a certain full retail value for some customer-generators and a different one for others, and that creating two different measures of full retail value for the UGI service territory is beyond the authorization of the AEPS Act. Further, Penn Renewables submits that there is no evidence of harm or the alleged subsidy, and that there is no basis for the ALJs' conclusion that compensating customer-generators at full retail value is a subsidy. In addition, Penn Renewables argues that the ALJs' recommendation is unsupported because there is no evidence in the record to suggest that UGI considered other alternative means of addressing its concerns. Finally, Penn Renewables avers that other unrecoverable subsidies will exist under UGI's proposed classification and GSR-2 rate mechanism that will flow from customer-generators to GSR-1 customers, including reduced transmission expenses and increased reliability through upgrades to the distribution system paid for by the solar developer, which were not discussed in the Recommended Decision. Exc. at 10-12.

b. Replies

(1) UGI Reply Exceptions

In reply, UGI contends that the evidence is clear that large customer-generators will receive full retail value for excess generation under the Company's proposal. UGI avers that Penn Renewables' position on this issue has changed throughout this proceeding regarding how it discussed the GSR-2 rate: first, as a wholesale rate; next, as a retail rate for certain customers; and finally, as a proxy wholesale rate. UGI reinforces its assertion that the GSR-2 rate has always been a retail rate, and that if the Company's position is adopted, large customer-generators will receive full retail value for their excess generation under the GSR-2 retail default service rate. Moreover, UGI submits that the AEPS Act does not define "full retail value," and that Penn Renewables is attempting to read language into the AEPS Act that does not exist. To the contrary, UGI argues that the Commission has the authority to determine what constitutes "full retail value," which the Commission has historically done by authorizing EDCs to develop different retail default service rates for different customers, which are retail rates that constitute the retail value for the customers classified under each specific rate. UGI R. Exc. at 11-13.

In addition, UGI disagrees with Penn Renewables' argument that its facilities are small business customers entitled to quarterly default service rates under the Code. Because the AEPS Act does not define small business customers or provide any kW classification for such customers, UGI argues that the Commission has the power to determine whether large customer-generators' facilities are small business customers, which it has determined that they are not. UGI is of the opinion that Penn Renewables' facilities are clearly large customer-generators, not small customer-generators; therefore, they are not small business customers. UGI submits that Penn Renewables' facilities are also classified as large customer-generators by the Federal Energy Information

Administration, the Environmental Protection Agency, and the Solar Energy Industries Association. Regarding Penn Renewables' argument that UGI did not consider other means to address the concerns regarding large customer-generators negatively impacting the GSR-1 procurements, UGI states that it was not required to do so, and it is not aware of any alternative that would allow large customer-generators to be included in the GSR-1 group without harming residential and small commercial GSR-1 customers. UGI R. Exc. at 13-14.

(2) OCA Reply Exceptions

The OCA, in reply to Penn Renewables' Exception No. 3, submits that the ALJs properly determined that UGI's DSP V does not violate the AEPS Act. The OCA explains that the AEPS Act does not restrict UGI from utilizing the SPLI methodology when classifying GSR customers, and it simply requires that net metered customers receive full retail value for excess generation. The OCA avers that Penn Renewables did not cite to any statutory language to support the position that it is entitled to a cross-subsidization assignment to the GSR-1 rate class. Furthermore, the OCA argues that Penn Renewables' requested proposals would result in the unreasonable subsidization of customer-generators by residential customers, in violation of the Code; whereas no unreasonable subsidization of rates would result under UGI's proposed GSR-2 rate. With respect to Penn Renewables' argument that there is no evidence to suggest that UGI considered other means of addressing Penn Renewables' concerns, the OCA echoes the position of UGI that the Company was not required to do so. The OCA avers that UGI appropriately proposed rate classifications that would fully compensate Penn Renewables, and all net metered customers, at their full retail rate within their respective rate classes. OCA R. Exc. at 3-5.

c. Disposition

Upon review, we agree with the ALJs that UGI's DSP V does not violate the AEPS Act. While the AEPS Act requires that net metered customers receive full retail value for excess generation, full retail value is not defined therein. 73 P.S. § 1648.4. Rather, the AEPS Act delegates technical and net metering rules to the Commission. *Id*. In addition, the Code requires that all default service rates must be designed so that the costs of providing service to each customer class are not subsidized by any other class. 66 Pa.C.S. § 2807(e)(7). The AEPS Act does not restrict UGI's SPLI methodology when classifying GSR customers.

We agree with the OCA that, if Penn Renewables' proposals are adopted, residential customers would unreasonably subsidize customer-generators, which is inconsistent with the Code. Classifying all customers as GSR-1 simply ignores the differences between GSR-1 and GSR-2. In addition, including customers with large on-site generators attached to their loads in the same default service procurement and rate group as residential customers would also result in unreasonable subsidization by the residential customers. *See* OCA M.B. at 9-10; OCA R.B. at 8-12. Additionally, as UGI's witness, Mr. Faryniarz, observed, "adding additional supply risk from large customer generators to the GSR-1 customer pool only increases supplier risk, likely impacting supplier participation and increases bid price. This subsequently translates to higher costs for customers and an even higher subsidy paid to these same large customer generators." *See* UGI Exh. SCF-4-RJ.

On the other hand, we agree that no unreasonable subsidization of rates would exist under UGI's proposal. UGI's DSP V separates portfolio risk management and cost impacts to default service procurement activities and properly addresses cross-subsidization concerns. UGI St. 2 at 29-30; *See also* OCA M.B. at 7; OCA R.B. at 9. It also provides that large customer-generators will receive the full retail GSR-2

value for their excess generation. UGI St. 2-RJ at 12. Therefore, we will deny Penn Renewables' Exception No. 3.

3. Penn Renewables Exception No. 5, Replies, and Disposition

a. Penn Renewables Exception No. 5

In its Exception No. 5, Penn Renewables argues that the ALJs erred by recommending that the Commission reject its counterproposal, made in surrebuttal testimony, that the classification threshold for GSR-1 should be expanded to include customer-generators with a SPLI of up to 3,000 kW, in contrast to UGI's proposal to raise the limit for customers and customer-generators up to 100 kW in SPLI. Penn Renewables contends that the ALJs incorrectly concluded that there was no factual or legal support for its proposal. Penn Renewables reiterates its assertion that there is no support in the record or the law for UGI's proposed change from 25 kW to 100 kW, or to switch to SPLI, and asserts that both of these changes require waivers, which were made too late and without evidentiary support. Exc. at 13-14.

b. Replies

(1) UGI Reply Exceptions

In reply to Penn Renewables' Exception No. 5, UGI avers that the ALJs properly recommended that Penn Renewables' counterproposal be denied because it would create all the discriminatory impacts that UGI is trying to avoid for residential and small commercial GSR-1 customers. UGI avers that adopting Penn Renewables' "counterproposal" would have the same effect as denying UGI's proposal. Furthermore, UGI clarifies that, contrary to Penn Renewables' assertion, UGI is not proposing to

change the GSR-1 threshold from 25 kW to 100 kW because the threshold is currently 100 kW and is not changing. UGI R. Exc. at 15-16.

(2) OCA Reply Exceptions

The OCA, in reply to Penn Renewables' Exception No. 5, argues that Penn Renewables failed to advocate for its counterproposal in its Main Briefs. The OCA submits that UGI's filing neither requested to increase UGI's GSR threshold from 100 kW to 3 MW, nor to eliminate the GSR-1 and GSR-2 classifications by classifying all customer-generators as GSR-1 customers; and that Penn Renewables' counterproposal would result in an unreasonable preference and advantage for large customer-generators at the expense of small customer-generators. Furthermore, the OCA avers that Penn Renewables' counterproposal to increase the GSR-2 threshold from UGI's current GSR-2 threshold of 100 kW to Penn Renewables' proposed threshold of 3 MW results in unjust, unreasonable, and discriminatory rates. The OCA contends that Penn Renewables, in its Exceptions, is now attempting to advocate for a different proposal after the ALJs recommended that Penn Renewables' prior position be denied. OCA R. Exc. at 5-7.

c. Disposition

Upon review, we agree with the OCA that Penn Renewables did not advocate in its Main Brief for the counterproposal that its witness, Mr. Crist, offered in his surrebuttal testimony to expand the classification for GSR-1 to include customer-generators with a SPLI of up to 3 MW, instead of UGI's proposed threshold of 100 kW. Rather, Penn Renewables only briefly mentions this proposal in its Reply Briefs in the context of its response to the OCA's argument that Penn Renewables bears the burden of proof with regard to its opposition to UGI's proposed classification. *See* Penn Renewables R.B. at 21. Also, contrary to Penn Renewables' claims that UGI is proposing to change the GSR-1 threshold from 25 kW to 100 kW, UGI's DSP V filing did not

contain a request to increase the GSR-1 threshold to 100 kW because the threshold is currently 100 kW.

We find no error in the ALJs' recommendation that Penn Renewables' counter proposal should be rejected. Further, we agree with UGI and the OCA that Penn Renewables' proposal should be denied because it would create discriminatory impacts and result in an unreasonable preference and advantage for large customer-generators, at the expense of small customer-generators, which UGI is trying to avoid. Moreover, we note that Penn Renewables' proposal to increase the GSR-2 threshold to 3 MW would unreasonably result in a 2,900% increase compared to UGI's 100 kW threshold included in its DSP V. *See* OCA M.B. at 10-11, 12-15. Therefore, we agree with the ALJs that neither Penn Renewables' proposal to eliminate the GSR threshold, nor its modified proposal to increase UGI's GSR threshold to 3 MW, should be adopted. Accordingly, we shall deny Penn Renewables' Exception No. 5.

4. Penn Renewables Exception No. 7, Replies, and Disposition

a. Penn Renewables Exception No. 7

In its Exception No. 7, Penn Renewables argues that the ALJs incorrectly concluded that Penn Renewables has admitted that GSR-2, as proposed, is a default service rate. Penn Renewables avers that UGI uses the GSR-1 rate as the default service rate for all but approximately 100 of its over-60,000 customers. Penn Renewables remains of the opinion that although UGI may intend its GSR-2 rate to be a default service rate, it must be full retail value to be used as a compensation mechanism for a customer-generator, which it is not. Penn Renewables submits that the ALJs' recommended acceptance of a rate mechanism that does not reflect retail sales, but rather reflects wholesale prices, cannot be a retail value. In addition, Penn Renewables contends that it does not matter what the default service rate is called because it does not

comply with the mandate set forth in the AEPS Act that customer-generators be paid for excess generation at full retail value on an annual basis. Therefore, Penn Renewables posits that the ALJs' conclusion that a wholesale rate will embody full retail value is an error. Exc. at 15-16.

b. Replies

(1) UGI Reply Exceptions

In reply, UGI restates its assertion that Penn Renewables admitted that the GSR-2 rate is a default service rate. UGI avers that Penn Renewables attempts to twist facts here into something that they are not. UGI further restates its explanation that all retail rates consist of wholesale purchases and associated components, that the GSR-2 default service rate is a retail rate, and that large customer-generators will receive full retail value under the GSR-2 retail rate for their excess generation. UGI R. Exc. at 17-18.

(2) OCA Reply Exceptions

The OCA also avers that Penn Renewables admitted that the GSR-2 is a default service rate. The OCA submits that the ALJs correctly stated that Penn Renewables attempted to show that UGI's proposals related to GSR-2 are unjust and unreasonable; however, those attempts contained assumptions that were incorrect and inconsistent. To the contrary, the OCA submits that under UGI's proposal, the GSR-2 rate is a retail rate offered to all customers with a peak demand or supply impact greater than 100 kW. OCA R. Exc. at 7-8.

c. Disposition

Upon review, we agree with the ALJs that Penn Renewables' witness, Mr. Crist, recognized the GSR-2 rate as a default service rate. Specifically, as noted in Section V.C, *supra,* Mr. Crist acknowledged this at the hearing in this proceeding. More specifically, Mr. Crist testified, as follows:

> Q. Okay.
> I understand your position on that, but I just want to just clarify, do you - **is it a default service rate that's been approved by the PUC?**
>
> A. **For, yes. For larger customers.**
>
> Q. Okay.
>
> A. Greater than 100 kilowatt customers of demand.
>
> Q. Okay.
> **Do you agree that UGI is providing retail service to GSR-2 default service customers?**
>
> A. **UGI is providing, yes. They're providing retail service. Yes.**

Tr. at 103 (emphasis added). In addition, Mr. Crist testified:

> Q. Yeah, but if I just go back here and it seems like in your testimony throughout, you suggest that the GSR-2 rate can't be retail because it's based on spot market.
> Is that correct?
>
> A. Can't be retail and can't - doesn't meet the criteria to apply to the small customers because it's a spot market rate. **It very**

well might be a retail rate that applies to 100kw and greater customers.

Tr. at 110 (emphasis added). Therefore, we will deny Penn Renewables' Exception No. 7.

Moreover, although Penn Renewables avers that it does not matter what the default service rate is called because it does not comply with the AEPS Act's mandate that customer-generators be paid annually for excess generation at full retail value, we agree with the ALJs that the testimony of Penn Renewables' witness, Mr. Crist, was contradictory, and included incorrect and inconsistent assumptions. R.D. at 31-37. Contrary to Penn Renewables' position, we agree with the ALJs that the GSR-2 rate, as proposed by UGI, 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.

5. Penn Renewables Exception No. 8, Replies, and Disposition

a. Penn Renewables Exception No. 8

In its Exception No. 8, Penn Renewables argues that ALJs erred by concluding that UGI's proposed GSR-2 classification mechanism does not violate the Code or the Commission's Regulations. Penn Renewables restates its assertion that the law requires that small business customers with demand of less than 25 kW are to be provided with a rate that changes no more frequently than quarterly. Penn Renewables avers that while Penn Renewables may be a customer-generator, it is also a customer and is, therefore, entitled to what the law provides. Penn Renewables contends that UGI should not be able to avoid the law or the Commission's Regulations by stripping away the 25 kW threshold that kept GSR-2 in compliance and replace it with a new threshold and a new mechanism, SPLI, to replace maximum registered peak load. Exc. at 17.

b. Replies

(1) UGI Reply Exceptions

In reply, UGI argues that its proposal complies with the Code and the Commission's Regulations. UGI refers to its arguments in its Reply to Penn Renewables Exception No. 4, *supra,* and in its Briefs, against Penn Renewables' arguments that its facilities are small business customers with less than 25 kW of demand that are entitled to quarterly default service rates. Also, UGI states that Penn Renewables' assertion that GSR-2 had a threshold of 25 kW of load until this case is incorrect because the GSR-2 threshold has been at 100 kW since the conclusion of UGI's DSP II proceeding. Finally, UGI asserts that it is simply attempting to develop just, reasonable, and non-discriminatory default service rates for all customers that comply with the Company's least cost obligations, and that its proposal in this proceeding to classify default service customers according to their SPLI does that. UGI R. Exc. at 18-19.

(2) OCA Reply Exceptions

In reply to Penn Renewables' Exception No. 8, the OCA contends that the ALJs' recommendation complies with the Code and the Commission's Regulations. The OCA argues that UGI is not required to provide an hourly changing PTC on its bill under the Commission's Regulations. Further, the OCA notes that UGI has been offering hourly default service rates for over fifteen years and the PTC for GSR-2 customers has never been on UGI's bill. The OCA avers that Penn Renewables' argument that the Code requires that the default service rate charged to small businesses cannot change more frequently than quarterly confuses the issues in this proceeding because Penn Renewables' concern is not a flaw of the compensation mechanism design for exports by customer-generators, but it, rather, reflects the fundamental principles and rules of PJM's LMP construct in which UGI operates. Moreover, the OCA argues that Penn

Renewables' concerns with the GSR-2 customer-generator compensation mechanism has no relationship with the methodology by which customers are classified into the GSR-1 and GSR-2 procurement groups, and assigning large supply peak load impact customer-generators to the GSR-1 procurement group because Penn Renewables perceives GSR-1 rates to be higher than GSR-2 rates on average, or because GSR-1 customers are offered fixed rates but GSR-2 customers are not, is not a reasonable or proper remedy. OCA R. Exc. at 8-10.

c. Disposition

Upon review, we agree with the ALJs that UGI's proposed GSR-2 classification does not violate the Code or the Commission's Regulations by not showing the hourly changing PTC for GSR-2 on its bill. UGI is not required to provide an hourly changing PTC on its bill under the Commission's Regulations. Furthermore, the record indicates that EDCs in Pennsylvania have been offering default service for many years, and the Commission has not required EDCs to include the PTC on the bill for hourly priced default service. *See* UGI M.B. at 36; OCA R.B. at 5-6. In addition, from a practical standpoint, UGI would not be able to inform a customer as to a specific PTC until the end of the month because the PTC is not based solely on the hourly rate. *See* Tr. at 80. For these reasons, we will deny Penn Renewables' Exception No. 8.

VI. Affiliated Interest Transactions

As noted, *supra*, in addition to requesting that the Commission approve its DSP V, UGI requested that the Commission approve potential affiliated interest transactions associated with the Company's DSP V pursuant to Section 2102 of the Code, 66 Pa.C.S § 2102. UGI DSP V at 2.

The ALJs recommended that the Commission approve UGI's potential affiliated interest transactions associated with the Company's DSP V. R.D. at 2.

We note that no party objected to the ALJs' recommendation on this issue. Finding the ALJs' recommendation to be reasonable, we shall adopt the ALJ's recommendation without further comment.

VII. Conclusion

For the reasons set forth above, we shall approve the Joint Petition for Non-Unanimous Settlement, consistent with this Opinion and Order. Additionally, we shall: (1) deny the Exceptions of Penn Renewables; (2) adopt the Recommended Decision of ALJs Dennis J. Buckley and Alphonso Arnold III, without modification; and (3) grant the Joint Petition and approve the Non-Unanimous Settlement, without modification, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Penn Renewables, LLC, filed on December 13, 2024, to the Recommended Decision of Administrative Law Judges Dennis J. Buckley and Alphonso Arnold III, issued on December 3, 2024, are denied, consistent with this Opinion and Order.

2. That the Recommended Decision of Administrative Law Judges Dennis J. Buckley and Alphonso Arnold III, issued on December 3, 2024, is adopted, consistent with this Opinion and Order.

3. That the Joint Petition for Approval of Non-Unanimous Settlement, including affiliated interest transactions, filed on October 22, 2024, at Docket Nos.

P-2024-3049343 and G-2024-3049351, is approved, consistent with this Opinion and Order.

4. That UGI Utilities, Inc. – Electric Division's proposed Default Service Program V, for the period of June 1, 2025 through May 31, 2029, be approved, as modified by the Joint Petition for Approval of Non-Unanimous Settlement, consistent with this Opinion and Order; and the Parties be directed to comply with the terms of the Joint Petition for Approval of Non-Unanimous Settlement, as though each term and condition stated therein had been the subject of an individual ordering paragraph.

5. That UGI Utilities, Inc. – Electric Division be permitted to file a tariff or tariff supplement to implement the rates, terms, and conditions of service contained in the Joint Petition for Non-Unanimous Settlement, to become effective on one day's notice after entry of this Opinion and Order.

6. That UGI Utilities, Inc. – Electric Division's request for a waiver of the Commission's regulation at 52 Pa. Code § 54.187 be granted to the extent that is necessary to permit the Company to acquire and manage default suppliers for the GSR-1 and GSR-2 customer groups, consistent with this Opinion and Order.

7. That UGI Utilities, Inc. – Electric Division's request for approval of certain potential affiliated interest agreements and transactions with a UGI affiliate, in the event such an affiliate submits a winning bid under the Request for Proposal process set forth in UGI's DSP V, pursuant to 66 Pa.C.S.§ 2102, is granted, consistent with this Opinion and Order.

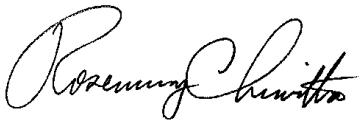
8. That a copy of this Opinion and Order be served on the Director of the Commission's Office of Competitive Market Oversight.

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

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

11. That upon acceptance and approval by the Commission of the tariff and tariff supplements filed by UGI Utilities, Inc. – Electric, as set forth in Ordering Paragraph No. 5 above, consistent with this Opinion and Order, this proceeding at Docket Nos. P-2024-3049343 and G-2024-3049351 shall be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: February 20, 2025

ORDER ENTERED: February 20, 2025