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February 18, 2021

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Policy Proceeding – Utilization of Storage Resources as Electric Distribution Assets
Docket No. M-2020-3022877

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Retail Energy Supply Association's ("RESA")
Comments with regard to the above-referenced matter.

Sincerely,



Deanne M. O'Dell

DMO/lww
Enclosure

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I. INTRODUCTION

The Retail Energy Supply Association (“RESA”),¹ submits these comments in response to the Commission’s December 3, 2020 Secretarial Letter seeking information to guide any potential future regulatory policies related to utilization of electric storage within electric utility distribution resource planning.² The Retail Energy Supply Association (“RESA”) is a trade association of energy companies including Pennsylvania licensed electric generation suppliers (“EGSs”), many of whom either offer or have relationships with third party providers that develop and offer electric storage options.

While RESA members support the general policy objective of utilizing electric storage to enhance reliability and resiliency within the Commonwealth’s electric distribution systems, RESA members strongly oppose utility ownership of electric storage resources for the following reasons (as discussed further below).

- Utility ownership of energy storage violates the Electricity Generation Customer Choice and Competition Act (“Competition Act”) because it constitutes a return to regulation of generation, which the Commission no longer has the statutory authority to do.
- EDC’s use of a storage resource in PJM’s Frequency Regulation Market prevents FERC classification as a distribution asset and negatively impacts the asset’s useful life which may lead to stranded costs as the asset depreciates faster than the assumed useful life.

¹ The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

² *Questions for Comment in the Policy Proceeding – Utilization of Storage Resources as Electric Distribution Assets*, Docket No. M-2020-3022877, 50 Pa.B. 7259 (December 19, 2020). The Commission subsequently granted a request to extend the comment period to February 18, 2021. *Re: Motion of the Office of Consumer Advocate for an Extension of Time for Comments*, Docket No. M-2020-3022877, Secretarial Letter dated December 30, 2020.

- Utility ownership of energy storage leads to inefficient costs and risk allocation, which stifles innovation and straddles ratepayers with the unnecessary costs of outdated and less than optimal infrastructure.
- Utility ownership of electric storage is unnecessary. Such solutions are already available in the competitive market. Allowing utilities to make similar offers, funded by captive ratepayers, will have anti-competitive effect on third parties seeking to deploy energy storage.

The net result of moving forward with utility ownership of energy storage will be to deny ratepayers of the most cost efficient and innovative solutions available in the market. Energy storage and other distributed energy solutions are best delivered by third party entities who can offer market-based solutions rather than through a regulated utility. Consumers are best served if the EDCs remain focused on their core functions as a regulated utility – to provide a robust distribution system – and share information as appropriate with third party developers who can provide meaningful energy storage solutions where necessary.

II. RESA COMMENTS

A. **Utility Ownership of Electric Storage Violates the Competition Act Because it is a Return to Regulation of Generation**

According to the Competition Act, codified in the Public Utility Code, “the generation of electricity shall no longer be regulated” and “all customers of [EDCs] in this Commonwealth shall have the opportunity to purchase electricity from their choice of [EGSs].”³ To accomplish this, electricity is broken down into three core components: (1) generation; (2) transmission; and, (3) distribution.⁴

Historically, the monopoly EDC provided all three components. With implementation of the Competition Act, the EDC continues to provide distribution and transmission to all

³ 66 Pa. C.S. § 2806(a) (emphasis added).

⁴ *ARIPPA v. Pa. Pub. Util. Comm’n*, 792 A.2d 636, 642 (Pa. Cmwlth. 2002).

consumers in its service territory on a monopoly basis. Generation is not a regulated service to be provided by the EDCs; rather, the Commission is required to establish a properly functioning competitive retail electricity market whereby EGSs can offer a variety of competitive generation products and service to consumers.⁵ Thus, electric generation, distribution and transmission service are unbundled so that costs are recovered separately on a stand-alone basis.⁶ The purpose of unbundling and subjecting generation to competition is the recognition that “competitive market forces are more effective than economic regulation in controlling the cost of generating electricity.”⁷ As time has passed, the wisdom of relying on competitive market forces has been validated with the all-sector annual weighted average price in 35 monopoly states 19.5% higher in 2019 than in 2008 while the all-sector annual weighted average price for the competitive retail markets was 6.9% lower in 2019 than in 2008.⁸ Moreover, because of the current market structure, EDCs are no longer able to receive cost recovery of large centralized generation which can take hundreds of millions, if not billions, of dollars to build and may become obsolete before they are ever even deployed.

Fostering a competitive marketplace, which encourages EGSs to offer generation, has been no small task as the historical monopoly provider of generation (the EDC) has enormous competitive advantages that no EGS can match. These include the EDC’s brand recognition with consumers, its exclusive access to necessary customer information, and its well-developed customer and billing systems paid by all ratepayers over the years. In addition, because EDCs

⁵ 66 Pa.C.S. §2811.

⁶ 66 Pa. C.S. § 2806(3).

⁷ 66 Pa.C.S. §2803(5).

⁸ See Philip O’Connor, Ph.D. and Muhammad Asad Khan, *The Great Divergence in Competitive and Monopoly Price Trends* Figure 2 (as updated June 2020). This paper is available at <https://www.resausa.org/phil-oconnor-thought-leadership>.

continue to be the exclusive providers of default service⁹ and consumers are encouraged to compare the default service rate (aka the Price-to-Compare) with the generation supply rate of the EGSs, the competitive retail electricity market – at least for mass market customers – is heavily tilted in favor of the EDCs. As such, care must be taken to not adopt policies which will further tilt the scales in favor of the EDCs and deprive consumers of the benefit of the competitive market as envisioned by the Competition Act. Given the divestiture of EDC’s generation assets in furtherance of the Competition Act, it would be counter-intuitive to now permit EDCs to receive cost recovery for energy storage resources and it would further entrench in the minds of consumers the misperception that the utility’s offerings are superior.

Although presented in terms of enhancing reliability and resiliency within the Commonwealth’s electric distribution system, the costs and uses of energy storage are generation related. The purpose of energy storage is to retain energy resources that can be called upon as needed to serve the generation needs of connected customers. Moreover, as discussed further in the next section, the Federal Energy Regulatory Commission (“FERC”) has already determined that the expected use by utilities of battery resources prevent the energy storage resources from being classified as distribution.

Energy storage development is not a natural extension of the traditional role of utilities to justify a utility using its distribution monopoly status to recover costs through rate base. Nor does the utility have any type of “monopoly” on energy storage development. There are many developers, that can, and do, develop such projects. Embarking upon a path whereby the EDCs could now own generation in the form of energy storage while subjecting that ownership to rate

⁹ 66 Pa.C.S. §§ 2803; 2807(e)(3.1).

regulation as part of a utility rate base results in the Commission regulating generation. Because regulation of generation is explicitly prohibited by the Competition Act, the Commission lacks statutory authority to permit utilities to own energy storage resources.

B. EDC’s Use of Storage Resource in PJM’s Frequency Regulation Market Prevents FERC Classification as Distribution Asset and Negatively Impacts Asset’s Useful Life Which May Lead To Stranded Costs

The recent base rate case filed by UGI Utilities, Inc. – Electric Division (“UGI”) is a good way to illustrate the problems with an EDC deploying electric storage as a distribution asset.¹⁰ UGI proposes to install and interconnect a utility-owned, small-scale, energy storage battery (1.25 MWh) into the primary distribution system. The estimated project cost is approximately \$1.5 million and will support the expected peak load of 68 customers for up to 4 hours. UGI also proposes to participate in PJM’s Frequency Regulation (“FR”) Market while battery is in grid-connected mode (during normal operating conditions).¹¹ UGI’s proposed use of electric storage resources to participate in PJM’s FR Market prohibits the asset from being classified as distribution according to FERC uniform systems of accounts¹² and negatively impacts the battery’s useful life likely causing it to depreciate at a faster rate that – if not accurately stated – can lead to stranded distribution costs when the asset prematurely reaches the end of its useful life.

The PJM FR market is a competitive wholesale service that is designed to correct for short-term changes in electricity use by matching generation and demand while providing

¹⁰ See Docket No. R-2021-3023618 filed February 8, 2021.

¹¹ See UGI St No. 3, Testimony of Eric Sorber at 24-28 and UGI St. No. 6, Testimony of John Taylor at 45-46 at Docket No. R-2021-3023618.

¹² *Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies*, 144 FERC ¶ 61,056 at para. 136 (July 18, 2013) (“*FERC Order 784*”).

market-based compensation to resources that can adjust output or consumption in response to an automated signal.¹³ At its core, the FR Market is a competitive service used to match up generation and demand to help the grid maintain its desired electrical frequency and operate normally. Proposed participation by a utility in this competitive market by contributing a generation resource is unreasonable and inappropriate.

Further, PJM implemented a redesigned Regulation D signal for use in the FR Market on January 9, 2017 which is used to dispatch faster, dynamic resources, such as battery storage.¹⁴ The 2017 Regulation D signal change has resulted in complaints from FR market participants that the new signal has directed resources to operate outside their design parameters resulting in performance and efficiency issues, reduced compensation, and adverse impacts on their energy storage equipment.¹⁵ Because frequency regulation requires frequent cycling and the more a battery is cycled – whether through participation in the FR Market or otherwise – the battery resource will more rapidly reach the end of its useful life.¹⁶

Putting this into the context of this docket, participation in PJM’s FR Market both prohibits the resource from being designated as a distribution asset pursuant to FERC rules and threatens to more quickly deplete the useful life of the resource. By using a storage asset to defer a distribution substation investment while also proposing to use the asset to offer frequency regulation service, there is a high likelihood that the asset will depreciate at a faster rate. As the

¹³ *Frequency Regulation Compensation in the Organized Wholesale Power Markets*, 137 FERC ¶ 61,064 at Para 4, n.5 (October 20, 2011) (“*FERC Order 755*”).

¹⁴ FERC Order on Contested Settlement at Para. 3, 170 FERC ¶ 61,258 (Mar. 26, 2020).

¹⁵ *Energy Storage Assoc. v. PJM Interconnection, LLC*. Docket No. EL 17-64-000 et al, at 15-16 (Apr. 13, 2017).

¹⁶ *Energy Storage Assoc. v. PJM Interconnection, LLC*. Docket No. EL 17-64-000 et al, Reply Comments of the AES Corporation and Duke Energy Corporation In Support of Settlement at 5-6 (May 23, 2019).

life span of the battery decreases, the utility will need to recover additional depreciation expenses over a shorter period (increasing the rate). The reduced life span results in less total frequency regulation revenue to offset the cost of the battery. As such, the depreciation rate assumed in the distribution ratemaking calculation will be understated and lead to stranded distribution costs when the asset prematurely reaches the end of its useful life. The combined result – increased cost and decreased revenue to offset costs – may actually tilt the cost benefit analysis in favor of the substation.

Thus, as illustrated by UGI’s proposal, a utility’s ownership of energy storage assets and inclusion in the distribution rates raises significant issues regarding its participation in the FR market and the impacts of such participation both in the actual classification of the asset and its useful life. While, at a minimum, a strict rule against permitting any utility to participate in the FR market is advisable, for the reasons discussed further below the more optimal result for Pennsylvania’s consumers is to encourage third party development of energy storage and other distributed energy solutions.

C. Ratepayer Funded Electric Storage Leads To Inefficient Costs and Risk Allocation

Ratepayer funded electric storage leads to inefficient costs and risk allocation resulting in investment decisions that cost ratepayers more than they should. EDCs will seek full cost recovery of the energy storage resource, plus a rate of return on the capital deployed for the project. Conversely, private developers of energy storage resources must risk their own capital without authorization to seek cost recovery or a return from ratepayers. The investment decision for an energy storage developer that does not have a guaranteed way to receive cost recovery is much different from for a utility. Specifically, for private energy storage development, the decision to invest in energy storage is based on the desires of the customer who wishes to receive

the benefits and the economics to the private developer of providing that option. Importantly, the private developer cannot depend on a subsidy from all ratepayers to fund its research and development and to ensure a return on investment. Further, only those customers wishing to receive the benefits are at risk for bearing the costs of over-runs, on-going operating and maintenance costs and performance issues.

On the other hand, if a utility is guaranteed full cost recovery from ratepayers, the utility will be much more likely to build (or purchase) the energy storage resource, even if the economics do not make sense. This is because the utility is assured of receiving full cost recovery, including a return of, and the opportunity to earn a return on investment, from ratepayers. In addition, by spreading the costs of the resource to all customers, the utility project puts all customers at risk for bearing the costs over-runs, on-going operating and maintenance costs, and performance – even for customers who are not direct beneficiaries of the energy storage resource.

Such result contradicts one of the core reasons for removing generation from rate regulation, i.e., that competitive markets and consumers acting on their own behalf can do a better job of selecting cost efficient resources than through traditional rate base regulation of monopoly providers. Simply stated, private companies taking on the risk of their own capital are incentivized to seek out innovative solutions that can increase customer value through efficient capital investment. If the private company's offering is unsuccessful, the risk is borne by investors and not by all utility ratepayers. When a company has no risk at stake and only a potential for return, an incentive to pursue the proposal at any cost is necessarily present.

Moreover, allowing recovery from all customers of generation-related costs associated with energy storage that can only be used to serve a subset of customers permits a utility to build

generation with very limited risk to its shareholders, which places costs on customers who derive no real or direct benefit from the energy storage resource. The result will return Pennsylvania to the days prior to the Competition Act when utilities owned highly expensive generation resources for which ratepayers were continuing to pay even when such resources were no longer the most technologically efficient or best options available. As technology continues to evolve and new resources become available, the answer to drive their development and incorporation into the energy system is not to look to utilities and their captive ratepayers. Rather, the answer is to identify ways to utilize the competitive market to drive private investment in the resources for the more direct benefit of consumers.

D. Utility Ownership of Electric Storage Is Unnecessary Because Such Solutions Are Already Available in the Competitive Market And Will Have Anti-Competitive Effect On Third Parties Seeking To Deploy Energy Storage

Energy storage solutions are already available in the competitive market and energy storage and other distributed energy solutions are best delivered by third party entities such as third party suppliers that offer market-based solutions rather than through a regulated utility. In addition to eliminating ratepayer risk and preventing cross-subsidization of behind-the-meter investments by various customer classes (as discussed in the previous section), the private ownership model enables customization of technology in an innovative way for customers and promotes robust competition to reduce costs and advance technological progress. Innovation and responsiveness to customer needs are enhanced when services are provided by entities that must compete to win and retain customer relationships. Permitting utility ownership gives the utility an unfair advantage using ratepayer funds to undercut participants in the competitive market, which will lower the likelihood of innovative approaches that will be made available in Pennsylvania.

The calculus to invest for a private entity is much different from that of a distribution utility that receives guaranteed cost recovery from ratepayers. A private entity must keep costs low, and size projects that are designed to be the most economically efficient, because they know this will be the only way they earn a profit on their investment. As discussed in the previous section, a utility has less incentive to keep costs down, because – absent a disallowance (which is uncommon) – the utility is guaranteed to recover its full project costs recovered from ratepayers. An incentive to over-build is also created because the utility’s only opportunity to earn a return on the project is based on the size of the capital investment. Thus, the larger the project, the more the utility has an opportunity to earn.

Factoring in the presence of utility owned energy storage is another consideration of significant importance for private developers and one that will discourage investment. This is because a private developer would have to overcome the significant obstacle of a utility’s socialized cost recovery of the energy storage resource.

Moreover, private developers must work with the utility before and during the energy storage construction to ensure interconnection with the grid. Often the utility plays a prominent role in determining the costs to interconnect into the distribution system and these costs can be substantial. Therefore, concerns arise when the EDC is acting as a competitor of the private developers and the gatekeeper to interconnection. While rules and regulations may be in place, placing the utility in a position to make these decisions for both its own utility-owned generation assets and privately-owned projects is unwise and creates perceived and real conflicts of interest (i.e., the utility favors its generation over private developers), notwithstanding the existence of rules intended to prevent abuses.

For all these reasons, participants in the competitive market are best suited to provide innovative energy storage solutions to consumers. Inviting utility ownership of energy storage resources will stifle innovation and will require captive ratepayers to pay the costs of bad investments – the exact outcome intended to be eliminated by the Competition Act.

III. CONCLUSION

RESA appreciates this opportunity to submit comments. While RESA members support the general policy objective of utilizing electric storage to enhance reliability and resiliency within the Commonwealth’s electric distribution systems, RESA members strongly oppose utility ownership of electric storage resources. Utility ownership will not improve the economics of the energy storage projects but simply shift the risk of uncertainty onto the backs of utility ratepayers while discouraging private developers from undertaking such projects. Rather than looking to the rate-of-return model, RESA members urge the Commission to focus on investigating ways to incentivize private development of energy storage resources. Through private investment in a competitive market with the utility neutrally ensuring fair interconnection with the grid, consumers will receive the most optimal benefit of these new and exciting technologies.

Respectfully submitted,



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