

Provisional Rules for Post-Hearing Briefing

Docket No. 23-05-EL

- (1) Post-Hearing Briefs shall be filed by all parties, due by COB on November 28.
 - a. The Company needs to restate precisely what it is asking the Commission to approve, with a summary of why it is consistent with the law, is just, and is reasonable.
 - b. Other parties must clearly state their position. If requesting the Commission to impose a requirement on the Company, change the tariff, or otherwise asking the Commission to reject or modify the Company's proposal in any way, it should be stated clearly.
 - c. Parties must support arguments or positions with evidence that is in the record.
 - d. The Commission also is requesting the parties to address a specific legal issue regarding Commission authority, identified in the attachment to these provisional rules.

- (2) Reply Briefs are permitted for all parties, due by COB on December 8.
 - a. Any Reply must be narrowly tailored in response to an argument, proposal, or assertion made in another party's Post-Hearing Brief.
 - b. If a party introduces a new proposal or new argument that is not reasonably responsive to a position asserted in a given Post-Hearing Brief to which the party is responding, either the entire filing or the relevant portion may be stricken and not considered.

- (3) The Company has the burden of proof. Thus, the Company will be permitted to file a Response to the Reply of any party. However, it must be narrowly tailored to address only the issues raised by the Reply.

If filed by the Company, the Response is due by COB on December 15.

- (4) The Commission will not accept any filing by a party of any other briefs, memoranda, or exhibit regarding the merits of the case if such party has not been granted leave to make such filing through a Motion for Leave to make the filing. If such a motion is not made and granted, the filing will be rejected and not given consideration. The Motion for Leave must be granted before any brief, memorandum, or any other exhibit regarding the merits (to which the motion applies) is accepted and docketed. Any brief, memoranda, or exhibit filed that does not comply with this directive may be rejected and stricken from the record.

ATTACHMENT TO PROVISIONAL BRIEFING RULES

Legal Issue:

Gridwealth's witness has recommended that the last resort service rate used for determining the Excess Credits be adjusted for purposes of the annual reconciliation to increase the value of the Excess Credits.

This raises the question of whether the Commission has the statutory authority to make such an adjustment to the last resort rate for purposes of the annual reconciliation. The Commission requests this question to be briefed.

In briefing the legal issue, the parties should address the significance, if any, of the fact that the General Assembly did not reference the last resort service rate alone, but defined the excess credit as being equal to the "avoided cost rate." See the sentence within the definition of "excess renewable net-metering credit," as follows:

Such excess renewable net-metering credit shall be equal to the electric distribution company's avoided cost rate, which is hereby declared to be the electric distribution company's last resort service kilowatt hour (kWh) charge for the rate class and time-of-use billing period (if applicable) applicable to the customer of record for the eligible net-metering system or applicable to the customer of record for the community remote net-metering system.

(emphasis added)

In addressing the legal issue, the Commission also refers the parties to the following Commission Order which established the Company's avoided cost rate in Docket No. 4268, back in 2012:

<https://ripuc.ri.gov/sites/g/files/xkgbur841/files/eventsactions/docket/4268-NGrid-Ord20649%282-16-12%29.pdf>

In its post-hearing brief, Gridwealth should address the reasons why it believes that the Commission has the authority to make such an adjustment. Gridwealth also should answer the two specific questions stated at the bottom of this attachment below.

The Company and the Division should state their position and legal reasoning and answer the same two questions.

Other parties may also indicate whether they have a position and, if so, respond similarly.

The two specific questions are as follows. Please explain the answer:

- (1) In order to adjust the last resort rate used for purposes of the annual reconciliation relating to the Excess Credits, as recommended by Gridwealth, would the Commission need to change the avoided cost rate referenced in the Docket 4268 Order?
- (2) Given the declaration by the General Assembly within the statutory definition, does the Commission have the authority to declare the avoided cost rate to be different for purposes of the annual reconciliation than what is declared in the statutory definition?