

# Morgan Lewis

**Anthony C. DeCusatis**

Of Counsel  
+1.215.963.5034  
anthony.decusatis@morganlewis.com

September 6, 2018

## **VIA eFILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17105-3265

**Re: Pennsylvania Public Utility Commission v. Duquesne Light Company**  
**Docket Nos. R-2018-3000124 and C-2018-3001152**

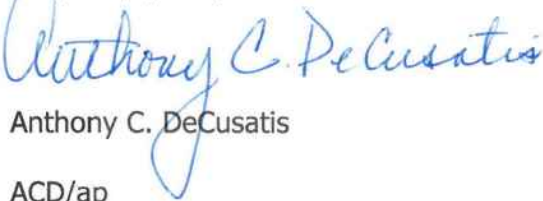
Dear Secretary Chiavetta:

Enclosed for filing is the **Initial Brief of Duquesne Light Company ("Initial Brief")** in the above-referenced matter.

As evidenced by the attached Certificate of Service, a copy of the Initial Brief has been served upon Administrative Law Judge Katrina L. Dunderdale, Judge Dunderdale's Technical Assistants, and all parties of record.

Should you have any questions, please contact me directly at 215.963.5034. Thank you.

Very truly yours,



Anthony C. DeCusatis

ACD/ap  
Enclosures

c: Per Certificate of Service (w/encls.)

## **Morgan, Lewis & Bockius LLP**

1701 Market Street  
Philadelphia, PA 19103-2921  
United States

**T** +1.215.963.5000  
**F** +1.215.963.5001

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>PENNSYLVANIA PUBLIC UTILITY COMMISSION</b>	:	
	:	
	:	<b>Docket Nos. R-2018-3000124</b>
<b>v.</b>	:	<b>C-2018-3001152</b>
	:	
<b>DUQUESNE LIGHT COMPANY</b>	:	

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing **Initial Brief on behalf of Duquesne Light Company** have been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant):

**VIA ELECTRONIC MAIL & FEDERAL EXPRESS**

The Honorable Katrina L. Dunderdale  
Administrative Law Judge  
Office of Administrative Law Judge  
Pennsylvania Public Utility Commission  
Piatt Place, Suite 220  
301 5th Avenue  
Pittsburgh, PA 15222  
[kdunderdal@pa.gov](mailto:kdunderdal@pa.gov)

Gina L. Miller  
John M. Coogan  
Pennsylvania Public Utility Commission  
Bureau of Investigation & Enforcement  
400 North Street, 2nd Floor  
Harrisburg, PA 17120  
[ginmiller@pa.gov](mailto:ginmiller@pa.gov)  
[jcoogan@pa.gov](mailto:jcoogan@pa.gov)

Patrick M. Cicero  
Kadeem G. Morris  
Elizabeth R. Marx  
Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101  
[pulp@palegalaid.net](mailto:pulp@palegalaid.net)  
*Counsel for Coalition for Affordable  
Utility Services and Energy Efficiency  
in PA (CAUSE-PA)*

Phillip D. Demanchick  
David T. Evrard  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5th Floor  
Harrisburg, PA 17101-1923  
[pdemanchick@paoca.org](mailto:pdemanchick@paoca.org)  
[devrard@paoca.org](mailto:devrard@paoca.org)

Sharon E. Webb  
Assistant Small Business Advocate  
Office of Small Business Advocate  
Commerce Tower, Suite 202  
300 North Second Street  
Harrisburg, PA 17101-1923  
[swebb@pa.gov](mailto:swebb@pa.gov)

Scott J. Rubin  
333 Oak Lane  
Bloomsburg, PA 17815-2036  
[scott.j.rubin@gmail.com](mailto:scott.j.rubin@gmail.com)  
*Counsel for International Brotherhood Of  
Electrical Workers, Local 29*

Renardo L. Hicks  
Dilworth Paxson LLP  
2 North 2nd Street, Suite 1101  
Harrisburg, PA 17101  
[rhicks@dilworthlaw.com](mailto:rhicks@dilworthlaw.com)  
*Counsel for ChargePoint, Inc.*

Sarah C. Stoner  
Daniel Clearfield  
Eckert Seamans Cherin & Mellott LLC  
213 Market Street, 8th Floor  
Harrisburg, PA 17101  
[sstoner@eckertseamans.com](mailto:sstoner@eckertseamans.com)  
[dclearfield@eckertseamans.com](mailto:dclearfield@eckertseamans.com)  
*Counsel for KEEA*

Joseph L. Vullo  
Burke Vullo Reilly Roberts  
1460 Wyoming Avenue  
Forty Fort, PA 18704  
[jlvullo@aol.com](mailto:jlvullo@aol.com)  
*Counsel for Community Action Association  
of PA (CAAP)*

David P. Zambito  
Jonathan P. Nase  
Cozen & O'Connor  
17 North Second Street, Suite 1410  
Harrisburg, PA 17101  
[dzambito@cozen.com](mailto:dzambito@cozen.com)  
[jnase@cozen.com](mailto:jnase@cozen.com)  
*Counsel for Peoples Natural Gas  
Company LLC*

William H. Roberts, II  
PNG Companies, LLC  
375 North Shore Drive  
Pittsburgh, PA 15212  
[william.h.robertsii@peoples-gas.com](mailto:william.h.robertsii@peoples-gas.com)  
*Counsel for Peoples Natural Gas  
Company LLC*

Mark C. Szybist  
Natural Resources Defense Council  
1152 15th Street N.W., Suite 300  
Washington, DC 20005  
[mszybist@nrdc.org](mailto:mszybist@nrdc.org)  
*Counsel for Natural Resources  
Defense Council*

Eric Miller  
Policy Counsel  
Keystone Energy Efficiency Alliance  
1501 Cherry Street  
Philadelphia, PA 19102  
[emiller@keealliance.org](mailto:emiller@keealliance.org)

Pamela C. Polacek  
Matthew L. Garber  
McNees Wallace & Nurick LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
[ppolacek@mcneeslaw.com](mailto:ppolacek@mcneeslaw.com)  
[mgarber@mcneeslaw.com](mailto:mgarber@mcneeslaw.com)  
*Counsel for Duquesne Industrial Intervenors*

Matthew F. Smith  
Gabrielle I. Lee  
Cozen O'Connor  
301 Grant Street, 41st Floor  
Pittsburgh, PA 15219  
[mfsmith@cozen.com](mailto:mfsmith@cozen.com)  
[gilee@cozen.com](mailto:gilee@cozen.com)  
*Counsel for NRGP*

Derrick Price Williamson  
Barry A. Naum  
Spilman Thomas & Battle PLLC  
1100 Bent Creek Boulevard, Suite 101  
Mechanicsburg, PA 17050  
[dwilliamson@spilmanlaw.com](mailto:dwilliamson@spilmanlaw.com)  
[bnaum@spilmanlaw.com](mailto:bnaum@spilmanlaw.com)  
*Counsel for Wal-Mart Stores East, LP  
And Sam's East, Inc.*

Brian Kalcic  
Excel Consulting  
Suite 720  
225 South Meramec Avenue  
St. Louis, MO 63105  
[excel.consulting@sbcglobal.net](mailto:excel.consulting@sbcglobal.net)  
*Consultant for OSBA*

Jason Dolby  
409 Anawanda Avenue  
Pittsburgh, PA 15228  
[jayjay890@gmail.com](mailto:jayjay890@gmail.com)

Michael W. Gang  
Anthony D. Kanagy  
Post & Schell, P.C.  
17 North Second Street, 12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601  
[mgang@postschell.com](mailto:mgang@postschell.com)  
[akanagy@postschell.com](mailto:akanagy@postschell.com)  
*Counsel for Duquesne Light Company*

**VIA ELECTRONIC MAIL ONLY**

Joseph Otis Minott  
Logan Welde  
Clean Air Council  
135 South 19th Street, Suite 300  
Philadelphia, PA 19103  
[joe\\_minott@cleanair.org](mailto:joe_minott@cleanair.org)  
[lwelde@cleanair.org](mailto:lwelde@cleanair.org)  
*Counsel for Clean Air Council*

Patrick C. Auth  
Emily Collins  
Emma Hempstead  
Fair Shake Environmental Legal Services  
3495 Butler Street, Suite 102  
Pittsburgh, PA 15201  
[pauth@fairshake-els.org](mailto:pauth@fairshake-els.org)  
[ecollins@fairshake-els.org](mailto:ecollins@fairshake-els.org)  
[ehempstead@fairshake-els.org](mailto:ehempstead@fairshake-els.org)  
*Counsel for National Resources Defense  
Council*



Stephen Jakab  
[sjakab@pa.gov](mailto:sjakab@pa.gov)

Scott Gebhardt  
[sgebhardt@pa.gov](mailto:sgebhardt@pa.gov)

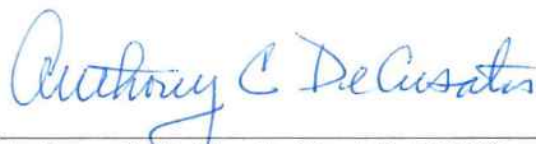
Marissa Boyle  
[maboyle@pa.gov](mailto:maboyle@pa.gov)

Joseph Magee  
[jmagee@pa.gov](mailto:jmagee@pa.gov)

**VIA FIRST CLASS MAIL ONLY**

Leonard Coyer  
10490 Allante Court  
Gibsonia, PA 15044

Respectfully submitted,



---

Anthony C. DeCusatis (Pa. I.D. 25700)  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
215.963.5034 (bus)  
215.963.5001 (fax)  
[anthony.decusatis@morganlewis.com](mailto:anthony.decusatis@morganlewis.com)

Tishekia E. Williams (Pa. I.D. 208997)  
Michael Zimmerman (Pa. I.D. 323715)  
Duquesne Light Company  
411 Seventh Avenue, 15-7  
Pittsburgh, PA 15219  
412.393.6268 (bus)  
412.393.5897 (fax)  
[twilliams@duqlight.com](mailto:twilliams@duqlight.com)  
[mzimmerman@duqlight.com](mailto:mzimmerman@duqlight.com)

Dated: September 6, 2018

*Counsel for Duquesne Light Company*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>PENNSYLVANIA PUBLIC UTILITY COMMISSION</b>	:	<b>Docket Nos. R-2018-3000124</b>
	:	
<b>v.</b>	:	<b>C-2018-3001152</b>
	:	
<b>DUQUESNE LIGHT COMPANY</b>	:	

**INITIAL BRIEF OF  
DUQUESNE LIGHT COMPANY**

**Before Administrative Law Judge  
Katrina L. Dunderdale**

Tishekia E. Williams  
(Pa. ID No. 208997)  
Michael Zimmerman  
(Pa. ID No. 323715)  
Duquesne Light Company  
411 Seventh Avenue  
Pittsburgh, PA 15219  
412.393.1514 (bus)  
412.393.6268 (bus)  
412.393.5897 (fax)  
[twilliams@duqlight.com](mailto:twilliams@duqlight.com)  
[mzimmerman@duqlight.com](mailto:mzimmerman@duqlight.com)

Anthony C. DeCusatis  
(Pa. ID No. 25700)  
Catherine G. Vasudevan  
(Pa. ID No. 210254)  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
215.963.5034 (bus)  
215.963.5001 (fax)  
[anthony.decusatis@morganlewis.com](mailto:anthony.decusatis@morganlewis.com)  
[catherine.vasudevan@morganlewis.com](mailto:catherine.vasudevan@morganlewis.com)

*Counsel for Duquesne Light Company*

Dated: September 6, 2018

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## **I. INTRODUCTION AND OVERVIEW**

### **A. Duquesne Light Company's Base Rate Filing**

On March 27, 2018, Duquesne Light Company (“Duquesne Light,” “DLC” or the “Company”) filed Supplement No. 174 to Tariff Electric – Pa. P.U.C. No. 24 (“Supplement No. 174”) to become effective on May 29, 2018. Supplement No. 174 contained proposed rates designed to produce an increase in annual Pennsylvania operating revenues of \$133.8 million or an increase in the Company’s annual electric distribution revenues of approximately 17%.<sup>1</sup> On April 19, 2018, the Pennsylvania Public Utility Commission’s (“PUC” or the “Commission”) initiated an investigation of the proposed rates, rules and regulations set forth in Supplement No. 174 (“Investigation Order”) and, therefore, Supplement No. 174 was suspended by operation of law<sup>2</sup> until December 29, 2018.

As part of Supplement No. 174, the Company proposed to increase the rate for “back-up service” available to eligible customers that meet a portion of their load with their own generating facilities and elect the option of receiving service under Rider No. 16 to Duquesne Light’s tariff.<sup>3</sup> Specifically, the Company proposed to increase the rate for Rider No. 16 service to \$8.00 per kW for the level of demand specified by the customer in its contract for back-up service.

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<sup>1</sup> The proposed increase in base rates included \$52.2 million of revenues billed under surcharges that the Company proposed to “roll-in” to base rates and, therefore, the net increase to customers was \$81.6 million.

<sup>2</sup> 66 Pa.C.S. §1308(d).

<sup>3</sup> Unlike the back-up riders of other electric utilities in Pennsylvania, Rider No. 16 is not mandatory. Customers with on-site generation can elect service under Rider No. 16 or choose to receive service under their applicable general service rate schedule without Rider No. 16 based on which alternative is most beneficial for them. The record evidence demonstrates that this option is very valuable because customers with on-site generators as reliable as intervenors’ witnesses have testified (*see e.g.*, Duquesne Industrial Intervenors’ Statement No. 1, p. 15, lines 18-21) can remain on their applicable general service rate schedule, not elect Rider No. 16 and effectively receive back-up service at no cost. *See* DLC St. No. 16-R, pp. 7-10, 19-22; DLC St. No. 16-RJ, pp. 10-14.

The current Rider No. 16 rate of \$2.50 per kW became effective on May 1, 2013, when the Company reduced the rate from \$6.45 per kW (for contract demand less than 5,000 kW) and \$6.04 per kW (for contract demand of 5,000 kW or more).<sup>4</sup> Duquesne Light proposed to increase the Rider No. 16 rate to mitigate intra-class and inter-class subsidies that are produced by the current substantially below-cost rate and to mitigate intra-class and inter-class subsidies that would increase in the event of increased penetration of distributed generators that elect Rider No. 16 in the future. The Company's Rider No. 16 proposal was also designed to provide better price signals to distributed generators that elect Rider No. 16, so that back-up charges better reflect the actual cost to provide back-up distribution service for customers contemplating the construction of on-site generation.<sup>5</sup> As explained in Section I.D., *infra*, the Company has withdrawn its proposed increase to the Rider No. 16 rate.

With Supplement No. 174, the Company filed the supporting data required by the Commission's filing requirements at 52 Pa. Code §§ 53.52 *et seq.*, including the direct testimony of fifteen witnesses, with accompanying exhibits.<sup>6</sup> Duquesne Light's direct testimony included the testimony of Howard S. Gorman (DLC Statement No. 14)<sup>7</sup> and David B. Ogden (DLC Statement No. 15).<sup>8</sup>

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<sup>4</sup> Peoples Cross-Exam. Exhibit No. 1, Attachment 1, pp. 5-6.

<sup>5</sup> See DLC Statement No. 1-R, p. 10, lines 19-22; DLC Statement No. 16-R, pp. 24-35; DLC Statement No. 16-RJ, pp. 15-18.

<sup>6</sup> A list of the Company's statements of direct testimony and a summary of the topics addressed in each statement were provided in Duquesne Light's Prehearing Memorandum (pp. 3-5).

<sup>7</sup> Mr. Gorman is the President of HSG Group, Inc., an independent consulting firm to the energy industry. Mr. Gorman has held this position since 2010. For thirteen years prior to 2010, Mr. Gorman was a Principal Consultant with R. J. Rudden Associates and Black & Veatch Corporation. Mr. Gorman's entire employment history and statement of qualifications are provided in Attachment A to DLC Statement No. 14. Mr. Gorman has over thirty years' experience in the energy industry and has testified extensively before this Commission and the utility regulatory authorities of other states and the Province of Ontario, Canada. *Id.*

<sup>8</sup> Mr. Ogden is the Manager, Rates and Tariff Services, for Duquesne Light. In that position, he oversees the Company's retail and transmission rates, including supervising the preparation, development and implementation of

Mr. Gorman prepared and presented the Company's allocated cost of service study using principles and procedures of cost allocation that have been generally accepted by the Commission in base rate proceedings for Duquesne Light and other electric distribution companies in Pennsylvania.<sup>9</sup> Mr. Gorman's cost of service study showed that the cost to furnish back-up service under Rider No. 16, after being adjusted to remove various indirect costs, was slightly higher than \$8.00 per kW and, therefore, fully supported the Company's proposed rate.<sup>10</sup> Mr. Ogden sponsored the Company's Supplement No. 174 containing its proposed Rider No. 16 rate and explained certain limited clarifications the Company proposed to the language of Rider No. 16.<sup>11</sup> In addition, the Company's proposed changes to Rider No. 16 were addressed and further supported by the rebuttal testimony submitted by Mr. Gorman (DLC Statement No. 14-R), Mr. Ogden (DLC Statement No. 15-R) and C. James Davis (DLC Statement No. 1-R)<sup>12</sup> and by the rebuttal (Statement No. 16-R) and rejoinder (Statement No. 16-RJ) testimony submitted by Neil S. Fisher.<sup>13</sup> No party other than the OCA, which represents customers served on Rates

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Duquesne Light's Pennsylvania-jurisdictional electric distribution rates. A complete statement of Mr. Ogden's qualifications and employment history is provided in DLC Statement No. 15, pp. 1-2.

<sup>9</sup> DLC Statement No. 14, p. 1, lines 13-18.

<sup>10</sup> DLC Exhibit No. 6-4H and DLC Statement No. 14, p. 12.

<sup>11</sup> DLC Exhibit No. DBO-1; DLC Statement No. 15, p. 26.

<sup>12</sup> Mr. Davis is Duquesne Light's Director – Rates, Energy Procurement, and Federal/RTO Affairs. In that capacity, Mr. Davis is responsible for overseeing and directing the Company's Rates & Tariff Services Department, Supply Procurement and RTO [Regional Transmission Organization] Settlement functions as well as Federal and RTO affairs. Mr. Davis has nearly 30 years of diversified experience in the utility industry, having worked for two other major Pennsylvania electric utilities prior to joining Duquesne Light. A complete statement of Mr. Davis' qualifications, employment history and prior testimony before this Commission is set forth in DLC Statement No. 1, pp. 1-2.

<sup>13</sup> Mr. Fisher is a Principal of The NorthBridge Group, a national economic and strategic consulting firm serving the electricity and natural gas industries, including both regulated utilities and other companies active in the competitive wholesale and retail markets (Tr. at 507). Mr. Fisher specializes in advising energy companies about strategic issues, in particular, issues relating to customer choice, rate design, the design of default service supply and pricing. A complete statement of Mr. Fisher's qualifications and employment history is provided in DLC Exhibit NSF-1-R. Mr. Fisher has testified in a number of cases before this Commission over the past sixteen years, as set forth in DLC Statement No. 16-R, p. 2.

RS, RH and RA and are not eligible for Rider No. 16, objected to any portion of the allocated cost of service study.

A total of sixteen parties intervened or filed complaints in the Company's base rate proceeding, including the Commission's Bureau of Investigation & Enforcement ("I&E"), the Office of Consumer Advocate ("OCA") and the Office of Small Business Advocate ("OSBA").<sup>14</sup> Three intervening parties addressed the Company's proposed increase to Rider No. 16 – the OSBA, Peoples Natural Gas Company LLC ("Peoples") and the Duquesne Industrial Intervenors ("DII"). DII is an *ad hoc* group of five large-use customers of Duquesne Light that includes Duquesne University, which is the only customer currently electing to receive service under Rider No. 16.<sup>15</sup> Other parties to this case, including I&E and the OCA, neither opposed nor supported the Company's proposed changes to Rider No. 16.

Following the issuance of the Investigation Order, a Prehearing Conference was convened on May 3, 2018. At the Prehearing Conference, a procedural schedule was established that provided dates for submission of non-company direct testimony, the submission of all parties' rebuttal, surrebuttal and rejoinder testimony and the evidentiary hearings to be held at the Commission's offices in Harrisburg (August 15-17, 2018). Various parties submitted testimony in conformance with the procedural schedule to address a wide range of issues pertaining to revenue requirement, cost of service, revenue allocation and rate design, as well as other issues presented by the Company's filing, including the proposed increase in the Rider No. 16 rate.

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<sup>14</sup> A complete list of complainants and intervenors will be set forth in the Joint Petition for Approval of Settlement Stipulation ("Joint Petition") to be filed on September 14, 2018. *See* Section I.C., *infra*.

<sup>15</sup> DII includes, in addition to Duquesne University, the Allegheny County Airport Authority, Linde Energy Services Corporation, United States Steel Corporation, and the University of Pittsburgh.

## **B. Other Parties' Testimony And Positions Regarding Rider No. 16**

The OSBA, through its witness, Brian Kalcic, supported the Company's proposed Rider No. 16 rate. Specifically, Mr. Kalcic, following his review of the Company's allocated cost of service study and the testimony of witnesses on behalf of Peoples and DII, found that the Company's proposed rate was developed in accordance with cost of service principles and procedures that are appropriate for ascertaining the cost to furnish back-up service to customers with on-site generation.<sup>16</sup> Mr. Kalcic also explained that establishing an appropriate rate for service under Rider No. 16 is important to the OSBA because a rate that does not recover the cost of providing back-up service to customers with on-site generation would cause other distribution customers to bear those costs through higher distribution rates.<sup>17</sup>

Peoples submitted the direct and surrebuttal testimony of four witnesses to address Rider No. 16. Jeffrey S. Nehr described a 35 kW reciprocating engine electric generator that Peoples is installing to provide combined heat and power ("CHP") at its Etna Field Shop, which Peoples anticipates will be in service at the end of 2018.<sup>18</sup> Jamie Scripps provided her calculations of the back-up service charges of Duquesne Light, PECO Energy Company and PPL Electric Utilities Corporation, as well as a group of Midwestern electric utilities. Ms. Scripps based her calculations on what she determined to be a representative customer with on-site CHP and realistic operating scenarios for such a customer.<sup>19</sup> Jennifer R. Kefer discussed what she

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<sup>16</sup> OSBA Statement No. 1-R, pp. 4-7. Mr. Kalcic explained that the type of cost analysis employed by Peoples' and DII's witnesses (which he referred to as a "partial requirements" approach) would not capture all of the fixed (and, therefore, unavoidable) costs of the capacity Duquesne Light must reserve on its distribution system to furnish back-up service. Consequently, he concluded: "I would expect a partial-requirements-based back-up rate to result in subsidized back-up service." *Id.* at 6.

<sup>17</sup> *Id.* at 6, lines 28-33, and 7.

<sup>18</sup> Peoples Statement Nos. 1 and 1-SR.

<sup>19</sup> Ms. Scripps' scenarios include a "no outage" scenario and various generator-outage scenarios reflecting generator outages for up to 32 hours per month. Peoples Statement Nos. 3, pp. 10-11, and 14-15; Peoples Statement 3-SR, Revised Exhibit JWS-1 and Revised Exhibit JWS-2.

perceives to be public policy issues relating to the deployment of customer-owned CHP.<sup>20</sup> James W. Daniel addressed the Company's proposed Rider No. 16 rate and offered his own recommendation for that rate.<sup>21</sup>

Mr. Daniel recommended a rate of \$2.41 per kW using a methodology he attributed to the Company as the basis for the \$2.50 per kW rate proposed in its 2013 base rate case.<sup>22</sup> Mr. Daniel began with the proposed Rider No. 16 rate (\$8.00 per kW), which reflects the fully allocated cost of providing back-up service calculated by Mr. Gorman (\$8.07 /kW) and which Mr. Daniel accepted as accurate. He then multiplied that value by 30%, which he used as a representative load factor for customers with distributed generation that would employ back-up service from the Company.<sup>23</sup> Given the marginal difference between the current \$2.50 per kW rate and the rate Mr. Daniel calculated, Mr. Daniel's recommendation, for all practical rate design purposes, amounted to maintaining the current Rider No. 16 rate. Additionally, Mr. Daniel's proposed rate did not explicitly reflect the "roll-in" to base rates of the Company's distribution system improvement charges ("DSIC") (approximately 5%), which would have added 12.5 cents per kW to Mr. Daniel's figure.<sup>24</sup>

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<sup>20</sup> Peoples Statement Nos. 4 and 4-SR.

<sup>21</sup> Peoples Statement Nos. 2 and 2-SR.

<sup>22</sup> Peoples Statement No. 2, p. 10. Mr. Daniel also presented an alternative rate design for back-up service that used his \$2.41 per kW rate to create seasonally differentiated rates of \$3.41 per kW for service during the months of June through September and \$1.71 per kW for service during the months of October through May. See Peoples Exhibit No. JWD-5.

<sup>23</sup> As Mr. Daniel noted, the 30% figure was described by the Company's witness Pfrommer in its 2013 base rate case as "an estimate based on the availability of the current customer, a review of other utility tariffs, and the expectation of the need for the Company to provide back-up power." See Peoples Statement No. 2, p. 9.

<sup>24</sup> Peoples Statement No. 2, pp. 10-11; DLC Statement No. 1, pp. 3-4.



DII presented the testimony of three witnesses. DII witnesses Richard Heller<sup>25</sup> and Eric Sprys<sup>26</sup> testified on behalf of the University of Pittsburgh and the Allegheny County Airport Authority, respectively. Messrs. Heller and Sprys described their concerns about the impact the Company's proposed increase might have on their employers if they decide to pursue CHP projects to supply a portion of their electrical and thermal loads.

DII witness James L. Crist critiqued the Company's proposed increase in its Rider No. 16 rate and also undertook his own analysis of the cost of providing back-up service. Like Mr. Daniel, Mr. Crist contended that he was replicating the rate design methodology Duquesne Light employed in its 2013 base rate case to derive the existing Rider No. 16 rate of \$2.50 per kW.<sup>27</sup> Contrary to his stated purpose, however, Mr. Crist actually deviated significantly from the approach Mr. Daniel employed. In lieu of multiplying the allocated cost of providing back-up service by 30%, he multiplied by 5%.<sup>28</sup>

Mr. Crist described the 5% figure at various places in his direct and surrebuttal testimony as "a load factor,"<sup>29</sup> a rate purportedly representing "unplanned outage hours,"<sup>30</sup> a figure that is both a "load factor" and "based on the expected availability of the distributed generation"<sup>31</sup> and the allegedly "small percentage of annual hours" that customer-generators "would need back-up service."<sup>32</sup> In short, it not at all clear what the 5% figure is supposed to represent. What is clear,

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<sup>25</sup> DII Statement Nos. 2 and 2-SR.

<sup>26</sup> DII Statement Nos. 3 and 3-SR.

<sup>27</sup> DII Statement No. 1, p. 25, lines 9-15.

<sup>28</sup> *Id.* at 25, lines 20-23.

<sup>29</sup> DII Statement No. 1-SR, p. 12, line 14.

<sup>30</sup> DII Statement No. 1, p. 25, line 19.

<sup>31</sup> DII Statement No. 1-SR, p. 32, line 15.

<sup>32</sup> DII Statement No. 1-SR, p. 11, lines 17-18.

however, is that multiplying the allocated cost of providing back-up service by 5% produced a rate of 40 cents per kW,<sup>33</sup> which Mr. Crist subsequently reduced to 36 cents per kW.<sup>34</sup>

In addition, and also contrary to the approach he attributed to the Company's last case, Mr. Crist proposed that this back-up rate should apply on an "as used" basis only. In other words, a customer would pay Mr. Crist's steeply discounted rate only for the demand registered during a month when that customer used back-up distribution service because of the outage of its own generator,<sup>35</sup> even though the Company would have to keep distribution capacity available *all* hours of the year to meet an unplanned outage of that customer's on-site generator.<sup>36</sup> While it is not proper to reduce the fully-allocated cost of providing back-up service for the frequency of a customer's use of the electric distribution system (*see* Section III.A., *infra*), Mr. Crist compounded his error by adjusting for the frequency of use *twice* – once by discounting the fully-allocated cost of back-up service by 95% and again by applying even that steeply discounted rate only to demands registered when a customer actually uses back-up service during outages of its generator.

On June 25, 2018, Duquesne Light entered into a Memorandum of Understanding ("MOU") with Duquesne University, a member of DII and the only customer currently electing to receive service under Rider No. 16.<sup>37</sup> Under the terms of the MOU, the Company and Duquesne University agreed, subject to the Commission's approval, that the University could

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<sup>33</sup> DII Statement No. 1, p. 25, line 23.

<sup>34</sup> Tr. at 60, lines 16-17.

<sup>35</sup> DII Exhibit No. JC-8, p. 1 (definition of "Back-Up Power Billing Determinants").

<sup>36</sup> *See* Tr. at 612, lines 20-22, where Mr. Crist acknowledged that back-up service would have to be available on a 24-7-365 basis because a customer's generator could experience an outage at any time, including on-peak periods ("There will always be an outage. I don't know when the unpredicted outages are, that's why they're called unpredicted.") And, as Mr. Crist also acknowledged, such outages could possibly occur multiple times per month (*see* DII Statement No. 1-SR, p. 16, lines 5-14).

<sup>37</sup> DLC Statement No. 1-R, p. 11, and DLC Exhibit No. CJD-1-R.

continue to receive back-up service under Rider No. 16 at the current rate of \$2.50 per kW for a period of five years from January 1, 2019 pursuant to a new electric service contract specifying contract demands for Supplementary service and Back-Up service.<sup>38</sup> The Company determined that it is appropriate to “grandfather” the existing Ride No. 16 rate for a period of five years (subject to specific delineation of Supplementary and Back-Up contract demands, as previously noted).<sup>39</sup> The Commission has previously approved excluding existing customers with on-site generation from changes in back-up rates and charges when new, increased back-up rates and charges were proposed and approved for prospective application.<sup>40</sup>

### **C. The Partial Settlement**

At the beginning of the evidentiary hearing held on August 15, 2018, the Company notified the Administrative Law Judge (“ALJ”) that a settlement had been achieved with all parties except Peoples on all issues excluding Rider No. 16. DII and Peoples indicated that they desired to continue to contest the Company’s proposed Rider No. 16 rate, although DII did not contest any aspect of the overall settlement, while Peoples indicated that so long as Rider No. 16 issues were not resolved to its satisfaction, it would contest the entire settlement. All parties waived cross-examination of their respective witnesses except for DII, Peoples and the

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<sup>38</sup> DLC Exhibit No. CJD-1-R, p. 2.

<sup>39</sup> Duquesne University installed its existing 5,000 kW CHP facility in 1997 and has elected to receive service on Rider No. 16 since that time. DII Exhibit No. JC-7, pp. 4-5.

<sup>40</sup> PECO Energy proposed its Capacity Reservation Rider (“CRR”) for back-up distribution service to customers with distributed generation in its 2015 electric base rate case at Docket No. R-2015-2468981. In its final order entered December 17, 2015, the Commission approved the terms of a settlement that included a CRR expressly providing that “[t]he CRR shall not apply to customer generating facilities that are online prior to January 1, 2016.” Joint Petition for Settlement of Rate Investigation, Appendix D, p. 4. That term has been embodied in PECO Energy’s current Tariff Electric – Pa. P.U.C. No. 5, Original Page No. 68, since January 1, 2016. In short, the Commission approved PECO’s proposal to “grandfather” an exemption from the CRR for all of its customers with existing distributed generation as of January 1, 2016.

Company. Those parties proceeded with cross-examination of the witnesses they designated, which focused on issues related to Rider No. 16.<sup>41</sup>

**D. The Rider No. 16 Issue Still Being Contested By Certain Members Of DII**

At the beginning of the August 17, 2018 evidentiary hearing, the Company's Vice-President and General Counsel, David T. Fisfis, notified the ALJ that the Company was withdrawing its proposed changes to Rider No. 16 and, therefore, would leave in place the existing Rider No 16 rate of \$2.50 per kW.<sup>42</sup> The Company had proposed changes to Rider No. 16 to address two significant concerns. First, unless the Rider No. 16 rate is aligned with the cost of providing back-up service, the increased penetration of distributed generation in Duquesne Light's service area in the future will create material intra-class and inter-class subsidies of customer-generators.<sup>43</sup> Second, back-up service rates that are not aligned with the cost of that service send erroneous price signals, incentivize customers to install distributed generation that is not economically justified, and, in that way, increase the cost of furnishing electric distribution service to all customers.<sup>44</sup>

In addition, what is known now – but was not known at the time this case was filed – is that the Commission would initiate both a collaborative “working group,” pursuant to its Final Policy Statement on Combined Heat and Power,<sup>45</sup> to explore issues such as back-up service costs and rates, and that the legislature would significantly alter the statutory landscape by authorizing

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<sup>41</sup> The Company also presented James Karcher and Katherine M. Scholl at the ALJ's request to address questions about topics within the scope of their testimony.

<sup>42</sup> Tr. at 646, lines 1-5.

<sup>43</sup> DLC Statement No. 14, p. 12, lines 6-13; DLC Statement No. 16-R, p. 14, lines 14-21, and p. 32, lines 1-13.

<sup>44</sup> DLC Statement No. 16-R, pp. 30-31. See DLC Statement No. 16-RJ, pp. 15-16.

<sup>45</sup> *Final Policy Statement on Combined Heat and Power*, Docket No. M-2016-2530484 (April 5, 2018), p. 22, Paragraph No. 6.

various forms of alternative ratemaking.<sup>46</sup> Consequently, the Company determined that the best course at this time is to leave in place the existing Rider No. 16 rate of \$2.50 per kW, which allows customers with distributed generation to avoid a significantly larger portion of total transmission and distribution (“T&D”) charges than the back-up service rates of the other Pennsylvania electric utilities to which Duquesne Light has been compared throughout this proceeding.<sup>47</sup> This decision also aligns Rider No. 16 and the terms of the MOU and, therefore, eliminates any basis for the concerns expressed previously by other parties about possible differences in the treatment of existing and prospective customers receiving service under Rider No. 16.

The Company’s agreement to leave the Rider No. 16 rate unchanged resolved Peoples’ issue with Rider No. 16 to its satisfaction and, therefore, Peoples withdrew its opposition to the settlement of all issues in this case.<sup>48</sup> DII, on the other hand, while not opposing the settlement of all other issues, continued to advocate Mr. Crist’s position that the Rider No. 16 back-up rate should be steeply discounted from its current level, which is \$2.50 per kW multiplied by a fixed contract demand, to 36 cents per kW (based on an “as-used” variable kW demand). Therefore, DII continues to litigate that issue. DII, on behalf of its members excluding Duquesne University,<sup>49</sup> is now the only party that disputes Rider No. 16 in this case, and the only issue left for decision is whether the Rider No. 16 rate should remain at its current level, which was

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<sup>46</sup> See Act 58 of 2018, adding Section 1330 to the Public Utility Code, 66 Pa.C.S. § 1330.

<sup>47</sup> See DLC Statement No. 16-R, p. 44. See also Section II, *infra*.

<sup>48</sup> As a consequence, the Company waived cross-examination of Peoples’ witnesses Scripps and Daniel at the August 17, 2018 hearing.

<sup>49</sup> Duquesne University committed to work with the Company in good faith to obtain Commission approval of the MOU, which maintains the \$2.50 per kW rate for the term of a renewed service agreement between the Company and the University (DLC Exhibit No. CJD-1-R, p. 3, Paragraph 8).

approved in the Company's 2013 base rate case, or be reduced to 36 cents per kW (on an "as-used" basis).

As previously explained, the terms of the Company's MOU with Duquesne University maintain the \$2.50 per kW rate and apply that rate to the customer's back-up contract demand. Therefore, the MOU is now congruent with the position of the Company and all other parties, except certain DII members, regarding Rider No. 16. Duquesne University is the only customer currently electing to receive service under Rider No. 16, and Peoples indicated that, upon completion of its Etna Field Shop CHP project, it may elect service on Rider No. 16<sup>50</sup>. The record evidence does not indicate that there are any major CHP or distributed generation projects on the horizon that are likely to be completed and elect service on Rider No. 16 during the period rates established in this case are reasonably anticipated to be in effect. Accordingly, the one customer electing to receive service under Rider No. 16 and the one customer that indicated it may apply for service under Rider No. 16 either support the current rate (Duquesne University) or do not oppose the current rate (Peoples).

None of DII's remaining members receive service under Rider No. 16 nor have they stated they have a firm expectation (let alone a definitive plan) to install CHP or any other form of distributed generation during the period rates established in this case can reasonably be expected to be in effect. Mr. Sprys acknowledged that he and his employer have already assumed the use of the *current* Rider No. 16 (including some escalation of that rate) in their preliminary modeling to determine whether an on-site CHP project would be cost justified.<sup>51</sup>

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<sup>50</sup> Peoples Statement No. 1, p. 6, lines 15-17.

<sup>51</sup> DII Statement No. 3-S, p. 2, lines 20-23. *See also* DII Statement No. 3-S, p. 3, lines 10-11 ("ACAA has been evaluating a potential CHP project and appropriately evaluated the project's back-up costs in light of Rider No. 16.").



Similarly, Mr. Heller analyzed the economics of a possible CHP project for the University of Pittsburgh based on the difference between the current Rider No. 16 rate of \$2.50 per kW and the initially proposed rate of \$8.00 per kW.<sup>52</sup>

In short, maintaining the existing Rider No. 16 rate, as the Company has proposed with the agreement or non-opposition of all parties other than certain DII members, would have no material impact on those DII members still litigating this issue, as the DII witnesses' own testimony affirms. Moreover, DII witness Crist identified a wide array of factors other than the cost of back-up distribution service that must be considered and quantified in order to determine if a particular distributed generation or CHP project would be cost-justified, including the capital investment required, financing costs, natural gas prices, operating and maintenance expenses and, for CHP, the potential for beneficial use of excess thermal energy.<sup>53</sup> These far more substantial factors overwhelm in significance the cost of back-up distribution service – particularly because charges for back-up distribution service under Rider No. 16 would be only a small portion (i.e., less than 3%-4%) of a Duquesne Light customer's total electric bill.<sup>54</sup>

## **II. SUMMARY OF ARGUMENT: THE EXISTING RIDER NO. 16 RATE SHOULD BE APPROVED**

To summarize, the Company has agreed to withdraw its proposed changes to the Rider No. 16 rate and retain the existing rate of \$2.50 per kW. Except for certain members of DII, all parties – including the only two customers that actually elected or may elect service under Rider

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<sup>52</sup> DII Statement No. 2-S, p. 6, lines 3-16; DII Exhibit No. RH-2S.

<sup>53</sup> DII Statement No. 1-S, p. 26.

<sup>54</sup> Mr. Fisher explained that back-up service charges represent only about 8% to 10% of the total electric charges that a customer on full requirements service would pay under the proposed \$8.00 per kW back-up charge. DLC Statement No. 16-R, p. 39, n. 45. At the current \$2.50 per kW back-up rate level, which is 31% of the initially proposed \$8.00 per kW rate, back-up service charges represent only about 3% to 4% of total electric charges.

No. 16 in the future – either support or do not oppose the Company’s decision to maintain the existing Rider No. 16 rate at \$2.50 per kW as applied to back-up contract demand.

Furthermore, any claims that the current Rider No. 16 could be a “barrier” to the deployment of distributed generation, including CHP, or that it provides insufficient “incentives” for CHP deployment, are unsupported and simply wrong. The undisputed record evidence demonstrates that the existing Rider No. 16, together with the valuable option customer-generators retain to take general service *without* Rider No. 16, allow such customers to avoid significant transmission and distribution charges.<sup>55</sup> Unlike other Pennsylvania electric distribution companies, Duquesne Light allows customers the flexibility to choose whichever option a customer might prefer. Rider No. 16 is an option that may be very attractive to eligible customers depending on the characteristics of their on-site generation, how the customers choose to operate their on-site generation, differences in charges under Rider No. 16 versus charges in the customers’ applicable rate schedules, and the customers’ load characteristics.<sup>56</sup>

DLC witness Fisher analyzed the customer savings under both options (i.e., a customer electing Rider No. 16 and a customer not electing Rider No. 16) for a CHP customer-generator of the size, and with the operating characteristics, that Peoples’ witness Scripps determined to be

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<sup>55</sup> The record evidence also shows that those customers avoid charges for distribution service that exceed the costs Duquesne Light itself can avoid when customers self-generate. The difference between customers’ avoided charges and the much lower level of costs that Duquesne Light can avoid leaves unrecovered revenue requirement that is shifted to non-generating customers. DLC Statement No. 16-R, pp. 19-24; DLC Statement No. 16-RJ, p. 17, line 14 through p. 18, line 9; OSBA Statement No. 1-R, p. 6.

<sup>56</sup> The potential benefit of being on Rider No. 16 relative to the general service rate schedules is to obtain a lower \$/kW demand charge. If a customer has a very high load factor (i.e., a relatively flat load profile) and/or has a generator that frequently will be out during or near the customer’s peak load hours, then Rider No. 16 is likely to be relatively more attractive to that customer. Alternatively, customers with baseload CHP that has few outages or outages predominantly during off-peak hours are more likely to prefer to remain on the applicable general service rate schedules without Rider No. 16. DLC Statement No. 16-RJ, p. 11, lines 10-18 and p. 12, lines 5-6.

a good representation for comparing back-up rates across multiple companies.<sup>57</sup> Mr. Fisher's analysis shows that a representative customer-generator on the current Rider No. 16 (at \$2.50 per kW) that experienced a 32-hour outage *every month* would save at least \$258,000 per year in T&D charges (at current distribution rate levels) as compared to a customer without a CHP facility.<sup>58</sup> That savings represents at least 37% of the customer's total T&D costs. A representative customer with a CHP facility reliable enough to avoid generator outages that would cause the customer to register on-peak demand above its Supplementary demand<sup>59</sup> would see even more significant savings by exercising its option to remain on general service rates. In that case, the customer would garner annual savings of \$318,000 to \$356,000 or 45% of its total T&D charges.<sup>60</sup>

A representative customer with on-site generation in Duquesne Light's service territory can avoid a significantly higher percentage of T&D charges than customers of the other Pennsylvania electric distribution companies to which the Company has been compared in this case.<sup>61</sup> Customer-generators on PECO Energy's CRR can avoid at most 12% of its T&D charges, while customer-generators cannot avoid any T&D charges under PPL Electric Utilities' Rule 6.<sup>62</sup> Additionally, neither of those companies provides its customer-generators the option to not take service under their back-up rates – the CRR and Rule 6 are mandatory, not optional like

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<sup>57</sup> The representative customer identified by Ms. Scripps would have approximately 5.0 MW of total connected load and a 2.0 MW CHP facility. DLC Statement No. 16-R, p. 20, n. 17.

<sup>58</sup> *Id.* at 22. The avoided distribution charges would be even higher than the amount shown by Mr. Fisher if the distribution rates in the settlement are approved and the back-up service rate in Rider No. 16 remains at the \$2.50 per kW level.

<sup>59</sup> Supplementary demand represents the customer's demand that must be met by external sources even when its generator is operating normally.

<sup>60</sup> *Id.* at 21.

<sup>61</sup> DLC Statement No. 16-R, p. 43, line 11 through p. 44, line 6.

<sup>62</sup> *Id.*

Rider No. 16. Furthermore, neither PECO nor PPL offers back-up service demand rates (\$ per kW) that are discounted for load factor (as compared to their generally applicable rate schedules) or calculate kW billing demand on an “as-used” basis, as DII has recommended in this case.<sup>63</sup>

An additional perspective on the incentives that Duquesne Light’s distribution rates create for distributed generation is provided by examining avoided T&D charges on a per MWH basis. A customer with a reasonably reliable on-site generator could avoid between \$64 and \$67 per MWH (between 90% and 94%) of the total-bill charges (generation, transmission and distribution) of \$71 per MWH that a similar full-requirements customer of Duquesne would incur.<sup>64</sup> Significantly, Peoples’ witness Scripps presented evidence that a back-up rate allowing a customer with on-site generation to avoid at least 90% of the customer’s otherwise applicable charges for full-requirements service conforms to what she (and other advocates for distributed generation) consider a “best practice” for back-up rate design.<sup>65</sup>

Duquesne Light does not agree with Ms. Scripp’s prescription of “best practices” because, among other reasons, the 90% threshold allows customers to avoid *charges* that exceed the *costs* that Duquesne Light itself could avoid.<sup>66</sup> Nonetheless, the fact that the current Rider No. 16 rate can clear even Ms. Scripps’ high hurdle furnishes indisputable evidence that leaving the existing \$2.50 per kW rate in place does not create a “barrier” to CHP or any other form of

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<sup>63</sup> Tr. at 519, lines 11-18.

<sup>64</sup> DLC Statement No. 16-R, p. 30, Figure 4 (as revised Aug. 17, 2018).

<sup>65</sup> Peoples Exhibit No. JWS-9 (U.S. EPA, *Standby Rates For Customer-Sited Resources: Issues, Considerations and the Elements of Model Tariffs* (2009)), p. 9; Peoples Statement No. 3, p. 24, lines 15-17 and n. 20.

<sup>66</sup> The charges that such a representative customer-generator could avoid paying to Duquesne Light under its existing rates exceed by between \$15 and \$18 per MWH the costs that the Company can avoid by that customer self-generating. DLC Statement No. 16-R, p. 30, Figure 4 (as revised Aug. 17, 2018): \$64 per MWH (customer’s avoided charges) - \$49 per MWH (DLC avoided costs) = \$15 per MWH (avoided charges in excess of avoided costs); \$67 per MWH (customer’s avoided charges) - \$49 per MWH (DLC’s avoided costs) = \$18 per MWH (avoided charges in excess of avoided costs). The avoided charges would exceed avoided costs by an even greater margin under the settlement rates.

distributed generation. Moreover, the same evidence belies Mr. Crist's claim that Rider No. 16 would force a customer to pay the same level of T&D costs as a "full-requirements" customer without on-site generation.<sup>67</sup> That contention has no basis in fact and should be summarily rejected.

Mr. Crist's proposed Rider No. 16 rate would grant a 95% discount from the fully allocated cost of furnishing back-up service. Mr. Crist initially tried to justify such a steeply discounted rate by contending that CHP and other forms of distributed generation were highly reliable and would infrequently need to use back-up service – and, even then, only during off-peak periods.<sup>68</sup> However, in the course of the evidentiary hearings, he substantially altered his original position and conceded that customer-generators can – and will – regularly require back-up service at any time: "I don't know when the unpredicted outages are, that is why they are unpredicted."<sup>69</sup> Thus, the latest position articulated by Mr. Crist was that customer-generators should receive back-up service at a rate that would allow them to pay only a small fraction (5%) of the costs to have distribution capacity available 24-7-365 to meet their needs.

In short, and as explained in detail in Section III.B., *infra*, Mr. Crist's recommendation would exempt back-up customers from costs that all other Duquesne Light distribution customers pay even if such back-up customers are not capable of reducing their monthly peak demands below the levels they would experience *without* on-site generation. Customer-generators should not get essentially the same level of distribution service the Company furnishes full-requirements distribution service customers but pay only a small fraction of the costs to provide that service.

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<sup>67</sup> See, e.g., DII Statement No. 1-S, p. 15, lines 3-15.

<sup>68</sup> See DII Statement No. 1, p. 25

<sup>69</sup> Tr. at 612, lines 9-22.

As explained in Section III.C., *infra*, Mr. Crist’s reliance on the Federal Energy Regulatory Commission’s (“FERC”) regulations implementing the Public Utility Regulatory Policies Act of 1978 (“PURPA”) is misplaced. Those regulations apply only to “qualifying facilities” and, even as to qualifying facilities, the rate design criteria that Mr. Crist cites do not apply to the provision of state-regulated distribution service. In fact, and as also explained in Section III.C., *infra*, the PURPA regulations, viewed in their totality, do not support Mr. Crist’s position.

Finally, as discussed in Section III.D., *infra*, Mr. Crist acknowledged that because there is only one customer that has currently elected to receive service under Rider No. 16, it would not be proper to treat back-up service as a “class” for cost-allocation purposes at this time. Mr. Crist suggested, however, that back-up customers’ load data should be aggregated “into a customer class” in the future if the number of customers electing service on Rider No. 16 were to expand.<sup>70</sup> Mr. Crist’s recommendation, while not having any impact on this case, is nonetheless incorrect. The back-up service rates of all major electric utility in Pennsylvania are set forth in “riders” that operate in conjunction with their general service rates and are not identified as a customer class that merits a separate rate schedule. That is the approach that properly conforms to established cost of service principles because customers should be placed into appropriate customer classes based on their total peak demand without regard to whether they have on-site generation. Moreover, dividing the customer base into separate classes based on whether a customer receives back-up service would produce anomalous results and would not furnish a reasonable basis for designing distribution rates.<sup>71</sup>

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<sup>70</sup> DII Statement No. 1-S, p. 11.

<sup>71</sup> DLC Statement No. 14-R, p. 32.



The Company's proposal to retain the existing Rider No. 16 rate, which is either supported or not opposed by all parties except certain members of DII, should be approved, and the substantial reduction to that rate proposed by DII should be rejected.

**III. DII WITNESS CRIST'S PROPOSED BACK-UP SERVICE RATE, AND THE METHODOLOGY HE USED TO DERIVE IT, ARE CONCEPTUALLY AND FACTUALLY WRONG AND SHOULD BE REJECTED**

**A. The Costs Of Providing Distribution Service, Including Back-Up Distribution Service, Do Not Vary With A Customer's Frequency Of Use Of The Distribution System**

All of Duquesne Light's customers depend on a reliable, secure and universally available distribution grid, including customers that generate a portion of their electricity.<sup>72</sup> Customer-generators could separate themselves entirely from the distribution grid and avoid paying any distribution charges to their electric distribution company. However, customer-generators almost never do so because they want to be able to rely upon the electric distribution system to provide electricity when their own generation is not operating for any reason, including scheduled maintenance outages and unplanned outages.<sup>73</sup> As Mr. Crist conceded, generator outages – and the attendant need for customer-generators to rely on the electric distribution grid – can occur at any time: “There will always be an outage. I don't know when the unpredicted outages are, that's why they're called unpredicted.”<sup>74</sup> The distribution grid also provides customer-generators with balancing, voltage, and frequency control, which is essential to the safe operation of these customers' electrical equipment; it also allows them to sell their excess generation into the grid during hours when their generation exceeds their load.<sup>75</sup>

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<sup>72</sup> DLC Statement No. 16-R, p. 16.

<sup>73</sup> *Id.*

<sup>74</sup> Tr. at 612, lines 20-22.

<sup>75</sup> DLC Statement No. 16-R, p. 16.

So long as a customer wants to retain the option to have power delivered to it from external sources by its electric utility's distribution system, the customer's use of on-site generation to meet a portion of its load does not reduce the utility's cost to furnish distribution service to that customer, as long as the utility has the obligation to serve the customer's peak demand at any time it may occur.<sup>76</sup> The Commission has previously found that "the costs of the distribution system, in the short run, are fixed and do not vary by day or month" and, similarly, "distribution service costs do not vary, in the short run between rate cases, in proportion to a consumer's daily or monthly level of consumption."<sup>77</sup> In other words, an electric utility bears the fixed costs of building and maintaining its distribution system without regard to how frequently the system may be used by customers.

Whether or not a customer has on-site generation and is eligible for Rider No. 16, the size (capacity) and the cost of the Company's distribution property and equipment must be sufficient to meet the customer's peak demand.<sup>78</sup> As Mr. Gorman explained, Duquesne Light does not incur any less cost to build, own and operate its distribution system simply because a customer on Rider No. 16 may use back-up distribution service only intermittently. To the contrary, as Mr. Gorman also explained, "*peak demand*, and therefore, the capacity of the equipment installed, drives costs; the frequency with which the system is used has almost nothing to do with costs for those customers."<sup>79</sup> Thus, in order to comply with its statutory obligation to furnish

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<sup>76</sup> DLC Statement No. 16-R, pp. 17-18.

<sup>77</sup> *Fixed Utility Distribution Rates Policy Statement*, Docket No. M-2015-2518883 (May 3, 2018), p. 16. *See also* p. 14, where the Commission states that straight fixed/variable rate design "is based on the fact that most, if not all, of the utility's distribution system costs may be fixed in the short run and therefore customers should pay for those costs through fixed charges on their bills that reflect the amount of fixed costs of the distribution system for each customer class."

<sup>78</sup> DLC Statement No. 14-R, p. 27, lines 4-12; DLC Statement No. 16-R, p. 18.

<sup>79</sup> DLC Statement No. 14-R, p. 27, lines 6-8.

safe, reliable and reasonable distribution service,<sup>80</sup> Duquesne Light must stand ready to serve the total connected load of all of its customers at any time and at all times. For a customer with on-site generation, total connected load means the total load the customer will place on the Company's system when its generator is experiencing either a scheduled or unplanned outage.<sup>81</sup> For that reason, it costs the same to build a distribution system that will be used to meet a customer's total connected load every day as it does to build a distribution system that is used to meet a customer's total connected load only once or twice a year.<sup>82</sup> Whether a 2 MW CHP generator runs 95% of the time and uses the distribution system 5% of the time, runs 90% of the time and uses the distribution system 10% of the time, or runs 50% and uses the distribution system 50% of the time, the Company must have 2 MW of backup distribution capacity available. Conversely, the cost to serve a customer with a 2 MW CHP facility that uses the distribution system 5% of the time is based on the 2 MW of demand the customer places on the system, and not the 5%; it is not the same as the cost to serve a 0.2 MW CHP that uses the system 50% of the time.<sup>83</sup>

The capacity dedicated to full-requirements customers and to customer-generators must be sufficient to meet each customer's total connected load that the utility is obligated to serve. For a customer-generator, an electric utility must reserve distribution capacity on its system for possible use at any time during the entire year because no one knows when the customer will call

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<sup>80</sup> See 66 Pa.C.S. § 1501.

<sup>81</sup> DLC Statement No. 16-R, p. 18.

<sup>82</sup> *Id.*

<sup>83</sup> DII witness Crist's approach suggests that the distribution back-up service costs for a 2 MW generator that uses the distribution system 5% of the time (2 MW \* 5% or 0.1 MW) is equivalent to a 0.2 MW generator that uses the system 50% of the time (0.2 MW \* 50% or 0.1 MW). This is clearly not correct.

upon the distribution system to provide back-up service.<sup>84</sup> As Mr. Crist acknowledged, “unpredicted outages” can, and do, occur at any time, including during on-peak periods. In fact, the record evidence shows that, as recently as June 2016, the peak demand of the customer currently on Rider No. 16 was coincident with the peak demand of the Rate GL class,<sup>85</sup> when the customer registered its monthly peak demand because its generator was not operating.<sup>86</sup> Moreover, in two other months (May and September), the customer’s demand was at least 90% of its monthly peak at the time the Rate GL class peak occurred, which shows that outages of the customer’s generator were material contributors to the class monthly peaks.<sup>87</sup> Similarly, when the customer achieved its annual peak demand for 2016 (at 2:15 PM on August 10), the Rate GL class demand was at 98% of its annual peak and the entire distribution system was at 97% of its total annual peak demand.<sup>88</sup> Thus, actual operating data confirm that the unavailability of a customer’s generator can be a major contributor to both class and total system peak demands, and to the use of not only localized assets but the entire distribution system. Therefore, as Mr. Gorman explained further:

These data indicate the Company must stand ready to meet a customer’s maximum need for Back-up service at the time of the class peak and the time of the system peak, and that a customer’s maximum need for Back-up service may occur (and historically has occurred) when the class and the system are operating at or very near peak.<sup>89</sup>

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<sup>84</sup> *Id.*

<sup>85</sup> This customer receives general service on Rate GL. DLC Statement No. 14-R, p. 30, lines 2-6.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at lines 7-8.

<sup>88</sup> *Id.* at lines 10-14.

<sup>89</sup> DLC Statement No. 14-R, p. 30, lines 16-20.

Because a customer-generator's need for back-up service may occur at any time and because the Company must have distribution system capacity available to meet that need, Duquesne Light does not avoid distribution system costs when a customer installs on-site generation but continues to "lean" on the distribution system to meet its total connected load during outages of its generator.<sup>90</sup> As previously explained, this point was driven home by the Commission itself, which found that "distribution system costs do not vary . . . in proportion to a consumer's daily or monthly levels of consumption."<sup>91</sup> Even Peoples' witness Daniel was unable to identify any specific change in delivery service costs that the Company would experience when a customer installs on-site generation. Instead, he merely alluded to the possibility of unspecified costs that might be avoided in the future.<sup>92</sup> Significantly, the capacity that is reserved to meet a customer-generator's total connected load cannot be used for any other purpose, which means that the Company cannot sell the reserved capacity to any other customer to try to create revenue that might offset the cost of providing back-up service to customer-generators.<sup>93</sup>

The distribution charges that a customer-generator avoids by having a below-cost rate do not reflect costs that the Company avoids; these under-collected costs are shifted to other customers within the customer-generator's own general service class (an intra-class subsidy) and/or to customers in other classes, including residential and low-income customers (an inter-class subsidy). Company witness Fisher analyzed and quantified both the level of costs that Duquesne Light can avoid when a representative CHP customer generates its own electricity and

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<sup>90</sup> DLC Statement No. 16-R, pp. 18-19.

<sup>91</sup> *Fixed Utility Distribution Rates Policy Statement, supra.*

<sup>92</sup> DLC Statement No. 16-R, p. 23, n. 18; DLC Exhibit No. NSF-2-R, p. 8 (Peoples Response to DLC Interrogatory Set III, No. 21).

<sup>93</sup> DLC Statement No. 16-R, p. 18, lines 17-21.

the level of Duquesne Light's distribution charges that such a customer can avoid. That analysis was not rebutted by any witness in this case. Mr. Fisher's analysis shows that, under Duquesne Light's existing rates (including the current Rider No. 16), the distribution charges that a representative CHP customer with a reliable generator could avoid paying to Duquesne Light would exceed by between \$15 and \$18 per MWH the costs that the Company could avoid by that customer self-generating a portion of its electric load equal to its generator's capacity.<sup>94</sup> Specifically, the Company's avoided costs are \$49 per MWH, while the representative CHP customer would avoid paying total charges of between \$64 and \$67 per MWH under current rates and as much as \$70 per MWH under the proposed rates.<sup>95</sup> A further reduction in the charges paid by a representative CHP customer (as Mr. Crist proposes) would shift even more costs to non-generating customers.

In summary, as the Commission itself has found, the cost of providing distribution service is largely fixed. Therefore, it is improper to grant a steep discount from the price of full-requirements service to customers that have on-site generation but still rely on the distribution system for back-up service. Granting such a steep discount allows customer-generators to avoid paying a portion of the distribution charges that the Company incurs in order to serve them. When distributed generators elect Rider No. 16 and avoid paying their allocated costs, the

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<sup>94</sup> DLC Statement No. 16-R, p. 30, revised Figure 4. The avoided rate bar shown in Figure 4 for proposed rates labeled "CHP with Rider 16" (\$59 per MWH) was based on the initial Duquesne Light proposed back-up rate of \$8.00 per kW. At a \$2.50 per kW back-up rate, this \$59 per MWH figure would increase above the \$64 per MWH level shown under current rates as customer savings increase with a higher GL rate and no change is made in the back-up rate.

<sup>95</sup> *Id.* Mr. Fisher testified that the \$70 per MWH figure based on the "no outage scenario" would be \$65 per MWH assuming 32 hours of outages in a month. This avoided charge customer credit represents a 43% (\$70 per MWH) to 33% (\$65 per MWH) premium above the PJM market value (\$49 per MWH) of the output associated with the customer's generator (including energy, capacity, ancillary services, delivery line losses, and renewable energy credits, etc.). Tr. at. 514, lines 3-5 and Tr. at 528, lines 1-29. No witness in this case disputes Mr. Fisher's market value figures shown in Figure 3 of his rebuttal testimony (DLC Statement No. 16-R, p. 28) or the fact that customers that install CHP can avoid Duquesne Light charges in excess of those market values.



responsibility for these costs is shifted to, and subsidized by, distribution customers without on-site generation. As the Commission itself found in the *Final Policy Statement on Combined Heat and Power*, the costs properly attributed to furnishing distribution service to a customer-generator should not be “socialized through the rate base” to other customers.<sup>96</sup>

Mr. Crist’s proposal that customer-generators receive back-up service at a more than 95% discount from the fully-allocated cost of providing distribution service is contrary to the well-accepted cost of service concepts and the principles of distribution system design and cost causation that were described above.

**B. Mr. Crist’s Own Internally Inconsistent Testimony Demonstrates That There Is No Valid Basis For His Proposed Back-Up Service Rate**

DII witness Crist (like Peoples’ witness Daniel) accepted Mr. Gorman’s calculation of the fully allocated cost to provide electric distribution service to back-up service customers.<sup>97</sup> Hence, the starting point for all of those witnesses was the same. Mr. Crist, however, contended that the allocated cost of service should be multiplied by 5% to derive his proposed back-up service rate (a reduction of 95%) and, in a significant departure from the structure of the existing Rider No. 16 rate (and the rate designs approved by the Commission in PECO’s CRR and PPL Rule 6), he contended that his steeply discounted rate should be applied only on an “as-used basis.”

As previously explained, it is difficult to discern what Mr. Crist’s 5% factor actually represents.<sup>98</sup> Mr. Crist is hard to pin down, since he described the 5% factor in various ways at

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<sup>96</sup> *Final Policy Statement on Combined Heat and Power*, *supra*, at 8.

<sup>97</sup> Tr. 588, lines 5-7 (Mr. Crist: “You are getting into Mr. Gorman’s stuff. I didn’t refute his cost of service allocation for the class cost of service whatsoever.”) *See also* Tr. 595, lines 1-7; 1-25 and Tr. 596, lines 1-5; Peoples Statement No. 2, p. 11.

<sup>98</sup> *See* Section I.B, *supra*.

various points in his testimony.<sup>99</sup> One thing is clear, however, Mr. Crist’s proposed 5% factor is much different from the 30% factor Mr. Daniel used<sup>100</sup> in an effort to replicate the rate design methodology attributed to the Company’s last base rate case.<sup>101</sup> This issue became even more vexed because of the inherent contradiction between the purported justification for the 5% factor Mr. Crist initially articulated and the much different position he advanced to try to defend his proposed rate in response to questioning on cross-examination.

Initially, Mr. Crist alluded to the allegedly few “unplanned outage hours” customer-generators would experience,<sup>102</sup> the high “availability” of “distributed generation”<sup>103</sup> and the allegedly “small percentage of annual hours” that customer-generators “would need back-up service”<sup>104</sup> as the basis for discounting the fully-allocated cost of providing back-up service by over 95%. In other words, Mr. Crist was attempting to justify a steep discount for back-up service because he contended – at least initially – that customers’ generators are highly reliable and, therefore, customer-generators would rarely need to use back-up service and, even when they did, their usage would not occur during on-peak periods. Of course, as explained in Section III.A., *supra*, the assumptions initially put forth by Mr. Crist are not supported by the record

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<sup>99</sup> *Id.*

<sup>100</sup> The \$2.50 per kW rate currently set forth in Rider No. 16 reflects the application, in the Company’s 2013 base rate case, of a 30% factor to the fully allocated cost of furnishing back-up service. In that case, the 30% multiplier was described as “an estimate based on the availability of the current customer, a review of other utility tariffs, and the expectation of the need for the Company to provide back-up power” (Peoples Statement No. 2, p. 9, lines 13-18).

<sup>101</sup> Since its last base rate case, the Company has carefully reviewed the cost-of-service basis for its back-up rate and concluded that a different approach should be considered – as it proposed in this case – so that increased penetration of distributed generation in its service territory in the future would not lead to inappropriate intra-class and inter-class subsidies and that proper price signals would be sent to prospective developers of on-site generation. As previously explained, the Company has since determined that this case would not be an appropriate venue for comprehensively reexamining and restructuring Rider No. 16 – a conclusion shared by all parties except certain members of DII.

<sup>102</sup> DII Statement No. 1, p. 25, line 19.

<sup>103</sup> DII Statement No. 1-SR, p. 32, line 15.

<sup>104</sup> DII Statement No. 1-SR, p. 11, lines 17-18.

evidence in this case. Even if a generator were highly reliable, it would not alter the fact the Company's costs are based on the peak load it is obligated to serve, not the frequency of usage of back-up service.

Mr. Crist substantially altered his original position, however, after Mr. Fisher showed that a distributed generation customer with the operating characteristics attributed to it by Mr. Crist (and Peoples' witness Scripps)<sup>105</sup> could remain on its general service rate without Rider No. 16 and obtain back-up service at no cost<sup>106</sup> or could experience a generator outage at the customer's average demand level and effectively pay only about \$7,500 more (i.e., effectively pay about \$3.75 per kW for back-up service) in monthly distribution charges.<sup>107</sup> Faced with this possibility, Mr. Crist reversed course and argued, notwithstanding his earlier testimony, that customer-generators were not so reliable after all. Astonishingly, he even disparaged the 95% availability factor Peoples' witness Scripps ascribed to CHP projects (the same 95% availability factor that, according to certain statements by Mr. Crist, underlies his proposed 5% multiplier) as "absolutely not a realistic case."<sup>108</sup> Based on his revised appraisal of the availability and reliability of CHP and other distributed generation, Mr. Crist's latest position – the one he articulated on the witness stand – is that CHP and other distributed generation can – and will –

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<sup>105</sup> In his direct testimony, Mr. Crist cited, and relied upon, a 2014 report by Duquesne University that its CHP facility could maintain a 97.5% availability rate, which is equivalent to an outage rate of 2.5%. DII Statement No. 1, p. 25, lines 1-3 and 20. Ms. Scripps relied upon evidence indicating an availability rate of 95%. Peoples Statement No. 3, p. 19, lines 3-4.

<sup>106</sup> DLC Statement No. 16-RJ, pp. 6-7 ("[I]f a customer with CHP that is on base rate GL (without Rider No. 16) experiences no generator outages in a month, then that customer would get a 'free pass' and pay nothing (\$0) to Duquesne Light for having to stand ready to serve those 2.0 MW [of back-up demand] in the event of an unplanned outage. . . . [Mr. Crist] also neglects to mention that customers would get a 'free pass and pay nothing (\$0) to Duquesne Light for having to stand ready to serve.'").

<sup>107</sup> DLC Statement No. 16-RJ, p. 8, lines 5-10.

<sup>108</sup> Tr. at 619, lines 8-9. *See also* Tr. at 620 at lines 6-7 ("He [Mr. Fisher] did say he used the Peoples Gas case, and I just want to be clear, that's not a realistic case.").

experience outages at any time, including during on-peak periods.<sup>109</sup> In short, he acknowledged what the evidence in this case (including actual operating data for the existing Rider No. 16 customer) had already shown.

Therefore, Mr. Crist abandoned his earlier theory that the high reliability of on-site generation justified his steeply discounted rate proposal. Instead, Mr. Crist conceded that customer-generators can – and will – regularly require back-up service *at any time*: “I don’t know when the unpredicted outages are, that is why they’re called unpredicted.”<sup>110</sup> In his surrebuttal testimony, Mr. Crist also opined that if a customer experiences an outage every month, “the billing demand of the customer [4.9 MW] would be no different than if no CHP were installed” and that there would be “no savings in distribution charges” under Duquesne Light’s generally applicable GL rate schedule.<sup>111</sup> To make this claim, Mr. Crist either does not understand Duquesne Light’s GL rate schedule or he assumes that the representative customer always experiences a generator outage when the customer is at its monthly peak load of 4.9 MW. Mr. Crist appears to argue that a customer cannot lower its monthly billing demand even if it has an on-site generator that Mr. Crist claims can operate 95% to 97.5% of the time (i.e., outages occur each month and they always occur when the customer is at its peak load). No witness in this case, including Mr. Crist, presents a valid reason why a customer with this type of on-site generator should be permitted to avoid a significant portion of distribution service demand-related costs when that customer cannot reduce its monthly billing demand. Under Mr. Crist’s proposal, a customer without CHP who has a 4.9 MW monthly billing demand would pay 100% of the Rate GL distribution demand charge while a customer with CHP on Rider No. 16 and the

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<sup>109</sup> Tr. at 612, lines 9-22.

<sup>110</sup> *Id.*

<sup>111</sup> DII Statement No. 1-S, p. 16, lines 5-13.

same 4.9 MW monthly billing demand would pay substantially less. The inevitable and unavoidable consequence of Mr. Crist's concession is that Duquesne Light must, therefore, keep distribution capacity available to meet those customers' demands whenever they occur.<sup>112</sup>

Based on the record at the close of evidentiary hearings, Mr. Crist's latest position is that customer-generators should receive back-up service at a rate that absolves them from paying all but a small fraction (5%) of the costs to have distribution capacity available 24-7-365 to meet their needs.<sup>113</sup> Significantly, Mr. Crist's recommendation would exempt back-up customers from costs that all other Duquesne Light distribution customers pay even in the extreme case where a customer with CHP achieves the same peak demand every month that it would have even if it did not have a CHP generator. However, the reservation of capacity on the Company's distribution system that Mr. Crist now acknowledges is needed to furnish back-up service commensurate with the "realistic" operating characteristics of customer-generators is not in any material way different from the capacity needs of distribution customers *without* on-site generation. Both groups of customers require Duquesne Light to have distribution capacity available to meet their peak demand (including the peak demand of back-up service customers when their generators are not operating) on a 24-7-365 basis. Clearly, customer-generators should not get essentially the same level of distribution service the Company furnishes full-requirements distribution service customers but pay a small fraction of the costs to provide that service.

Mr. Crist's proposed rate for back-up service is substantially less than the cost to furnish that service, would create significant intra-class and inter-class subsidies when CHP and other

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<sup>112</sup> See DLC Statement No. 16-R, pp. 18-19.

<sup>113</sup> Tr. At 619, lines 1-20.

distributed generation achieve greater penetration in the Company's service area, and violates the principle articulated by the Commission that the costs of installing and operating CHP and other distributed generation should not be "socialized" among non-generating customers.<sup>114</sup>

**C. Mr. Crist's Reliance On The FERC's Regulations Implementing PURPA Is Misplaced Because Those Regulations Only Address "Qualifying Facilities" And, Even As To "Qualifying Facilities," The Regulations' Rate Design Criteria Cited By Mr. Crist Do Not Apply To Electric Distribution Service**

Mr. Crist purported to find support for his proposed back-up service rate in his admittedly non-lawyer's interpretation<sup>115</sup> of the regulations adopted by the FERC<sup>116</sup> to implement PURPA.<sup>117</sup> Mr. Crist conceded, as he must, that FERC's PURPA regulations apply only to "qualifying facilities" that meet qualification criteria established by PURPA and have been certified by the FERC.<sup>118</sup> He also acknowledged that the kinds of customer-owned generation facilities that the parties focused upon for purposes of addressing Rider No. 16 issues in this case would not be "qualifying facilities."<sup>119</sup> Nonetheless, Mr. Crist contended that the "PURPA structure of Supplemental Power, Backup Power and Maintenance Power, and the concepts that apply to those services under the QF regulations provide a just and reasonable structure for the Commission to [follow] with other on-site generation."<sup>120</sup> Mr. Crist argues, in effect, that what the FERC purportedly requires for qualifying facilities is presumptively "just and reasonable"

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<sup>114</sup> *Final Policy Statement on Combined Heat and Power, supra.*

<sup>115</sup> See DII Statement No. 1-S, p. 30, line 10 through p. 31, line 4, where Mr. Crist asserts that, as a professional engineer, he is qualified to interpret the FERC's regulations.

<sup>116</sup> 18 CFR §§ 292.301 – 292.314.

<sup>117</sup> 16 U.S.C. §§ 2601 *et seq.*

<sup>118</sup> DII Statement No. 1, p. 25, lines 14-21. See also 18 CFR § 292.301(a): "Applicability. This subpart [C] applies to the regulation of sales and purchases between qualifying facilities and electric utilities." 18 CFR §§ 292.203 – 292.207 set forth the PURPA qualification criteria and procedures for certification.

<sup>119</sup> *Id.*

<sup>120</sup> DII Statement No. 1, p. 26, lines 18-21.

and, for that reason, the Commission should simply follow FERC's lead and adopt back-up rates that mirror what Mr. Crist interprets as the PURPA regulations' legal requirements.<sup>121</sup>

However, Mr. Crist seriously misinterpreted the FERC's PURPA regulations. Even as to qualifying facilities, the PURPA regulations that define an electric utility's obligation to supply "power" to qualifying facilities pertain *only* to the supply of "energy and capacity" (i.e., generation supply) and not to the state-regulated function of electric *distribution* service. This conclusion is perfectly clear from portions of the FERC's PURPA regulations that Mr. Crist failed to discuss (or even mention) in his testimony.

Mr. Crist focused exclusively upon, and quoted, only a portion of Section 292.305 of the FERC's regulations, which discusses how rates should be designed for "sales of back-up and maintenance power."<sup>122</sup> He did not discuss – and presumably did not consider – the nature of the obligation the FERC's regulations place on electric utilities to sell "power" to qualifying facilities – i.e., the only "obligation" to which the rate design criteria of Section 292.305 apply.

Electric utilities' "obligation to sell to qualifying facilities" is set forth in Section 292.303(b) of the FERC's PURPA regulations, which states: "Each electric utility shall sell to any qualifying facility, in accordance with § 292.305 . . . *energy and capacity* requested by the qualifying facility" (emphasis added). The operative words are "energy and capacity" – terms

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<sup>121</sup> Mr. Crist also offered the opinion that this Commission's regulations at 52 Pa. Code §§ 57.31 *et seq.* impose the same requirements as a matter of state law. That is simply not correct. The Commission clearly stated that the sole purpose of its regulations was to "implement § 210 of the Public Utility Regulatory Policies Act of 1978." 52 Pa. Code § 57.32(a). Thus, the Commission's regulations track the requirements of PURPA and the FERC's regulations and do not create independent requirements under state law. Therefore, if a requirement does not exist under PURPA and the FERC's PURPA regulations, it could not be imposed by action of the Commission. *Albert Einstein Healthcare Foundation v. Pa. P.U.C.*, 548 A.2d 339 (Pa. Cmwlth. 1988) (The FERC's rules governing the relationship between qualifying facilities and electric utilities were implemented by the PUC through regulations that essentially track the FERC's regulations.).

<sup>122</sup> DII Statement No. 1, p. 17, lines 12-24. See 18 CFR § 292.305(c).

that are consistently used in the FERC’s PURPA regulations to define the scope of an electric utility’s obligation to “sell” “power” to a qualifying facility.<sup>123</sup>

There is no dispute – indeed, Mr. Crist admitted – that “energy” and “capacity” are terms well-understood to refer to generation supply and *not* to the distribution of electric power.<sup>124</sup> Thus, the rate design criteria in Section 292.305 that Mr. Crist relied upon apply only to the supply of “energy and capacity” – a generation function – and not to a state-regulated electric utility’s separate and distinct function of furnishing *distribution* service.<sup>125</sup> This important distinction is also inherent in, and underscored by, other provisions in the FERC’s PURPA’s regulations, namely, the separately-imposed requirement in Section 292.306 that qualifying facilities pay an electric utility for “interconnection costs.”<sup>126</sup> Unlike Section 292.305, which identifies specific criteria for designing rates for *generation supply*, Section 292.306(a) provides that the rates for recovery of “interconnection costs” are within the discretion of the “State regulatory authority” and the only limitation in that section is that the prices established by the

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<sup>123</sup> See, e.g., 18 CFR § 292.101(5) (defining “rate” “with respect to the sale or purchase of electric energy or capacity”) and 18 CFR § 292.101(9) (defining “back-up power” as “electric energy or capacity supplied by an electric utility to replace energy ordinarily generated by a facility’s own generating equipment”). See also 18 CFR § 292.312, which authorizes the FERC to terminate an electric utility’s “obligation to sell to qualifying facilities” if “competing retail electric suppliers” are available to sell “electric energy” to the qualifying facility.

<sup>124</sup> Tr. at 602, line 1, through 603, line 8. See also Peoples Exhibit No. JWS-6 (Regulatory Assistance Project, *Standby Rates for Combined Heat and Power Systems* (2013)), pp. 4 and 8 (stating that the obligation for “delivery” of “power” is a separate and distinct function from the supply and sale of “back-up power,” maintenance power” and “supplementary power.”

<sup>125</sup> As Mr. Fisher explained, because Pennsylvania has “unbundled” electric generation from the transmission and distribution functions, any customer, including customer-generators, can obtain its generation supply at market-based prices (DLC Statement No. 16-R, p. 11, line 16 through p. 12, line 10). And, for customers who choose not to “shop,” Duquesne Light provides competitively-procured, market-priced default service on a non-discriminatory basis. *Id.* Thus, in a state like Pennsylvania where electric restructuring has occurred, the “unbundling” of electric generation assures that the “energy and capacity” supplied for “back-up,” “maintenance” and “supplementary” power satisfy the rate design criteria of 18 CFR § 292.305(c), and, in fact, that issue is not in dispute in this case. DLC Statement No. 16-R, pp. 12-13. DLC Statement No. 16-RJ, p. 9.

<sup>126</sup> 18 CFR § 292.306(a) (“Each qualifying facility shall be obligated to pay any interconnection costs which the State regulatory authority (with respect to any electric utility over which it has ratemaking authority) . . . may assess against the qualifying facility on a non-discriminatory basis with respect to other customers with similar load characteristics.”).



state agency should recover interconnection costs “on a nondiscriminatory basis with respect to other customers with similar load characteristics.” That standard is satisfied where an electric utility (like Duquesne Light with regard to Rider No. 16) charges the same rates whether or not the customer’s generator is a “qualifying facility.”

In summary, the FERC’s PURPA regulations do not support Mr. Crist’s position. Mr. Crist’s contention that the rate design criteria in Section 292.305(c) of the PURPA regulations, while applying only to qualifying facilities, should nonetheless be used as the model for structuring back-up *distribution* rates is not supported – indeed, is contradicted – by the regulations viewed in their totality. Section 292.305(c) only pertains to the provision of generation supply (“energy and capacity”) and does not even purport to define appropriate rate criteria for *distribution* service. Other provisions of the regulations expressly provide that state utility regulatory agencies may exercise their traditional ratemaking authority to design electric distribution rates subject only to a general non-discrimination requirement designed to assure that PURPA-certified qualifying facilities are not treated unfairly relative to retail electric customers.

The PURPA regulations, viewed in their entirety, soundly refute Mr. Crist’s fundamental premise that rates for *distribution* service (which consists of costs that do not vary with either a customer’s energy usage or the timing of that usage) should nonetheless adhere to the same rate-design criteria used to price *generation* supply service (which consists largely of costs that do, in fact, differ based on the level of a customer’s energy usage and the times when that usage occurs). Simply stated, the PURPA regulations draw a clear distinction between the rate design criteria for generation supply service (which Mr. Crist cites) and the materially different criteria for state-regulated distribution rates (which Mr. Crist ignored) and, therefore, the portions of the

PURPA regulations Mr. Crist relied upon do not provide any valid basis for critiquing DLC's back-up rate for distribution service.

**D. Back-Up Service Does Not Constitute A Separate Rate Class And Should Not Be Treated As Such For Cost-Allocation Purposes**

Mr. Crist has implicitly recognized that because only one customer is currently taking service on Rider No. 16 (and only one additional customer has expressed an intention to apply for such service), it would not be proper to treat back-up service as a "class" for cost-allocation purposes at this time.<sup>127</sup> However, he has suggested that, in the future, "[i]f there were a number of self-generators in DLC's service area, then Mr. Gorman could obtain load data from all of them and aggregate such data into a customer class."<sup>128</sup> While Mr. Crist's recommendation has no impact on this case, it is, nonetheless, incorrect for several reasons.

At the outset, all of the back-up service rates currently in place among major Pennsylvania electric distribution companies are set forth in "riders" that operate in tandem with the utilities' general service rates that otherwise apply to customers.<sup>129</sup> None of the major electric utilities identify back-up service as a separate "class" that merits a separate rate schedule in its tariff. Instead, customers are placed into appropriate general service customer classes based on their total peak demand without regard to whether they have on-site generation, just as Duquesne Light has also done in this and prior cases.<sup>130</sup> Indeed, this approach has been

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<sup>127</sup> DII Statement No. 1-S, p. 11, lines 18-23.

<sup>128</sup> *Id.*

<sup>129</sup> PECO Energy Company Tariff – Electric Pa. P.U.C. No. 6, Original Page No. 68 (Pilot Capacity Reservation Rider); PPL Electric Utilities Corp. Supp. No. 125 to Tariff – Electric Pa. P.U.C. No. 201, Seventh Revised Page No. 10 (Rule 6 – Auxiliary Service for Non-Qualifying Facilities); Metropolitan Edison Co. Supp. No. 54 to Tariff – Electric Pa. P.U.C. No. 52, Pages 153-158 (Rider L – Partial Services) (The other Pennsylvania utility subsidiaries of FirstEnergy, Pennsylvania Electric Co., Pennsylvania Power Co. and West Penn Power Co., also provide Partial Services under Rider L in their respective tariffs.).

<sup>130</sup> See DLC Statement No. 14-R, p. 31.

consistently used, with the Commission's approval, by electric distribution utilities for many years because it is the theoretically proper way to identify customer classes for purposes of allocating the cost of service, as DLC witness Gorman explained:

[T]he primary usage characteristic that drives cost for a large customer is the *peak demand* placed on the system, and the larger rate classes are differentiated based on peak demand . . . Whether or not the customer is eligible for Rider No. 16, the Company sizes its equipment to meet the customer's peak demand.<sup>131</sup>

As Mr. Gorman also testified, dividing the customer base into separate classes based on whether a customer does, or does not, receive back-up service would produce anomalous results because it ignores the most fundamental element of sound cost-allocation, namely, cost-causation.<sup>132</sup> The Company incurs costs to meet customers' peak demand whenever it occurs and for whatever reason that it may be occurring.

Additionally, as Mr. Gorman also explained, attempting to carve out the cost to furnish distribution service for the portion of a customer's total peak demand attributable solely to its "back-up" component is not practical and, even if it were feasible, would not provide a reasonable basis for designing distribution rates.<sup>133</sup>

In summary, it is neither necessary nor appropriate to make any finding in this case with respect to Mr. Crist's suggestion that back-up service be treated as a separate rate class at some point in the future if the pool of customers actually taking service under Rider No. 16 grows materially. Furthermore, even if his recommendation were to be considered in this case, it should not be adopted, for all the reasons also set forth above.

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<sup>131</sup> DLC Statement No. 14-R, p. 31, lines 9-14.

<sup>132</sup> See DLC Statement No. 14, p. 2, lines 6-8 ("The purpose of the ACOS [allocated cost of service study] is to assign, on a cost-causation basis, Duquesne Light's distribution revenue requirement . . .").

<sup>133</sup> DLC Statement No. 14-R, p. 32, lines 1-4.

#### IV. CONCLUSION

All of the parties to this case, except certain members of DII, either support or do not oppose Duquesne Light's proposal to maintain the existing Rider No. 16 rate of \$2.50 per kW. For the reasons set forth above, the consensus that has been achieved to maintain the Rider No. 16 rate is based on substantial – indeed, extensive – record evidence and should be approved by the ALJ and the Commission.

The proposal advanced by certain members of DII, through their witness, Mr. Crist, to establish a rate for back-up service that is less than 5% of the fully allocated cost of providing distribution service is contrary to the evidence presented in this case, which shows that such a steeply discounted rate does not recover the cost of providing back-up service, would create improper intra-class and inter-class subsidies that ultimately would be borne by all distribution customers, and would provide erroneous price signals that could lead to the installation of uneconomic customer-owned generation and higher costs for all customers.

Therefore, the ALJ and the Commission should reject DII's proposal to exempt customers on Rider No. 16 from paying over 95% of the fully allocated cost of the distribution

service that is incurred to reserve distribution capacity on Duquesne Light's distribution system on a 24-7-365 basis to meet customer-generators' peak demands whenever they occur.

Respectfully submitted,



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Tishekia E. Williams (Pa. ID No. 208997)  
Michael Zimmerman (Pa. ID No. 323715)  
Duquesne Light Company  
411 Seventh Avenue  
Pittsburgh, PA 15219  
412.393.1514 (bus)  
412.393.6268 (bus)  
412.393.5897 (fax)  
[twilliams@duqlight.com](mailto:twilliams@duqlight.com)  
[mzimmerman@duqlight.com](mailto:mzimmerman@duqlight.com)

Anthony C. DeCusatis (Pa. ID No. 25700)  
Catherine G. Vasudevan (Pa. ID No. 210254)  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
215.963.5034 (bus)  
215.963.5001 (fax)  
[anthony.decusatis@morganlewis.com](mailto:anthony.decusatis@morganlewis.com)  
[catherine.vasudevan@morganlewis.com](mailto:catherine.vasudevan@morganlewis.com)

Dated: September 6, 2018

*Counsel for Duquesne Light Company*

## **APPENDIX A**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>PENNSYLVANIA PUBLIC UTILITY</b>	:	
<b>COMMISSION</b>	:	
	:	<b>Docket Nos. R-2018-3000124</b>
<b>v.</b>	:	<b>C-2018-3001152</b>
	:	
<b>DUQUESNE LIGHT COMPANY</b>	:	

<b>DUQUESNE LIGHT COMPANY'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERING PARAGRAPHS</b>
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**September 6, 2018**

## PROPOSED FINDINGS OF FACT

1. On March 27, 2018, Duquesne Light Company (“Duquesne Light,” “DLC” or the “Company”) filed Supplement No. 174 to Tariff Electric – Pa. P.U.C. No. 24 (“Supplement No. 174”) to become effective on May 29, 2018. Supplement No. 174 contained proposed rates designed to produce an increase in annual Pennsylvania operating revenues of \$133.8 million or an increase in the Company’s annual electric distribution revenues of approximately 17%.<sup>1</sup> On April 19, 2018, the Pennsylvania Public Utility Commission’s (“PUC” or the “Commission”) initiated an investigation of the proposed rates, rules and regulations set forth in Supplement No. 174 (“Investigation Order”) and, therefore, Supplement No. 174 was suspended by operation of law<sup>2</sup> until December 29, 2018.

2. As part of Supplement No. 174, the Company proposed to increase the rate for “back-up service” available to eligible customers that meet a portion of their load with their own generating facilities and elect the option of receiving service under Rider No. 16 to Duquesne Light’s tariff.

3. The Company proposed to increase the rate for Rider No. 16 service to \$8.00 per kW for the level of demand specified by the customer in its contract for back-up service.

4. The current Rider No. 16 rate of \$2.50 per kW became effective on May 1, 2013, when the Company reduced the rate from \$6.45 per kW (for contract demand less than 5,000 kW) and \$6.04 per kW (for contract demand of 5,000 kW or more).<sup>3</sup>

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<sup>1</sup> The proposed increase in base rates included \$52.2 million of revenues billed under surcharges that the Company proposed to “roll-in” to base rates and, therefore, the net increase to customers was \$81.6 million.

<sup>2</sup> 66 Pa.C.S. § 1308(d).

<sup>3</sup> Peoples Cross-Exam. Exhibit No. 1, Attachment 1, pp. 5-6.



5. Duquesne Light proposed to increase the Rider No. 16 rate to mitigate intra-class and inter-class subsidies that are produced by the current substantially below-cost rate, and to mitigate intra-class and inter-class subsidies that would increase in the event of increased penetration of distributed generators that elect Rider No. 16 in the future. The Company's Rider No. 16 proposal was also designed to provide better price signals to distributed generators that elect Rider No. 16, so that back-up charges better reflect the actual cost to provide back-up distribution service for customers contemplating the construction of on-site generation.<sup>4</sup>

6. With Supplement No. 174, the Company filed the supporting data required by the Commission's filing requirements at 52 Pa. Code § 53.52 *et seq.*, including the direct testimony of fifteen witnesses, with accompanying exhibits.<sup>5</sup> Duquesne Light's direct testimony included the testimony of Howard S. Gorman (DLC Statement No. 14)<sup>6</sup> and David B. Ogden (DLC Statement No. 15).<sup>7</sup>

7. Mr. Gorman prepared and presented the Company's allocated cost of service study using principles and procedures of cost allocation that have been generally accepted by the Commission in base rate proceedings for Duquesne Light and other electric distribution companies in Pennsylvania.<sup>8</sup>

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<sup>4</sup> See DLC Statement No. 1-R, p. 10, lines 19-22; DLC Statement No. 16-R, pp. 24-35; DLC Statement No. 16-RJ, pp. 15-18.

<sup>5</sup> See Duquesne Light's Prehearing Memorandum (pp. 3-5).

<sup>6</sup> DLC Statement No. 14.

<sup>7</sup> DLC Statement No. 15.

<sup>8</sup> DLC Statement No. 14.

8. Mr. Gorman's cost of service study showed that the cost to furnish back-up service under Rider No. 16, after being adjusted to remove various indirect costs, was slightly higher than \$8.00 per kW and, therefore, fully supported the Company's proposed rate.<sup>9</sup>

9. Mr. Ogden sponsored the Company's Supplement No. 174 containing its proposed Rider No. 16 rate and explained certain limited clarifications the Company proposed to the language of Rider No. 16.<sup>10</sup>

10. The Company's proposed changes to Rider No. 16 were also addressed and further supported by the rebuttal testimony submitted by Mr. Gorman (DLC Statement No. 14-R), Mr. Ogden (DLC Statement No. 15-R) and C. James Davis (DLC Statement No. 1-R) and by the rebuttal (Statement No. 16-R) and rejoinder (Statement No. 16-RJ) testimony submitted by Neil S. Fisher.

11. A total of sixteen parties intervened or filed complaints in the Company's base rate proceeding, including the Commission's Bureau of Investigation & Enforcement ("I&E"), the Office of Consumer Advocate ("OCA") and the Office of Small Business Advocate ("OSBA"). A complete list of complainants and intervenors is set forth in the Joint Petition for Approval of Settlement Stipulation ("Joint Petition") filed on September 14, 2018. A detailed procedural history is set forth in the Joint Petition.

12. Three intervening parties addressed the Company's proposed increase to Rider No. 16 – the OSBA, Peoples Natural Gas Company LLC ("Peoples") and the Duquesne Industrial Intervenors ("DII").

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<sup>9</sup> DLC Exhibit No. 6-4H; DLC Statement No. 14, p. 12.

<sup>10</sup> DLC Exhibit No. DBO-1; DLC Statement No. 15, p. 26.

13. DII is an *ad hoc* group of five large-use customers of Duquesne Light that includes Duquesne University, which is the only customer currently electing to receive service under Rider No. 16.<sup>11</sup>

14. The OSBA, through its witness, Brian Kalcic, supported the Company's proposed Rider No. 16 rate. Mr. Kalcic testified that the Company's proposed rate was developed in accordance with cost of service principles and procedures that are appropriate for ascertaining the cost to furnish back-up service to customers with on-site generation.<sup>12</sup> Mr. Kalcic also explained that establishing an appropriate rate for service under Rider No. 16 is important to the OSBA because a rate that does not recover the cost of providing back-up service to customers with on-site generation would cause other distribution customers to subsidize those costs through higher distribution rates.<sup>13</sup>

15. Peoples submitted the direct and surrebuttal testimony of four witnesses to address Rider No. 16.

16. Jeffrey S. Nehr described a 35 kW reciprocating engine electric generator that Peoples is installing to provide combined heat and power ("CHP") at its Etna Field Shop, which Peoples anticipates will be in service at the end of 2018.<sup>14</sup>

17. Jamie Scripps provided her calculations of the back-up service charges of Duquesne Light, PECO Energy Company and PPL Electric Utilities Corporation, as well as a

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<sup>11</sup> DII includes, in addition to Duquesne University, the Allegheny County Airport Authority, Linde Energy Services Corporation, United States Steel Corporation, and the University of Pittsburgh. DII Complaint, Appendix A (updated June 7, 2018).

<sup>12</sup> OSBA Statement No. 1-R, pp. 4-7.

<sup>13</sup> *Id.* at p. 6, lines 28-33, and p. 7.

<sup>14</sup> Peoples Statement Nos. 1 and 1-SR.

group of Midwestern electric utilities. Ms. Scripps based her calculations on what she determined to be a representative customer with on-site CHP and realistic operating scenarios for such a customer.<sup>15</sup>

18. Jennifer R. Kefer discussed what she perceives to be public policy issues relating to the deployment of customer-owned CHP.<sup>16</sup>

19. James W. Daniel addressed the Company's proposed Rider No. 16 rate and offered his own recommendation for that rate.<sup>17</sup>

20. Mr. Daniel recommended a rate of \$2.41 per kW using a methodology he attributed to the Company as the basis for the \$2.50 per kW rate proposed in its 2013 base rate case.<sup>18</sup>

21. Mr. Daniel also presented an alternative rate design for back-up service that used his \$2.41 per kW rate to create seasonally differentiated rates of \$3.41 per kW for service during the months of June through September and \$1.71 per kW for service during the months of October through May.<sup>19</sup>

22. Mr. Daniel began with the proposed Rider No. 16 rate (\$8.00 per kW), reflecting the fully allocated cost of providing back-up service calculated by Mr. Gorman (\$8.07 / kW). Mr. Daniel accepted Mr. Gorman's calculation. He then multiplied that value by 30%, which he

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<sup>15</sup> Including a "no outage" scenario and various scenarios reflecting generator outages up to 32 hours per month. Peoples Statement No. 3, pp. 10-11 and 14-15; Peoples Statement No. 3-SR, Revised Exhibit JWS-1 and Revised Exhibit JWS-2.

<sup>16</sup> Peoples Statement Nos. 4 and 4-SR.

<sup>17</sup> Peoples Statement Nos. 2 and 2-SR.

<sup>18</sup> Peoples Statement No. 2, p. 10.

<sup>19</sup> Peoples Exhibit No. JWD-5.

used as a representative load factor for customers with distributed generation that would employ back-up service from the Company.<sup>20</sup>

23. Mr. Daniel's proposed rate did not explicitly reflect the "roll-in" to base rates of the Company's distribution system improvement charges ("DSIC") (approximately 5%).<sup>21</sup>

24. DII presented the testimony of three witnesses. Richard Heller<sup>22</sup> and Eric Sprys,<sup>23</sup> testified on behalf of the University of Pittsburgh and the Allegheny County Airport Authority, respectively. They expressed concerns about the impact the Company's proposed increase might have on their employers if they decide to pursue CHP projects to supply a portion of their electrical and thermal loads.

25. DII witness James L. Crist disagreed with the Company's proposed increase in its Rider No. 16 rate and also undertook an analysis of the cost of providing back-up service.<sup>24</sup>

26. Like Mr. Daniel, Mr. Crist contended that he was replicating the rate design methodology Duquesne Light employed in its 2013 base rate case to derive the existing Rider No. 16 rate of \$2.50 per kW.<sup>25</sup>

27. Mr. Crist did not use the approach Mr. Daniel employed. Instead of multiplying the allocated cost of providing back-up service by 30%, he multiplied by 5%.<sup>26</sup>

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<sup>20</sup> Peoples Statement No. 2, p. 9.

<sup>21</sup> Peoples Statement No. 2, pp. 10-11; DLC Statement No. 1, pp. 3-4.

<sup>22</sup> DII Statement Nos. 2 and 2-SR.

<sup>23</sup> DII Statement Nos. 3 and 3-SR.

<sup>24</sup> DII Statement No. 1.

<sup>25</sup> DII Statement No. 1, p. 25, lines 9-15.

<sup>26</sup> *Id.* at p. 25, lines 20-23.

28. Mr. Crist described the 5% figure at various places in his direct and surrebuttal testimony as “a load factor,”<sup>27</sup> a rate he asserted represents “unplanned outage hours,”<sup>28</sup> a figure that is both a “load factor” and “based on the expected availability of the distributed generation”<sup>29</sup> and the “small percentage of annual hours” that customer-generators “would need back-up service.”<sup>30</sup>

29. Multiplying the allocated cost of providing back-up service by 5% produced a rate of 40 cents per kW,<sup>31</sup> which Mr. Crist subsequently reduced to 36 cents per kW.<sup>32</sup>

30. In addition, Mr. Crist proposed that this back-up rate, unlike the existing Rider No. 16 rate, should apply on an “as used” basis only: a customer would pay Mr. Crist’s proposed rate only for the demand registered during a month when that customer used back-up distribution service because of the outage of its own generator,<sup>33</sup> without regard to distribution capacity the Company would have to reserve during all hours of the year to meet an unplanned outage of the customer’s on-site generator.<sup>34</sup>

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<sup>27</sup> DII Statement No. 1-SR, p. 12, line 14.

<sup>28</sup> DII Statement No. 1, p. 25, line 19.

<sup>29</sup> DII Statement No. 1-SR, p. 32, line 15.

<sup>30</sup> DII Statement No. 1-SR, p. 11, lines 17-18.

<sup>31</sup> DII Statement No. 1, p. 25, line 23.

<sup>32</sup> Tr. at 60, lines 16-17.

<sup>33</sup> DII Exhibit No. JC-8, p. 1 (definition of “Back-Up Power Billing Determinants”).

<sup>34</sup> Tr. at 612, lines 20-22 (Mr. Crist’s acknowledgement that back-up service would have to be available on a 24-7-365 basis because a customer’s generator could experience an outage at any time, including on-peak periods (“There will always be an outage. I don’t know when the unpredicted outages are, that’s why they’re called unpredicted.”); DII Statement No. 1-SR, p. 16, lines 5-14.

31. On June 25, 2018, Duquesne Light entered into a Memorandum of Understanding (“MOU”) with Duquesne University, a member of DII and the only customer electing to receive service under Rider No. 16.<sup>35</sup>

32. Under the terms of the MOU, the Company and Duquesne University agreed, subject to the Commission’s approval, that the University could continue to receive back-up service under Rider No. 16 at the current rate of \$2.50 per kW for a period of five years from January 1, 2019 pursuant to a new electric service contract specifying contract demands for Supplementary service and Back-Up service.<sup>36</sup>

33. The Commission has previously approved excluding existing customers with on-site generation from changes in back-up rates and charges when new, increased back-up rates and charges were proposed and approved for prospective application.<sup>37</sup>

34. At the beginning of the evidentiary hearing held on August 15, 2018, the Company notified the Administrative Law Judge (“ALJ”) that a settlement had been achieved with all parties except Peoples on all issues excluding Rider No. 16.<sup>38</sup>

35. DII and Peoples indicated that they desired to continue to contest the Company’s proposed Rider No. 16 rate, although DII did not contest any other aspect of the overall

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<sup>35</sup> DLC Statement No. 1-R, p. 11, and DLC Exhibit No. CJD-1-R.

<sup>36</sup> DLC Exhibit No. CJD-1-R, p. 2.

<sup>37</sup> *Pa. P.U.C. v. PECO Energy Co.*, Docket No. R-2015-2468981 (Final Order entered Dec. 17, 2015) approving a settlement providing that PECO Energy’s Capacity Reservation Rider (“CRR”) for back-up distribution service to customers with distributed generation “shall not apply to customer generating facilities that are online prior to January 1, 2016.” Joint Petition for Settlement of Rate Investigation, Appendix D, p. 4; PECO Energy Tariff Electric – Pa. P.U.C. No. 5, Original Page No. 68.

<sup>38</sup> Tr. at 188.

settlement, while Peoples indicated that so long as Rider No. 16 issues were not resolved to its satisfaction, it would contest the entire settlement.<sup>39</sup>

36. All parties waived cross-examination of their respective witnesses except for DII, Peoples and the Company. Those parties proceeded with cross-examination of the witnesses they designated, which focused on issues related to Rider No. 16. The Company also presented James Karcher and Katherine M. Scholl, at the ALJ's request, to address questions about topics within the scope of their testimony.<sup>40</sup>

37. At the beginning of the August 17, 2018 evidentiary hearing, the Company's Vice President and General Counsel, David T. Fisfis, notified the ALJ that the Company was withdrawing its proposed changes to Rider No. 16 and, therefore, would leave in place the existing Rider No. 16 rate of \$2.50 per kW.<sup>41</sup>

38. The Company determined that this rate case is not the appropriate forum in which to resolve the fundamental issues that necessarily underlie efforts to align back-up service rates with the associated cost of back-up service.<sup>42</sup>

39. Since the Company's March 27, 2018 rate filing, the Commission initiated a collaborative "working group," pursuant to its Final Policy Statement on Combined Heat and Power,<sup>43</sup> to explore issues such as back-up service costs and rates, and the legislature amended

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<sup>39</sup> *Id.*

<sup>40</sup> Tr. at 203-222.

<sup>41</sup> Tr. at 646, lines 1-5.

<sup>42</sup> Tr. at 647, line 24, through 648, line 21.

<sup>43</sup> *Final Policy Statement on Combined Heat and Power*, Docket No. M-2016-2530484 (Apr. 5, 2018), p. 22, Paragraph No. 6.



the Public Utility Code to authorize various forms of alternative ratemaking.<sup>44</sup> Consequently, the Company determined that the best course at this time is to leave in place the existing Rider No. 16 rate of \$2.50 per kW.<sup>45</sup>

40. The Company's decision aligned its final proposed Rider No. 16 rate with the terms of its MOU with Duquesne University.<sup>46</sup>

41. The Company's agreement to leave the Rider No. 16 rate unchanged resolved Peoples' issue with Rider No. 16 to its satisfaction and, therefore, Peoples withdrew its opposition to the settlement of all issues in this case. As a consequence, the Company waived cross-examination of Peoples' witnesses Scripps and Daniel at the August 17, 2018 hearing.

42. DII stated that, while it does not oppose the settlement of all other issues, it would continue to advocate Mr. Crist's position that the Rider No. 16 back-up rate should be discounted from its current level to 36 cents per kW (on an "as-used" basis) and, therefore, it would continue to litigate that issue. Accordingly, DII, on behalf of its members, excluding Duquesne University, is now the only party that disputes Rider No. 16.

43. The only principle issue left for decision is whether the Rider No. 16 rate should remain at its current level, which was approved in the Company's 2013 base rate case, or be reduced to 36 cents per kW (on an "as-used" basis) as DII proposes.

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<sup>44</sup> 66 Pa.C.S. § 1330. *See Implementation of Act 58 of 2018 Alternative Ratemaking for Utilities*, Docket No. M-2018-3003269 (Aug. 23, 2019). *See also Fixed Utility Distribution Rates Policy Statement*, Docket No. M-2015-2518883 (May 23, 2018) pp. 21-23 (dealing with "Standby and Backup Charges").

<sup>45</sup> Tr. at 647.

<sup>46</sup> *See* DLC Exhibit No. CJD-1-R.

44. None of DII's members other than Duquesne University receive service under Rider No. 16.

45. DII witnesses Sprys<sup>47</sup> and Heller<sup>48</sup> expressed concerns about the possible impact of a material increase in the Rider No. 16 rate over its current level.

46. Mr. Crist identified a non-exclusive list of factors that determine the economics of distributed generation, such as the capital investment in the project, the project's financing costs, natural gas prices, electric generation supply costs, operating and maintenance expenses, and the potential for some beneficial use of excess thermal energy.<sup>49</sup>

47. The number and magnitude of the factors that actually determine the economics of CHP and other distributed generation projects are much larger, and have a greater impact on the economics of CHP projects, than the costs of back-up distribution service.<sup>50</sup> Charges for back-up service under Rider No. 16 would be only a small portion (i.e., less than 3% - 4%) of a Duquesne Light customer's total electric bill.<sup>51</sup>

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<sup>47</sup> DII Statement No. 3, p. 3 (“[B]oth ACAA and its potential developers must consider the potential effect on any proposed on-site generation project of back-up charges that could *increase significantly from the current \$2.50 per kW level* to the proposed \$8.00 per kW” (emphasis added).) See DII Statement No. 3-S, p. 2 (“ACAA and other entities such as the University of Pittsburgh are presently evaluating CHP projects *based on the rates that have been in force*” (emphasis added).) See also DII Statement No. 2-S, p. 6 and DII Exhibit No. RH-2S.

<sup>48</sup> DII Statement No. 2-S, p. 6; DII Exhibit No. RH-2S.

<sup>49</sup> DII Statement No. 1-S, p. 26.

<sup>50</sup> *Id.* and DLC Statement No. 16-R, p. 40.

<sup>51</sup> Mr. Fisher states that back-up service charges represent only about 8% to 10% of the total electric charges that a customer on full requirements service would pay under the previously proposed \$8.00 per kW back-up charge. DLC Statement No. 16-R, p. 39, n. 45. At the current \$2.50 per kW back-up rate level, which is 31% of the initially proposed \$8.00 per kW rate, the back-up service charges represent only 3% to 4% of total electric charges.

48. The current Rider No. 16 is not a barrier to the deployment of distributed generation, including CHP, nor does it provide insufficient incentives for CHP deployment.<sup>52</sup>

49. The record evidence demonstrates that the existing Rider No. 16, together with the option customer-generators retain to take general service *without* Rider No. 16, allow such customers to avoid significant transmission and distribution charges.<sup>53</sup> Unlike other Pennsylvania electric distribution companies, Duquesne Light allows customers the flexibility to choose whichever option a customer might prefer.<sup>54</sup> DLC witness Fisher analyzed the customer savings under both options (i.e., a customer electing Rider No. 16 and a customer not electing Rider No. 16) for a CHP customer-generator of the size, and with the operating characteristics, that Peoples' witness Scripps determined to be a good representation for comparing back-up rates across multiple companies. The representative customer identified by Ms. Scripps would have approximately 5.0 MW of total connected load and a 2.0 MW CHP facility.<sup>55</sup>

50. Mr. Fisher's analysis shows that a representative customer-generator on the current Rider No. 16 (at \$2.50 per kW) that experienced a 32-hour outage every month would save at least \$258,000 per year in transmission and distribution ("T&D") charges (at current distribution rate levels) as compared to a customer without a CHP facility.<sup>56</sup> That savings represents at least 37% of the customer's total T&D costs.<sup>57</sup>

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<sup>52</sup> DLC Statement Nos. 16-R and 16-RJ.

<sup>53</sup> DLC Statement No. 16-R, pp. 19-24; DLC Statement No. 16-RJ, p. 17, line 14 through p. 18, line 9.

<sup>54</sup> DLC Statement No. 16-RJ, p. 11, lines 10-18 and p. 12, lines 5-6.

<sup>55</sup> DLC Statement No. 16-R, p. 20, n. 17.

<sup>56</sup> *Id.* at 22. The avoided distribution charges would be even higher than that shown by Mr. Fisher if the distribution rates in the settlement are approved and the back-up service rate in Rider No. 16 remains at the \$2.50 per kW level.

<sup>57</sup> *Id.*

51. Mr. Fisher's analysis also shows that a representative customer with a CHP facility reliable enough to avoid generator outages that would cause the customer to register on-peak demand above its Supplementary demand would see even more significant savings by exercising its option to remain on general service rates. In that case, the customer would garner annual savings of \$318,000 to \$356,000 or 45% of its total T&D charges.<sup>58</sup>

52. A representative customer with on-site generation in Duquesne Light's service territory can avoid a significantly higher percentage of T&D charges than customers of the other Pennsylvania electric distribution companies to which the Company has been compared in this case.<sup>59</sup>

53. Customer-generators on PECO Energy's CRR can avoid at most 12% of its T&D charges, while customer-generators cannot avoid any T&D charges under PPL Electric Utilities' Rule 6.<sup>60</sup> Neither of those companies provides its customer-generators the option to not take service under their back-up rates – the CRR and Rule 6 are mandatory, not optional like Rider No. 16.<sup>61</sup> Additionally, neither PECO nor PPL offers back-up service demand rates (\$ per kW) that are discounted or adjusted for load factor as compared to their generally applicable rate schedules, and neither PECO nor PPL offers customers with kW billing demand on an "as-used" basis, as DII has recommended in this case.<sup>62</sup>

54. Mr. Fisher's analysis also showed that a customer with a reasonably reliable on-site generator could avoid between \$64 and \$67 per MWH (between 90% and 94%) of the total-

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<sup>58</sup> *Id.* at 21.

<sup>59</sup> DLC Statement No. 16-R, p. 43, line 11 through p. 44, line 6.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> Tr. at 519, lines 11-18.

bill charges (generation, transmission and distribution) of \$71 per MWH that a similar full-requirements customer of Duquesne Light would incur.<sup>63</sup>

55. Peoples' witness Scripps presented evidence that a back-up rate allowing a customer with on-site generation to avoid at least 90% of the customer's otherwise applicable charges for full-requirements service conforms to what she (and other advocates for distributed generation) consider a "best practice" for back-up rate design.<sup>64</sup>

56. Duquesne Light did not agree with Ms. Scripp's description of "best practices" because, among other reasons, the 90% threshold allows customers to avoid charges that exceed the costs that Duquesne Light itself could avoid.<sup>65</sup> However, the fact that the current Rider No. 16 rate can satisfy even Ms. Scripps' proposed standard supports a finding that leaving the existing \$2.50 per kW rate in place does not create a barrier to CHP or any other form of distributed generation.

57. Duquesne Light's customers depend on a reliable, secure and universally available distribution grid, including customers that generate a portion of their electricity.<sup>66</sup>

58. Customer-generators could separate themselves entirely from the distribution grid and avoid paying any distribution charges to their electric distribution company. However, customer-generators typically do not do so because they want to be able to rely upon the electric

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<sup>63</sup> DLC Statement No. 16-R, p. 30, Figure 4 (as revised Aug. 17, 2018).

<sup>64</sup> Peoples Exhibit No. JWS-9 (U.S. EPA, *Standby Rates For Customer-Sited Resources: Issues, Considerations and the Elements of Model Tariffs* (2009)), p. 9; Peoples Statement No. 3, p. 24, lines 15-17 and n. 20.

<sup>65</sup> DLC Statement No. 16-R, p. 30, Figure 4 (as revised Aug. 17, 2018).

<sup>66</sup> DLC Statement No. 16-R, p. 16.

distribution system to provide electricity when their own generation is not operating for any reason, including scheduled maintenance outages and unplanned outages.<sup>67</sup>

59. DII witness Crist testified that generator outages, and the need for customer-generators to rely on the electric distribution grid, can occur at any time: “There will always be an outage. I don’t know when the unpredicted outages are, that’s why they’re called unpredicted.”<sup>68</sup>

60. The distribution grid also provides customer-generators with balancing, voltage, and frequency control, which are essential to the safe operation of these customers’ electrical equipment; it also allows them to sell their excess generation into the grid during hours when their generation exceeds their load.<sup>69</sup>

61. If a customer wants to retain the option to have power delivered to it from external sources by its electric utility’s distribution system, the customer’s use of on-site generation to meet a portion of its load does not reduce to any material extent the utility’s cost to furnish distribution service to that customer as long as the utility has the obligation to serve the customer’s peak demand at any time it may occur.<sup>70</sup>

62. The Commission has previously found that “the costs of the distribution system, in the short run, are fixed and do not vary by day or month” and, similarly, “distribution service

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<sup>67</sup> *Id.*

<sup>68</sup> Tr. at 612, lines 20-22.

<sup>69</sup> DLC Statement No. 16-R, p. 16.

<sup>70</sup> DLC Statement No. 16-R, pp. 17-18.

costs do not vary, in the short run between rate cases, in proportion to a consumer's daily or monthly level of consumption."<sup>71</sup>

63. An electric utility bears the fixed costs of building and maintaining its distribution system without regard to how frequently the system may be used by customers.<sup>72</sup> Whether or not a customer has on-site generation and is eligible for Rider No. 16, the size (capacity) and the cost of the Company's distribution property and equipment must be sufficient to meet the customer's peak demand.<sup>73</sup>

64. Duquesne Light does not incur any less cost to build, own and operate its distribution system simply because a customer on Rider No. 16 may use back-up distribution service only intermittently.<sup>74</sup> Duquesne Light witness Gorman explained that "*peak demand*, and therefore, the capacity of the equipment installed, drives costs; the frequency with which the system is used has almost nothing to do with costs for those customers."<sup>75</sup>

65. In order to comply with its statutory obligation to furnish safe, reliable and reasonable distribution service,<sup>76</sup> Duquesne Light must stand ready to serve the total connected load of all of its customers at any time and at all times.

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<sup>71</sup> *Fixed Utility Distribution Rates Policy Statement*, Docket No. M-2015-2518883 (May 23, 2018), p. 16. *See also* p. 14, where the Commission states that straight fixed/variable rate design "is based on the fact that most, if not all, of the utility's distribution system costs may be fixed in the short run and therefore customers should pay for those costs through fixed charges on their bills that reflect the amount of fixed costs of the distribution system for each customer class."

<sup>72</sup> DLC Statement No. 14-R, p. 27, lines 4-12; DLC Statement No. 16-R, p. 18.

<sup>73</sup> *Id.*

<sup>74</sup> DLC Statement No. 14-R, p. 27, lines 6-8.

<sup>75</sup> *Id.*

<sup>76</sup> 66 Pa.C.S. § 1501.

66. For a customer with on-site generation, total connected load means the total load the customer will place on the Company's system when its generator is experiencing either a scheduled or unplanned outage.<sup>77</sup>

67. It costs the same to build a distribution system that will be used to meet a customer's total connected load every day as it does to build a distribution system that is used to meet a customer's total connected load only once or twice a year.<sup>78</sup>

68. The capacity dedicated to full-requirements customers and to customer-generators must be sufficient to meet each customer's total connected load that the utility is obligated to serve.<sup>79</sup>

69. For a customer-generator, an electric utility must reserve distribution capacity on its system for possible use at any time during the entire year because no one knows when the customer will call upon the distribution system to provide back-up service.<sup>80</sup>

70. "Unpredicted outages" can, and do, occur at any time, including during on-peak periods.<sup>81</sup> The record evidence shows that, as recently as June 2016, the peak demand of the customer currently on Rider No. 16 was coincident with the peak demand of the Rate GL class,<sup>82</sup> when the customer registered its monthly peak demand because its generator was not operating.<sup>83</sup>

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<sup>77</sup> DLC Statement No. 16-R, p. 18.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> Tr. at 612, lines 20-22.

<sup>82</sup> This customer receives general service on Rate GL. DLC Statement No. 14-R, p. 30, lines 2-6.

<sup>83</sup> *Id.*



71. In two other months (May and September), the Rider No. 16 customer's demand was at least 90% of its monthly peak at the time the Rate GL class peak occurred, which shows that outages of the customer's generator were material contributors to the class monthly peaks.<sup>84</sup>

72. Similarly, when the customer achieved its annual peak demand for 2016 (at 2:15 PM on August 10), the Rate GL class demand was at 98% of its annual peak and the entire distribution system was at 97% of its total annual peak demand.<sup>85</sup>

73. The record evidence contains actual operating data for a Rider No. 16 customer confirming that the unavailability of a customer's generator can be a major contributor to both class and total system peak demands and the use of not only localized assets but the entire distribution system.<sup>86</sup>

74. Because a customer-generator's need for back-up service may occur at any time and because the Company must have distribution system capacity available to meet that need, Duquesne Light does not avoid distribution system costs when a customer installs on-site generation but continues to "lean" on the distribution system to meet its total connected load during outages of its generator.<sup>87</sup>

75. The Commission has found that "distribution system costs do not vary . . . in proportion to a consumer's daily or monthly levels of consumption."<sup>88</sup>

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<sup>84</sup> *Id.* at lines 7-8.

<sup>85</sup> *Id.* at lines 10-14.

<sup>86</sup> DLC Statement No. 14-R, p. 30, lines 16-20.

<sup>87</sup> DLC Statement No. 16-R, pp. 18-19.

<sup>88</sup> *Fixed Utility Distribution Rates Policy Statement, supra.*

76. The capacity that is reserved to meet a customer-generator's total connected load cannot be used for any other purpose, which means that the Company cannot sell the reserved capacity to any other customer to try to create revenue that might offset the cost of providing back-up service to customer-generators.<sup>89</sup>

77. The distribution charges that a customer-generator avoids by having a below cost rate do not reflect costs that the Company avoids; these under-collected costs are shifted to other customers within the customer-generator's own general service class (an intra-class subsidy) and/or to customers in other classes, including residential and low-income customers (an inter-class subsidy).<sup>90</sup>

78. Company witness Fisher analyzed and quantified the level of costs that Duquesne Light can avoid when a representative CHP customer generates its own electricity and the level of Duquesne Light's distribution charges that such a customer can avoid.<sup>91</sup> That analysis was not rebutted by any witness in this case.

79. Mr. Fisher's analysis shows that, under Duquesne Light's existing rates (including the current Rider No. 16), the distribution charges that a representative CHP customer with a reliable generator could avoid paying to Duquesne Light would exceed by between \$15 and \$18 per MWH the costs that the Company could avoid by that customer self-generating portion of its electric load equal to its generator's capacity.<sup>92</sup> The Company's avoided costs are \$49 per

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<sup>89</sup> DLC Statement No. 16-R, p. 18, lines 17-21.

<sup>90</sup> DLC Statement No. 16-R, p. 30; DLC Statement No. 16-RJ.

<sup>91</sup> *Id.*

<sup>92</sup> DLC Statement No. 16-R, p. 31, revised Figure 4. The avoided rate bar shown in Figure 4 for proposed rates labeled "CHP with Rider 16" (\$59 per MWH) was based on the initial Duquesne Light proposed back-up rate of \$8 per kW. At a \$2.50 per kW back-up rate, this \$59 per MWH figure would increase above the \$64 per MWH shown under current rates as customer savings increase with a higher GL rate and no change in the back-up rate.

MWH, while the representative CHP customer would avoid paying total charges of between \$64 and \$67 per MWH under current rates and as much as \$70 per MWH under the proposed rates.<sup>93</sup> A further reduction in the charges paid by a representative CHP customer (as DII proposes) would shift even more costs to non-generating customers.

80. DII witness Crist accepted Duquesne Light witness Gorman's calculation of the fully allocated cost to provide electric distribution service to back-up service customers.<sup>94</sup>

81. Mr. Crist initially contended that the fully allocated cost of service should be multiplied by 5% to derive his proposed back-up service rate (a reduction of 95%). He also proposed to change the structure of the existing Rider No. 16 such that his proposed rate would only apply on an "as-used basis."<sup>95</sup>

82. Initially, Mr. Crist proposed to justify a 95% discount for back-up service because he contended that customers' on-site generators are highly reliable, customer-generators would rarely need to use back-up service and their usage, when it occurred, would not be during on-peak periods. Thus, Mr. Crist initially referred to the few "unplanned outage hours" customer-generators he alleged would experience,<sup>96</sup> the high "availability" of "distributed generation"<sup>97</sup> and the allegedly "small percentage of annual hours" that customer-generators "would need

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<sup>93</sup> *Id.* Mr. Fisher testified that the \$70 per MWH figure based on the "no outage scenario" would be \$65 per MWH assuming 32 hours of outages in a month. This avoided charge customer credit represents a 43% (\$70 per MWH) to 33% (\$65 per MWH) premium above the PJM market value (\$49 per MWH) of the output associated with the customer's generator (including energy, capacity, ancillary services, delivery line losses, and renewable energy credits, etc.). Tr. at 514, lines 3-5 and Tr. at 528, lines 1-29. No witness in this case disputes Mr. Fisher's market value figures shown in Figure 3 of his rebuttal testimony (DLC Statement No. 16-R, p. 28) or the fact that customers that install CHP can avoid Duquesne Light charges in excess of those market values.

<sup>94</sup> Tr. 588, lines 5-7; Tr. 595, lines 1-7; 1-25; Tr. 596, lines 1-5; Peoples Statement No. 2, p. 11.

<sup>95</sup> DII Statement No. 1, p. 25.

<sup>96</sup> DII Statement No. 1, p. 25, line 19.

<sup>97</sup> DII Statement No. 1-SR, p. 32, line 15.

back-up service” as the basis for discounting the fully-allocated cost of providing back-up service by over 95%.<sup>98</sup>

83. Mr. Crist altered his position, after Mr. Fisher showed that a distributed generation customer with the operating characteristics attributed to it by Mr. Crist and Peoples’ witness Scripps<sup>99</sup> could remain on its general service rate without Rider No. 16 and obtain back-up service at no cost<sup>100</sup> or could experience a generator outage at the customer’s average demand level and effectively pay only about \$7,500 more (i.e., effectively pay about \$3.75 per kW for back-up service) in monthly distribution charges.<sup>101</sup>

84. In response to Mr. Fisher’s analysis, Mr. Crist argued that customer-generators were not reliable enough to avoid using back-up service several times during a month, including during on-peak periods when their usage would cause them to register their peak monthly billing demand.<sup>102</sup>

85. Mr. Crist testified that the 95% availability factor Peoples’ witness Scripps ascribed to CHP projects as “absolutely not a realistic case.”<sup>103</sup>

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<sup>98</sup> DII Statement No. 1-SR, p. 11, lines 17-18.

<sup>99</sup> DII Statement No. 1, p. 25, lines 1-3 and 20; Peoples Statement No. 3, p. 19, lines 3-4.

<sup>100</sup> DLC Statement No. 16-RJ, pp. 6-7 (“[I]f a customer with CHP that is on base rate GL (without Rider No. 16) experiences no generator outages in a month, then that customer would get a ‘free pass’ and pay nothing (\$0) to Duquesne Light for having to stand ready to serve those 2.0 MW [of back-up demand] in the event of an unplanned outage. . . . [Mr. Crist] also neglects to mention that customers would get a ‘free pass and pay nothing (\$0) to Duquesne Light for having to stand ready to serve.”).

<sup>101</sup> DLC Statement No. 16-RJ, p. 8, lines 5-10.

<sup>102</sup> Tr. at 619, lines 8-9; Tr. at 620, lines 6-7 (“He [Mr. Fisher] did say he used the Peoples Gas case, and I just want to be clear, that’s not a realistic case.”).

<sup>103</sup> Tr. at 619, lines 8-9.

86. Mr. Crist's latest position articulated in response to cross-examination is that CHP and other distributed generation will experience outages at any time, including during on-peak periods.<sup>104</sup>

87. In his surrebuttal testimony, Mr. Crist also opined that if a customer experiences an outage every month, "the billing demand of the customer [4.9 MW] would be no different than if no CHP were installed" and that there would be "no savings in distribution charges" under Duquesne Light's general applicable GL rate schedule.<sup>105</sup>

88. Mr. Crist contended that a customer cannot lower its monthly billing demand even if it has an on-site generator that Mr. Crist claims can operate 95% to 97.5% of the time (i.e., outages occur each month and they always occur when the customer is at its peak load).<sup>106</sup> No witness in this case, including Mr. Crist, presented a valid reason why a customer with this type of on-site generator should be permitted to avoid a significant portion of distribution service demand-related costs when that customer cannot reduce its monthly billing demand.

89. Under Mr. Crist's proposal, a customer without CHP who has 4.9 MW monthly billing demand would pay 100% of the Rate GL distribution demand charge while a customer with CHP on Rider No. 16 and the same 4.9 MW monthly billing demand would pay substantially less.

90. Based on the record at the close of evidentiary hearings, Mr. Crist's latest position is that customer-generators should receive back-up service at a rate that relieves them from

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<sup>104</sup> Tr. at 612, lines 9-22.

<sup>105</sup> DII Statement No. 1-S, p. 16, lines 5-13.

<sup>106</sup> *Id.*

paying all but 5% of the costs to have distribution capacity available 24-7-365 to meet their needs.<sup>107</sup>

91. The reservation of capacity on the Company's distribution system needed to furnish back-up service commensurate with Mr. Crist's assessment of the "realistic" operating characteristics of customer-generators is substantially the same as the capacity needs of distribution customers that do not have on-site generation. Both groups of customers require Duquesne Light to have distribution capacity available to meet their peak demand (including the peak demand of back-up service customers when their generators are not operating) on a 24-7-365 basis.

92. Customer-generators should not get essentially the same level of distribution service the Company furnishes to full-requirements distribution service customers but pay a small fraction of the costs to provide that service.

93. Mr. Crist's proposed rate for back-up service is substantially less than the cost to furnish that service and would create significant intra-class and inter-class subsidies when CHP and other distributed generation achieve greater penetration in the Company's service area.

94. Mr. Crist relied upon the regulations adopted by the Federal Energy Regulatory Commission's ("FERC")<sup>108</sup> to implement the Public Utility Regulatory Policies Act of 1978 ("PURPA")<sup>109</sup> to support his proposed back-up service rate.<sup>110</sup>

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<sup>107</sup> Tr. at 619, lines 1-20.

<sup>108</sup> 18 CFR §§ 292.301 – 292.314.

<sup>109</sup> 16 U.S.C. §§ 2601 *et seq.*

<sup>110</sup> DII Statement No. 1, pp. 16-18; DII Statement No. 1-S, pp. 19 and 30-31.

95. Mr. Crist agreed that FERC’s PURPA regulations apply only to “qualifying facilities” that meet qualification criteria established by PURPA and have been certified by the FERC.<sup>111</sup>

96. Mr. Crist contended that the Commission should adhere to the “PURPA structure of Supplemental Power, Backup Power and Maintenance Power, and the concepts that apply to those services under the QF regulations.”<sup>112</sup>

97. The PURPA regulations define an electric utility’s obligation to supply “power” to qualifying facilities. That obligation applies to the supply of “energy and capacity.”<sup>113</sup>

98. “Energy” and “capacity” refer only to generation supply and not to the distribution of electric power.<sup>114</sup>

99. Other provisions in the FERC’s PURPA’s regulations, which were not discussed by Mr. Crist, address state regulatory commissions’ authority and discretion to establish rates for distribution service as part of “interconnection costs.”<sup>115</sup>

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<sup>111</sup> DII Statement No. 1, p. 25, lines 14-21.

<sup>112</sup> DII Statement No. 1, p. 26, lines 18-21.

<sup>113</sup> 18 CFR § 292.303(b).

<sup>114</sup> Tr. at 602, line 1, through 603, line 8. Peoples Exhibit No. JWS-6 (Regulatory Assistance Project, *Standby Rates for Combined Heat and Power Systems* (2013)), pp. 4 and 8 (stating that the obligation for “delivery” of “power” is a separate and distinction function from the supply and sale of “back-up power,” maintenance power” and “supplementary power.”).

<sup>115</sup> 18 CFR § 292.306(a) (“Each qualifying facility shall be obligated to pay any interconnection costs which the State regulatory authority (with respect to any electric utility over which it has ratemaking authority) . . . may assess against the qualifying facility on a non-discriminatory basis with respect to other customers with similar load characteristics.”).

100. Because only one customer is currently taking service on Rider No. 16, Mr. Crist acknowledged that it would not be proper to treat back-up service as a “class” for cost-allocation purposes at this time.<sup>116</sup>

101. Mr. Crist suggested that, in the future, “[i]f there were a number of self-generators in DLC’s service area, then Mr. Gorman could obtain load data from all of them and aggregate such data into a customer class.”<sup>117</sup>

102. Mr. Crist’s recommendation has no impact on this case. Nonetheless, it is incorrect and should be rejected.

103. All of the back-up service rates currently in place among major Pennsylvania electric distribution companies are set forth in “riders” that operate in tandem with the utilities’ general service rates that otherwise apply to customers.<sup>118</sup>

104. Consistent with current practice and sound ratemaking principles, customers should be placed into appropriate general service customer classes based on their total peak demand without regard to whether they have on-site generation.<sup>119</sup> This approach is the theoretically proper way to identify customer classes for purposes of allocating the cost of service, as DLC witness Gorman explained:

[T]he primary usage characteristic that drives cost for a large customer is the *peak demand* placed on the system, and the larger

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<sup>116</sup> DII Statement No. 1-S, p. 11, lines 18-23.

<sup>117</sup> *Id.*

<sup>118</sup> PECO Energy Company Tariff – Electric Pa. P.U.C. No. 6, Original Page No. 68 (Pilot Capacity Reservation Rider); PPL Electric Utilities Corp. Supp. No. 125 to Tariff – Electric Pa. P.U.C. No. 201, Seventh Revised Page No. 10 (Rule 6 – Auxiliary Service for Non-Qualifying Facilities); Metropolitan Edison Co. Supp. No. 54 to Tariff – Electric Pa. P.U.C. No. 52, Pages 153-158 (Rider L – Partial Services) (The other Pennsylvania utility subsidiaries of FirstEnergy, Pennsylvania Electric Co., Pennsylvania Power Co. and West Penn Power Co., also provide Partial Services under Rider L in their respective tariffs.).

<sup>119</sup> DLC Statement No. 14-R, p. 31.



rate classes are differentiated based on peak demand . . . Whether or not the customer is eligible for Rider No. 16, the Company sizes its equipment to meet the customer's peak demand.<sup>120</sup>

105. Dividing the customer base into separate classes based on whether a customer does, or does not, receive back-up service would produce anomalous results because it ignores the most fundamental element of sound cost-allocation, namely, cost-causation.<sup>121</sup>

106. Attempting to carve out the cost to furnish distribution service for the portion of a customer's total peak demand attributable solely to its "back-up" component is not practical and, even if it were feasible, would not provide a reasonable basis for designing distribution rates.<sup>122</sup>

107. Substantial record evidence supports the finding that the existing Rider No. 16 rate is lawful, is not unjust, unreasonable or discriminatory, and should be approved.

108. Substantial record evidence supports the finding that Rider No. 16 is not a barrier to the development of CHP and other distributed generation.

109. Substantial record evidence supports the finding that the alternative Rider No. 16 rate proposed by DII would not recover the cost of furnishing back-up service to customers that elect to receive service on that rate; would result in improper intra-class and inter-class subsidization; would send improper price signals that could cause the installation of on-site generation that is not cost-effective, to the detriment of all of Duquesne Light's electric distribution customers.

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<sup>120</sup> DLC Statement No. 14-R, p. 31, lines 9-14.

<sup>121</sup> DLC Statement No. 14, p. 2, lines 6-8 ("The purpose of the ACOS [allocated cost of service study] is to assign, on a cost-causation basis, Duquesne Light's distribution revenue requirement . . .").

<sup>122</sup> DLC Statement No. 14-R, p. 32, lines 1-4.

110. Substantial record evidence supports the finding that the Rider No. 16 rate proposed by DII, if adopted, would be unlawful, unjust, unreasonable and unduly discriminatory and, therefore, should be rejected.

## PROPOSED CONCLUSIONS OF LAW

1. FERC’s PURPA regulations apply only to “qualifying facilities” that meet qualification criteria established by PURPA and have been certified by the FERC.<sup>123</sup>
2. The kinds of customer-owned generation facilities that the parties focused upon for purposes of addressing Rider No. 16 issues in this case would not be “qualifying facilities.”<sup>124</sup>
3. Even as to qualifying facilities, the PURPA regulations that define an electric utility’s obligation to supply “power” to such qualifying facilities pertain only to the supply of “energy and capacity” and not to the state-regulated function of electric distribution service.<sup>125</sup>
4. Section 292.305 of the FERC’s regulations address how rates should be designed for “sales of back-up and maintenance power.”<sup>126</sup>
5. Electric utilities’ “obligation to sell to qualifying facilities” for back-up and maintenance power is set forth in Section 292.303(b) of the FERC’s PURPA regulations, which states: “Each electric utility shall sell to any qualifying facility, in accordance with § 292.305 . . . energy and capacity requested by the qualifying facility” (emphasis added).
6. The term “energy and capacity” is consistently used in the FERC’s PURPA regulations to define the scope of an electric utility’s obligation to “sell” “power” to a qualifying facility.<sup>127</sup>

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<sup>123</sup> 18 CFR § 292.301(a): “Applicability. This subpart [C] applies to the regulation of sales and purchases between qualifying facilities and electric utilities.” 18 CFR §§ 292.203 – 292.207 set forth the PURPA qualification criteria and procedures for certification. DII Statement No. 1, p. 25, lines 14-21.

<sup>124</sup> *Id.*

<sup>125</sup> 18 CFR § 292.303(b).

<sup>126</sup> 18 CFR § 292.305(c); DII Statement No. 1, p. 17, lines 12-24.

<sup>127</sup> *See, e.g.*, 18 CFR § 292.101(5) (defining “rate” “with respect to the sale or purchase of electric energy or capacity”) and 18 CFR § 292.101(9) (defining “back-up power” as “electric energy or capacity supplied by an

7. The rate design criteria in Section 292.305 do not apply to a state-regulated electric utility's function of furnishing distribution service. Other provisions of the FERC's PURPA regulations address distribution cost recovery as part of "interconnection costs."<sup>128</sup>

8. Unlike Section 292.305, which identifies specific criteria for designing rates for *generation supply*, Section 292.306(a) provides that the rates for recovery of "interconnection costs" are within the discretion of the "State regulatory authority" and the only limitation in that section is that the prices established by the state agency should recover interconnection costs "on a nondiscriminatory basis with respect to other customers with similar load characteristics."

9. The standard set forth in Section 292.306(a) is satisfied where an electric utility (like Duquesne Light with regard to Rider No. 16) charges the same rates whether or not the customer's generator is a "qualifying facility."

10. The FERC's PURPA regulations do not support Mr. Crist's position. Mr. Crist's contention that the rate design criteria in Section 292.305(c) of the PURPA regulations, while applying only to qualifying facilities, should nonetheless be used as the model for structuring back-up *distribution* rates is not supported – indeed, is contradicted – by the regulations viewed in their totality.

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electric utility to replace energy ordinarily generated by a facility's own generating equipment"). *See also* 18 CFR § 292.312, which authorizes the FERC to terminate an electric utility's "obligation to sell to qualifying facilities" if "competing retail electric suppliers" are available to sell "electric energy" to the qualifying facility.

<sup>128</sup> 18 CFR § 292.306(a) ("Each qualifying facility shall be obligated to pay any interconnection costs which the State regulatory authority (with respect to any electric utility over which it has ratemaking authority) . . . may assess against the qualifying facility on a non-discriminatory basis with respect to other customers with similar load characteristics.").

11. The Company's current Rider No. 16 rate, which was previously approved by the Commission, is lawful and satisfies all of the criteria established by Chapter 13 of Public Utility Code for approval in this case.

12. The Company's current Rider No. 16 rate should be approved.

## **PROPOSED ORDERING PARAGRAPHS**

1. The Joint Petition is granted, and the Settlement is approved.
2. The proposed revisions to the Company's Rider No. 16 proposed by DII are rejected.
3. Duquesne Light is authorized to file the tariff supplement attached to the Joint Petition as Appendix A to be effective in accordance with its terms.