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November 5, 2018

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
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VIA ELECTRONIC FILING

**RE: Pennsylvania PUC v. Duquesne Light Company; Docket No. R-2018-3000124;
R-2018-3000829**

Dear Secretary Chiavetta:

Enclosed for filing please find the Reply Exceptions of the Duquesne Industrial Intervenors ("DII") to the Recommended Decision of Administrative Law Judge Katrina L. Dunderdale, issued in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to the proceeding are being served with copies of this document. Thank you.

Sincerely,

McNEES WALLACE & NURICK LLC

By

A handwritten signature in blue ink that reads 'Matthew L. Garber'.

Matthew L. Garber

Counsel to Duquesne Industrial Intervenors

Enclosure

c: Administrative Law Judge Katrina L. Dunderdale (via E-Mail and First-Class Mail)
Stephen Jakab, Bureau of Technical Utility Service (via e-mail)
Certificate of Service

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I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

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Dated this 5th day of November, 2018, at Harrisburg, Pennsylvania

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket No. R-2018-3000124
	:	
Office of Consumer Advocate	:	C-2018-3001029
Jason Dolby	:	C-2018-3001074
Peoples Natural Gas Company LLC	:	C-2018-3001152
Office of Small Business Advocate	:	C-2018-3001566
Duquesne Industrial Intervenors	:	C-2018-3001713
Leonard Coyer	:	C-2018-3002424
NRG Energy Center Pittsburgh LLC	:	C-2018-3002755
	:	
v.	:	
	:	
Duquesne Light Company	:	
1308(d) Proceeding	:	
	:	
Tax Cuts and Jobs Act – Duquesne Light Company	:	Docket No. R-2018-3000829
	:	

**REPLY EXCEPTIONS OF THE
DUQUESNE INDUSTRIAL INTERVENORS**

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Dated: November 5, 2018

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I. INTRODUCTION

On October 18, 2018, Administrative Law Judge Katrina Dunderdale (the "ALJ") issued a Recommended Decision ("R.D.") recommending the Pennsylvania Public Utility Commission ("Commission" or "PUC") approve the Joint Petition for Settlement in this proceeding. The ALJ also recommended the Commission approve the Duquesne Industrial Intervenors' ("DII") proposed Rider No. 16 ("Rider 16") back-up rate of \$0.352 per kW.¹ The ALJ stated that Duquesne Light Company ("DLC" or "Company") failed to demonstrate its back-up rate of \$2.50/kW was just and reasonable and found DII's evidence to be credible and persuasive. However, the ALJ did not recommend adoption of DII's proposal for a separate planned maintenance rate at this time.²

On October 29, 2018, DLC and DII filed Exceptions. DII supports the R.D. on all but one issue. DII only excepts to the R.D.'s recommendation to reject a separate rate for planned maintenance and to defer the decision on whether to mandate a maintenance rate. DLC in its Exceptions requested that the Commission reject most of the ALJ's recommendations on Rider 16.

These Reply Exceptions are DII's response to the factual and legal assertions in DLC's Exceptions. Herein, DII demonstrates that the ALJ was correct to place the burden of proof on DLC, and that DII has demonstrated by substantial evidence that its proposed rates, terms, and conditions for Rider 16 as set forth in DII Exhibit JC-8 (with adjustments to the rates contained therein to reflect the overall revenue requirement settlement) are just and reasonable.

II. SUMMARY OF ARGUMENT

On April 5, 2018, after two years of study and stakeholder input, the Commission adopted a Final Policy Statement on Combined Heat and Power ("CHP").³ In its Policy Statement Order,

¹ R.D. at 178.

² *Id.*

³ 52 Pa. Code § 69.3201-69.3203; *Final Policy Statement on Combined Heat and Power*, Docket No. M-2016-2530484 (April 5, 2018) ("CHP Policy Statement Order").

the Commission recognized that excessive back-up rates for distributed generation facilities can hamper the development of CHP facilities in Pennsylvania.⁴ The Final Policy Statement encouraged utilities to take steps to remove barriers to CHP development in their territories.⁵

The sole disputed issue in this proceeding concerns Rider 16, which sets rates and terms for customers with onsite generation. While Rider 16 is broader than CHP, current and potential CHP customers have particular interest in the outcome of this proceeding. CHP systems are sized to match the thermal load to maximize the efficiency benefit to the customer and the region.⁶ As a result, CHP systems rely on the distribution system for power needs above that being generated (supplemental power) and for power needs when the generator is offline (back-up power).

More broadly, the benefits of onsite generators (not limited to CHP) are significant. They provide a local source of generation, benefit the environment, reduce energy costs, and provide resiliency benefits to the local distribution grid.⁷ The Pittsburgh region has significant interest in onsite generation, and this case may have a significant impact on whether this interest can materialize into additional projects, as the Commission seeks in the CHP Final Policy Statement.⁸

Around the same time the Commission was finalizing its Final Policy Statement, DLC was beginning to litigate its proposal to triple Rider 16 back-up rates. DII's members, including several who own or are exploring major onsite generation projects, saw a critical need to engage this issue.

These Reply Exceptions directly refute DLC's Exceptions. Herein, DII will demonstrate that the R.D. correctly assigned the burden of proof to DLC, recommended the appropriate back-up rate, and affirmed the appropriateness of studying Rider 16 customers as a distinct class.

⁴ CHP Policy Statement Order at 1-3.

⁵ 52 Pa. Code § 69.3201(d) ("Final Policy Statement").

⁶ DII Brief, p. 6; DII Statement No. 1, pp. 15-16 (Crist).

⁷ Peoples Statement No. 2, p. 28 (Daniel).

⁸ DII Brief, pp. 17-25.

While many factors affect the development of distributed generation, the amount charged for backup rates is very significant.⁹ Mr. Heller from the University of Pittsburgh ("Pitt") explained that the existing \$2.50/kW rate results in an investment payback period of 15.7 years, which is longer than any energy efficiency and conservation project that has been approved by Pitt, despite its energy efficiency and carbon reduction goals.¹⁰ Every cost in that equation is essential to enable Pitt's potential CHP projects to be approved. Back-up rates, terms, and conditions are squarely within the Commission's purview. In this proceeding, the PUC has an opportunity to provide clear direction regarding the rates, terms, and conditions of service for distributed generation customers in DLC's territory and throughout the Commonwealth. This is the next step that was contemplated in the Final Policy Statement, in which the Commission urged parties to pursue appropriate cost allocation and rate design for distributed generation in rate cases.¹¹

Considering the voluminous record evidence in this proceeding and the timeliness of this issue in light of the CHP Final Policy Statement, the Commission should provide a definitive determination on the appropriate means of calculating back-up rates in DLC's territory that reflects reasonable assumptions about how frequently distributed generation customers rely on back-up service, as DII and the ALJ recommend.

III. ARGUMENT

DLC's Exceptions rely on three fundamental errors, all of which should be rejected by the Commission. First, DLC continually portrays Rider 16 customers as costing DLC the same as full requirements customers. DLC states that there is no difference between the fixed costs of

⁹ Peoples Statement No. 4, pp. 8-9 (Kefer); Peoples Statement No. 3, p. 7 (Scripps); 52 Pa. Code § 69.3201(d) (Final Policy Statement).

¹⁰ DII Brief, pp 17-18, 21-25, and Findings of Fact 70-100.

¹¹ Final Policy Statement, p. 9.

customers who use the distribution system less than 5% of the time and customers who use the distribution system 100% of the time.¹² To protect this position, DLC vigorously opposes evaluation of Rider 16 as a separate class of customers (see DLC Exception No. 5). DLC's arguments about the "fixed costs" to serve a customer err because the Company ignores the fact that this assertion applies to *every* customer on the system. Yet, requiring each customer to pay its "fixed costs" on a 7/24/365 basis is *not* how costs are allocated and rates designed.

Second, DLC continually claims that DII erroneously applies a "generation" concept (usage) to distribution service.¹³ This is a mischaracterization of DII's position. DLC even refers to DII's proposal as a "new usage-based rate" – as if DII's proposal was a new concept. Yet, DLC fails to acknowledge that Rider 16 is already a load factor based rate.¹⁴ DLC ignores its practice in implementing the current Tariff language, which resulted in Rider 16 back-up service being billed based on actual monthly usage rather than as a fixed monthly amount. DII is proposing the same approach but with updated and improved data.

Finally, DLC claims that it bears no burden of proof to maintain the \$2.50/kW back-up rate. DLC asks for deference for its current rate, which was developed as part of a "black box" settlement. DLC cannot explain the basis of the 30% load factor that was applied to produce the \$2.50 rate but seeks to shift the burden of proof to DII's alternative proposal. Further, DLC clearly does not think its \$2.50 rate is remotely close to cost of service. Thus, DLC asks the Commission to believe its evidence for a vastly higher rate, but to approve a \$2.50 rate.

In these Reply Exceptions, DII will demonstrate that (a) the R.D. correctly assigned DLC the burden to prove the justness and reasonableness of all aspects of its rate filing; (b) Rider 16

¹² DLC Exceptions, pp. 2, 4, 15, 19.

¹³ *Id.*, pp. 4, 19, 21.

¹⁴ DII Brief, p. 42; Tr. at 411-12 (Ogden). In the context of calculating a rate for Back-up Service under Rider 16, load factor means the percentage of time that the customer relies on the DLC system for Back-up Service because the generator is not operating. Tr. at 598, lines 10-14 (Crist).

should continue to be applied on an "as used" basis; (c) the R.D. correctly recommended a back-up rate of \$0.352/kW; (4) the R.D. correctly found that DLC's existing Rider 16 back-up rate is not supported by substantial evidence; and (5) the R.D. correctly recommended that Rider 16 customers be evaluated as a separate class.

A. The Recommended Decision Appropriately Assigns To Duquesne Light The Burden Of Proof For All Proposed Terms and Rates (Reply Exception No. 1).

On Exceptions, DLC argues that the R.D. erred in assigning to DLC the burden of proof on all aspects of its rate filing. DLC's arguments are incorrect. First, it is inequitable to shift the burden of proof onto a party that is forced to defend against a utility's dramatic cost increases and eleventh-hour shift in litigation position. Second, Commission precedent demonstrates that DLC possesses the burden of proof for its entire rate case, especially issues it raised in its filing.

The primary dispute between DII and DLC boils down to one question: *What is the appropriate rate for back-up power under Rider 16?* DLC raised this question when it proposed to more than *triple* the back-up rate in its initial filing in this proceeding and when it held that position firmly until the last day of hearings. DLC initiated the discussion of this issue.

In response to this dramatic proposal, DII invested substantial time and resources to provide countervailing testimony. It sponsored three witnesses, engaged its attorneys to draft an extensive Brief and Reply Brief, and incurred other costs. DII demonstrated by clear and convincing evidence that DLC's proposed rate of \$8.00/kW is unjust and unreasonable, that the existing rate of \$2.50/kW is unjust and unreasonable, and that \$0.352/kW is just and reasonable.

Now, in its Exceptions, DLC protests the R.D.'s approach to burden of proof, complaining that the R.D. forces it to "prove the negative." This is incorrect. DLC, not DII, is the entity seeking relief in this proceeding. DLC, not DII, is the entity whose Tariff rates are under investigation by the Commission, as is customary in a base rate case. DLC, not DII, is the entity that proposed to change the Rider 16 rates *and* terms. DII is responding to DLC's proposal. The R.D. does not ask

DLC to "prove the negative." The R.D. did exactly what an R.D. should do – it required DLC to produce evidence meeting the burden of proof for its proposal, which DLC failed to do.

On Exceptions, DLC cites to *Petition of Metropolitan Edison Co. ("Met-Ed")* and *Pa. PUC v. Duquesne Light Co.* to support its argument that DII, not DLC, carries the burden of proof on Rider 16.¹⁵ DLC quotes only one case (*Met-Ed*), which it characterizes as summarizing "extensive precedent" on burden of proof. As a threshold issue, *Met-Ed* has questionable value, for two reasons. First, the statements made on the topic of burden of proof were made in dicta, as the Commission never actually reached the issue of burden of proof in that case.¹⁶ Second, *Met-Ed* was not a general rate case, but was a petition by several utilities seeking approval of their distribution system improvement charge ("DSIC") riders. However, the burden of proof for rate cases is clear. Commonwealth Court has stated:

In rate case proceedings, such as this case, Section 315 of the Public Utility Code (Code), 66 Pa. C.S. § 315, places the burden of proof on the utility to establish the reasonableness of its rates. Pursuant to Section 102 of the Code, 66 Pa. C.S. § 102, a public utility's rates include, *inter alia*, every individual charge [] that utility demands for any service offered, rendered, or furnished by the utility, whether received directly or indirectly.¹⁷

As noted by the R.D., "A public utility seeking a general rate increase has the burden of proof to establish the justness and reasonableness of every element of the rate increase request. . . . [J]ustifying a public utility's rates includes every individual charge the public utility demands."¹⁸

¹⁵ DLC Exceptions at p. 7 (citing *Petition of Metropolitan Edison Co. et al.*, Docket Nos. P-2015-2508942, P-2015-2508948, P-2015-2508936; P-2015-2508931 (Order entered Apr. 19, 2018) ("*Met-Ed*") and *Pa. PUC v. Duquesne Light Co.*, Docket No. R-2013-2372129 (Order entered Apr. 23, 2014) ("*Duquesne Light*"), pp. 19-21.).

¹⁶ "Had we reached the issue . . . this is the standard we would have applied to that evidentiary issue." *Met-Ed* at 16-17 (emphasis added).

¹⁷ *Metro. Edison Co. v. Pa. PUC*, 22 A.3d 353, 359 (Pa. Cmwlth. 2011).

¹⁸ R.D., at pp. 160-61 (citing 66 Pa. C.S.A. § 315(a); *Pa. Pub. Util. Comm'n v. Aqua Pennsylvania, Inc.*, Docket No. R-00038805, 2004 Pa. PUC LEXIS 39 (Aug. 5, 2004); *Metro. Edison Co. v. Pa. PUC*, 22 A.3d 353, 359 (Pa. Cmwlth. 2011)).

As noted on brief, this legal principle is logical, as all aspects of a utility's terms and rates are interconnected and can affect one another.¹⁹

Even if the Commission accepts *Met-Ed* as persuasive, the very portion of *Met-Ed* quoted by DLC negates DLC's argument. It states, "Section 315(a) cannot reasonably be read to place the burden of proof on the utility *regarding an issue the utility did not include in its filing and which, frequently, the utility would oppose.*"²⁰ This statement clearly distinguishes *Met-Ed* from the instant case, where DLC included changes to both *terms and rates* of Rider 16 in its filing. DII proposed an adjustment and produced evidence to support that adjustment only after DLC included the issue in its filing. DLC was on notice that these issues would be litigated. DLC should not be allowed to dodge its responsibility through a last-minute withdrawal of its filed position.

More importantly, contrary to DLC's position, Commission precedent provides that a party proposing an adjustment to a utility's rate proposal does not assume the utility's burden of proof. Rather, the requirements placed on a party proposing an adjustment to a rate proposal are as follows: (1) provide notice that the rate is being challenged; and (2) present some evidence or analysis demonstrating the reasonableness of the adjustment.²¹ DII met both of these requirements. This policy is logical, sound, and consistent with the plain meaning of 66 Pa.C.S. § 315(a). The R.D. was correct to not impose additional burdens on DII.

Ironically, DLC only presented evidence for what it calls "full cost of service" (initially \$8.00, now \$7.00).²² It did not produce evidence to justify a \$2.50/kW back-up rate. Yet, DLC

¹⁹ DII Brief, p. 27.

²⁰ *Met-Ed* at 67.

²¹ "[W]hile the ultimate burden of proof does not shift from the utility, a party proposing an adjustment to a ratemaking claim bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment." *Pa. PUC, et al., v. West Penn Power Co.*, Docket No. R-2014-2428742, 2015 Pa. PUC LEXIS 97, *160 (Order entered March 9, 2015) (citing *Pa. Pub. Util. Comm'n v. PECO*, Docket No. R-891364, 1990 Pa. PUC LEXIS 155 (May 16, 1990); *Pa. Pub. Util. Comm'n v. Breezewood Telephone Company*, Docket No. R-901666, 1991 Pa. PUC LEXIS 45 (January 31, 1991)).

²² See DLC Exceptions, pp. 9, 21, 27.

asks the Commission to approve a \$2.50/kW rate based on evidence it presented to establish a rate of \$8.00/kW without imposing the burden of proof on DLC. This approach is not conducive to a fair process and should be firmly rejected by the Commission.

DLC asks the Commission for deference for its current rate. However, relying on a prior rate case, particularly a "black box" settlement, is inadequate in this situation. As demonstrated by applicable case law, the entirety of the rate case is DLC's to prove – even the part DLC changed on the last day of hearings. The R.D. correctly assigned DLC the burden of proof for its entire rate filing.²³

B. The Recommended Decision Correctly Allows for Rider 16 To Be Applied On An "As Used" Basis (Reply Exception No. 2).

In its original Rider 16 proposal in this proceeding, DLC proposed revised language that would have determined back-up costs by a contract demand or reservation charge as opposed to actual demand. This would change DLC's current practice of billing its Rider 16 customer based on actual demand.²⁴ The R.D. did not address this issue, but DLC raised it on Exceptions.

DII opposes monthly "reservation" charges for back-up service. Any Rider 16 charge for back-up service should be based on actual demand. As an initial matter, billing based on actual demand is how DLC has treated its current Rider 16 customer under current Tariff language. It is unclear why, if DLC is currently proposing no changes to the Rider 16, there should be a change in practice from actual demand to contract demand.

²³ R.D., at pp. 160-61. Regardless of who holds the burden of proof, the Commission is charged with providing a Final Order that is supported by substantial evidence. Commonwealth Court has held that a "litigant's burden of proof is satisfied by establishing a preponderance of evidence which is substantial and legally credible." *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), alloc. denied, 602 A.2d 863 (1992). *See also* 2 Pa.C.S. § 704. As explained *infra*, there is no evidence supporting the \$2.50 rate.

²⁴ DII Brief, p. 46; Tr. at 454-55 (Ogden). Contract demand is part of Rider 16 for other purposes, such as defining maximum back-up service needs, but was not used as a billing determinant with the current Rider 16 customer. *See* Rider 16, DLC Tariff.

Second, use of actual demand is consistent with how DLC measures and evaluates demand for its non-Rider 16 customers. DLC's distribution system has hundreds of thousands of customers with a variety of load profiles. Except for the HVPS class, which is served at transmission voltage with dedicated facilities, these customers are not subjected to billing based solely on contract demand. Rider 16 customers, who relieve substantial load from the distribution system, should not either.

Third, expert testimony in this proceeding supports the use of actual demand. Peoples witness Daniel stated that applying a Rider 16 charge to a customer's back-up contract demand rather than actual monthly demand is improper, and "is yet another example of the Company's apparent attempt to increase barriers" to distributed generation and CHP.²⁵

DLC's position on this issue is based on the same flawed premise that leads it to reject the use of a load factor (discussed in Section III.C, *infra*). Put simply, DLC argues that Rider 16 customers should be charged based on their maximum possible peak demand, while other customers gain the benefit of class diversity which is evaluated based on actual use.

DLC's reliance on its memorandum of understanding ("MOU") with Duquesne University to support a contract demand is dubious. The MOU refers to contract peak demand; however, this language mirrors the Tariff, which was being applied as basing charges on actual demand. DLC also refers to the EPA Standby Rates Study to support a contract demand based charge.²⁶ This is

²⁵ Peoples Statement No. 2, pp. 8, 22 (Daniel). Addressing a similar issue, the Michigan Public Service Commission rejected a proposed increase in standby rates by Consumers Energy Company and ordered Consumers, in its next rate case, "to provide actual and projected peak metered demand billing determinants for Rate GSG-2 customers, including any ratchet that would be applied. In addition, if the company chooses to rely on contracted demand, Consumers shall provide justification for its departure from the standardized framework." Order, *In the Matter of the Application of Consumers Energy Company For Authority to Increase its Rates*, Michigan Public Service Commission Docket No. U-18322, 2018 Mich. PSC LEXIS 70 (Order dated Mar. 29, 2018) (emphasis added).

²⁶ Peoples Exhibit No. JWS-9, p. B-5, B-6 (U.S. EPA, *Standby Rates for Customer-Sited Resources: Issues, Considerations and the Elements of Model Tariffs* (2009) ("EPA Standby Rates Study").

unpersuasive. The EPA Study states that utilities may apply "an agreed-upon contract demand" but suggests non-contract options as well, including actual monthly demand.

As described on brief, using actual demand provides an additional motivator for system efficiency and reliability. With actual demand charges, the operators of onsite generation systems are motivated to avoid outages, because even a brief outage can increase the customer's demand charges for the month. DLC calls this argument "grasping at straws," contending that a customer's distribution costs are too minor (in light of larger generation costs) to make a difference in behavior. However, testimony given in the proceeding indicates that these distribution costs *do* matter to prospective customers.²⁷ If they did not, DII's members would not be litigating this issue. Additionally, this is the cost component directly under Commission jurisdiction. It is not for DLC to say that these costs do not impact customers or do not provide additional motivation to maximize system operation. DLC's current practice of using actual demand is appropriate and should be maintained.

C. The Recommended Decision Correctly Applies Rate Design Principles In Recommending Adoption Of DII's Proposed Rider 16 Rate Of \$0.352 per kW (Reply Exception No. 3).

Extensive testimony has been presented in this proceeding to support the adoption of DII's proposed Rider 16 rate. The evidentiary and legal basis was thoroughly documented in DII's Brief and Reply Brief. Therein, DII conclusively established that the back-up service rate should be \$0.352/kW based on the historic availability of the Rider 16 customer's generation and other evidence demonstrating the expected availability of distributed generation.

²⁷ DII Statement No. 1-S, p. 26. DII Statement No. 2, Direct Testimony of Richard Heller on behalf of Pitt, at p. 9:19 – 10:5; DII Statement No. 3, Direct Testimony of Eric Sprys on behalf of Allegheny County Airport Authority ("ACAA"), at p. 10:4-15.

The heart of the dispute over back-up service in this proceeding centers on two questions: First – *Should a "load factor" or availability assumption be reflected in the rate?* Second – *If so, what is the appropriate load factor to use?*

DLC rejects the application of a load factor, arguing that its cost to serve a customer with onsite generation is essentially the same as its cost to serve a customer without onsite generation. In contrast, DII has consistently argued that a load factor should be maintained and based on historical data and industry norms (*i.e.*, 5% based on the record evidence in this proceeding). DII's approach is consistent with DLC's in its last rate case, but with additional and improved data.

1. Consistent application of ratemaking principles requires that rate calculation for back-up service must reflect diversity and the forced outage (or load factor) rate.

Evidence presented by DII and Peoples supports inclusion of a load factor in back-up rates. The R.D. correctly found this evidence to be compelling and persuasive. As described on brief, "load factor" means the percentage of time that the customer relies on the DLC system for back-up service because the generator is not operating.²⁸ DLC's witness Mr. Pfrommer used this term in the 2013 proceeding to describe the assumption that was being applied in determining the current back-up service rate.²⁹ As described in the DII Brief:

The distribution system is comprised of many users with a variety of demand profiles. This "diversity" enables the distribution utility to account for spikes and dips in demand of any single customer. However, DLC's original proposed approach to Rider 16 [in this 2018 proceeding] would have treated Rider 16 customers in a way dramatically inconsistent with their use of the distribution system and fundamentally inconsistent with how DLC treats other customers. . . .

To fully appreciate load factor as an essential component of Back-up rates, it should be recognized that the class demand for multiple self-generation customers is not the sum of the individual customer peaks, because Back-up Service is not required at the same time by every self-generator. Consequently, distributed generation

²⁸ Tr. at 598, lines 10-14 (Crist).

²⁹ Exhibit No. JC-6 (Pfrommer 2013 Testimony).

customers do not impose the same costs on the distribution system as full-requirements customers.³⁰

Both Peoples and DII addressed the importance of reflecting the diversity of the expected distribution system use by Rider 16 customers.³¹ In fact, even some testimony by DLC pointed to the need for a reflection of class diversity, despite DLC's rejection of the concept for Rider 16. For example, Mr. Gorman stated that a non-coincident peak ("NCP") allocation (which is used by almost all ratemakers) is most reflective of factors such as load diversity and the system cost that a utility incurs to meet the distribution service needs of a customer class.³²

Despite these facts, DLC repeatedly frames Rider 16 costs on an individual customer basis, as if an individual customer's peak is an appropriate basis of calculating rates. Onsite generation customers have dramatically different usage patterns and should not be charged for back-up service as if they are using the distribution system 100% of the hours of the year. In the absence of a proper cost of service study analyzing Rider 16 as a separate class, a load factor ensures that onsite generation customers get the appropriate diversity recognition in back-up rates.

2. DLC's rejection of a load factor results in a discriminatory cost allocation and rate methodology for one particular customer type.

Throughout this proceeding, DLC argues its distribution costs are "fixed." However, DLC's argument proves too much. To the extent that distribution costs are fixed, they are fixed for *all customers in all classes* – not just those with distributed generation. Despite this key fact, DLC seeks a very different cost allocation and rate methodology for Rider 16 customers only. As explained in DII's Reply Brief:

³⁰ DII Brief, pp. 32-34 (citing DII Statement No. 1-S, p. 11 (Crist) and Peoples Statement No. 4-SR, p. 3 (Kefer)).

³¹ Tr. at 595-598; Peoples Statement No. 2, p. 29. *See also* DII Statement No. 1, p. 25; Tr. at 663.

³² Tr. at 333, lines 9-22 (Gorman). Mr. Gorman, at the direction of a Rhode Island electric utility he consulted for, designed Back-up rates to reflect a 10% usage factor. Tr. at 346, lines 2-19 (Gorman).

For those without distributed generation, DLC calculates charges based on each customer's actual monthly peak. For Rider 16 customers, however, DLC seeks to calculate costs on their highest *possible* peak for the year.³³

At hearings, Mr. Gorman's testimony made clear that virtually all ratemakers, including Pennsylvania ratemakers, allocate distribution costs using NCPs.³⁴ By definition, NCP requires utilities to look at the *class peak*, not the mere total of every customer's peak. This ensures that each class gets the benefits of load diversity.³⁵

While this is a well-established ratemaking principle, DLC's approach to back-up service is different. Put simply, DLC would calculate back-up rates through *a sum of each customer's potential individual annual peak* – a diametrically different approach. As stated on brief:

In contrast, Mr. Gorman identified a Sum of the Class Peaks ("SCP") methodology used in New York, which sums the individual customer peaks and does not account for diversity in the class. This is essentially what DLC is supporting . . . when advocating for the 100% model.³⁶

DLC's rejection of a load factor is flawed because it assumes that distributed generation facilities use service at their maximum possible demand daily and throughout the month. Self-generators do NOT use the distribution system daily and can share the distribution system among a group of self-generators. Even though any one self-generator *could* go down at any time, all self-generators will not go down at the same time—rates should not be designed and calculated as if they would. To do so is unduly discriminatory against customers generating power onsite.

³³ DII Reply Brief at pp. 9-10 (citing Tr. at 332:15-19 (Gorman) and DLC Tariff, Rider 16 (Peoples Cross-Examination Exhibit No. 1); *see also* DLC Statement No. 14-R, pp. 27-30 (Gorman).

³⁴ Tr. at 333:2-5.

³⁵ Mr. Gorman described NCP as follows:

Within a class, not all customers will have the same peak. So if we add up the peaks for all the customers in the class, then that would be X. But if we looked at the instant where the class as a whole was drawing the greatest demand on the system, that would be less than X, because while some customers might be hitting their peak at that time and probably a good portion of them are, *not all of them will*. So the NCP will always be less than the sum of the class peaks.

Tr. 342:4-11 (emphasis added).

³⁶ DII Reply Brief, p. 9 (citing Tr. at 333-34).

3. PURPA and associated federal and state regulations provide clear principles supporting a load factor for back-up rates.

It is undisputed that Rider 16 applies to Qualifying Facilities under the Public Utility Regulatory Policies Act ("PURPA"). PURPA regulations at 18 CFR § 292.305 state that rates for back-up and maintenance service *must not be based on an assumption that outages, or other reductions in generation by all Qualifying Facilities on a utility's system, will occur at the same time, or at the time of the system's peak.* In implementing PURPA, the Pennsylvania Code makes a similar mandate.³⁷ As DII stated on brief,

PURPA's goal of promoting Qualifying Facility projects is similar to the Commission's goals articulated in the CHP Policy Statement. As Mr. Crist and Mr. Daniel explained, the principles established in PURPA's regulations at 18 CFR § 292.305 apply to distribution service in the unbundled environment. The history of Rider 16 demonstrates that DLC's Back-up rate was "unbundled" and set at a level similar to DII's proposal. In DLC's Restructuring proceeding, its Rider 16 Back-up Service was unbundled into distribution, Competitive Transition Charge, Transmission Charge and Generation Charge components [in 1999].³⁸

PURPA regulations and 52 Pa. Code § 57.35 continue to apply to distribution services for Qualifying Facilities. PURPA's structure for providing supplemental, back-up, and maintenance power provides a just and reasonable way to establish rates for all distributed generation.³⁹

4. A major study by the Regulatory Assistance Project emphasizes the importance of load diversity in standby rates.

Peoples witness Jamie Scripps sponsored Exhibit No. JWS-6, a study providing a summary of best practices in standby rate design ("RAP Study").⁴⁰ The RAP Study provides strong evidence that diversity or a load factor must be included in standby rate design. Key takeaways include: (1) Standby rates *should not assume simultaneous outages*, nor should they assume outages will

³⁷ 52 Pa. Code § 57.35.

³⁸ DII Brief, p. 36 (citing DII Statement No. 1, pp. 25-26 (Crist); DII Statement No. 1-S, pp. 15, 23-24 (Crist); Peoples Statement No. 2-S, p. 6; Peoples Cross-Examination Exhibit No. 1, Attachment No. 5, p. 2 of 7).

³⁹ DII Statement No. 1, p. 26 (Crist).

⁴⁰ Brubaker & Associates/Regulatory Assistance Project, *Standby Rates for Combined Heat and Power Systems: Economic Analysis and Recommendations for Five States* (2014).

occur at the utility's system peak; (2) "Generation reservation demand charges should be *based on the utility's cost and the forced outage rate* of customers' generators on the utility's system;" and (3) "Transmission and higher-voltage distribution demand charges should be designed in a manner that *recognizes load diversity*."⁴¹ These best practices support a load factor in back-up rates.

5. Cases in other states support the use of a load factor in back-up rates.

As explained on brief, various state utility commissions have embraced the use of a load factor in back-up or standby rates. On brief, DII provided the following examples:

- **Rhode Island Public Utility Commission.** The Rhode Island PUC affirmed a settlement placing a Back-up Retail Delivery Service at a factor of 10%, representing the likelihood that, on average, an outage of an individual customer's generator will occur coincident with the Company's distribution system peak demand approximately 10% of the time.⁴²
- **Michigan Public Service Commission.** In a rate case for DTE Electric Company, the Michigan PSC lowered the reservation charge to 10% for unscheduled standby use and 5% for scheduled standby use (based on a 5% forced outage rate).⁴³
- **Minnesota Public Utilities Commission.** The Minnesota PUC recently approved a negotiated settlement reducing Xcel Energy's standby reservation fee from 12% to 7.4% of the amount included in base tariff demand rates to better reflect outage rates for CHP systems,⁴⁴ which was reported by commenters in that proceeding to be 5%.⁴⁵

Remarkably, the thrust of these decisions was not *if* a load factor should be applied, but what the load factor should be. In contrast, DLC is denying the validity of a load factor altogether.

⁴¹ Exhibit No. JWS-6 at 5.

⁴² Order No. 21097, *Re Narragansett Electric Company dba National Grid*, Docket No. 4232 (Jul. 12, 2013), available at http://www.ripuc.org/eventsactions/docket/4232-NGrid-Ord21097_7-12-13.pdf.

⁴³ Order, *In the Matter of the Application of Consumers Energy Company For Authority to Increase its Rates*, Michigan Public Service Commission Docket No. U-18322, 2018 Mich. PSC LEXIS 70 (Order dated March 29, 2018).

⁴⁴ Order Approving Solar PV Demand Credit Rider With Modifications and Standby Service Rider, *In the Matter of a Commission Inquiry Into Standby Service Tariffs*, Docket No. E-999/CI-15-115, 2018 Minn. PUC LEXIS 139 (Minnesota PUC April 20, 2018).

⁴⁵ Reply Comments of Midwest Cogeneration Association and Fresh Energy, *In the Matter of a Commission Inquiry Into Standby Service Tariffs*, Minnesota PUC Docket No. E-999/CI-15-115 (Dec. 21, 2017).

6. Even the terms of Rider 16 prevent the customer's reliance on the distribution system 100% of the time.

The terms of Rider 16 itself indicate that onsite generation customers should not be charged as if they were full requirement customers. Rider 16 includes a 15% back-up limitation that prevents Rider 16 rates from applying more than 15% hours of the year. If DLC believes its costs are virtually the same regardless of how much a customer uses the distribution system, it is unclear why Rider 16 rates are limited to 15% of the hours a year. It is inappropriate, given this restriction, to charge Rider 16 customers for 100% of system use.

7. DII's proposed 5% load factor is supported by substantial evidence.

Having demonstrated a load factor is appropriate for back-up rates, a specific load factor must be determined. In this proceeding, DII witness Crist relied on historic Rider 16 generator availability, availability projections, and industry norms to develop DII's proposed 5% rate. While addressed more fully on brief, key data points demonstrate that DII's proposed load factor is reasonable, consistent, and thorough.⁴⁶

- **The existing Rider 16 customer's generation has been available 97.5% of the time.**⁴⁷ Historically, Duquesne University's generation has been unavailable only 2.5% of the time. Additionally, over the course of the last three years, Duquesne University did not exceed the 15% limitation on back-up usage established in the current Rider 16.⁴⁸
- **The assumed availability of Peoples' and the University of Pittsburgh's ("Pitt") systems is 95%.** The manufacturer of the generator for Peoples' CHP project has projected the generator will be available 95% of the time.⁴⁹ Pitt's CHP analysis also assumes a 95% utilization factor.⁵⁰
- **A major analysis of distributed generation indicates the average forced outage rate for gas turbines and reciprocating engine systems is under 3%.** Energy and Environmental Analysis, Inc. compiled operating and reliability data for 121 distributed generation and CHP systems with the goal of estimating the operational reliability of various technologies.⁵¹

⁴⁶ DII Brief, pp. 39-40.

⁴⁷ DII Statement No. 1, p. 25 (Crist); Exhibit No. JC-7, p. 15; *see also* Tr. at 608, lines 3-5 (Crist).

⁴⁸ Tr. at 442, lines 1-4 (Ogden).

⁴⁹ *Id.* at 634, lines 12-13 (Nehr).

⁵⁰ Exhibit No. RH-1S (Heller).

⁵¹ Exhibit No. JWS-5, pp. ES-1, ES-2 (Scripps).

Depending on unit size, the study indicated an average forced outage rate of only 0.85% to 1.76% for reciprocating engine systems and only 1.37% to 2.89% for gas turbine systems.⁵²

- **Determinations by other state utility commissions support a low load factor.** As discussed herein, *supra*, other state commission decisions approved factors of 10% and less for back-up and maintenance power based on projected uptime levels of around 5%.⁵³

On Exceptions, DLC claims that Mr. Crist's proposed 5% multiplier measures "frequency," which DLC states is a measure of consumption or usage.⁵⁴ DLC misapplies Mr. Crist's testimony. The 5% load factor is a usage-based measure out of necessity (similar to how DLC's Rider 16 utilizes a usage measurement for limits on back-up service). However, the 5% load factor is not ultimately about usage – rather, it indicates the dramatically reduced likelihood that any Rider 16 customer will need back-up service during a class or system peak.⁵⁵

The data points outlined above provide substantial evidence to demonstrate that DII's proposed back-up rate for Rider 16 is an accurately cost-allocated rate.⁵⁶ Mr. Crist's back-up rate analysis is a reasonable (and conservative) substitution for a fully allocated cost of service study that treats Rider 16 customers as a distinct class.⁵⁷ This approach resolves alleged "subsidization" concerns by providing a cost-based rate based on the expected availability of the generation owned by Rider 16 customers.⁵⁸ DII has conclusively established that the PUC should establish a Back-up Service rate for DLC of \$0.352 per kW.

⁵² Availability factors, which take into account both planned and unplanned downtime, ranged from 93.53% to 98.22%. *Id.* at ES-2 – ES-4. Additionally, the authors favorably noted that most failures appeared to be "random occurrences of short duration" that were not systemic problems with the generation systems. *Id.* at ES-4.

⁵³ See Section III.C.5 herein, *supra*.

⁵⁴ DLC Exceptions, p. 18.

⁵⁵ Tr. at 428-30, 435-36. DLC clouds the issue by alleging that DII was confused about rate design and was arguing for a usage-based measure. This is incorrect. By "spikes and dips in their usage" (DII Brief, p. 46), DII was simply referring to the peaks DLC measures. As stated in the very next sentence of DII's Brief, "DLC plans for that and charges based on the peak in the month (subject to minimum charge calculations as described by Mr. Ogden)." DII Brief, p. 46.

⁵⁶ Tr. at 584, lines 14-15 (Crist).

⁵⁷ *Id.* at 585, lines 13-15 (Crist). When Mr. Gorman conducted the cost of service study, he was not instructed by DLC to analyze Rider 16 as a separate class.

⁵⁸ *Id.* at 585, lines 15-24 (Crist).

D. The Recommended Decision Correctly Finds Duquesne Light's Existing, Approved Rider 16 Rate Is Not Supported By Substantial Evidence (Reply Exception No. 4).

On Exceptions and on brief, DLC pitches the existing \$2.50/kW back-up rate as a "compromise" rate. DLC asks the Commission to agree with DLC that true cost of service would require a back-up rate of \$7.00/kW, but to allow Rider 16 customers a significant reduction from that number. DLC also relies on Commission approval of a \$2.50/kW rate in the last rate case.

The R.D. appropriately rejected these arguments. Other than referencing the Commission's authority to implement "policy" (*i.e.*, assigning some customers a rate far below cost of service),⁵⁹ DLC does not provide a clear basis for a \$2.50 rate in light of its insistence that cost of service is much higher. DLC has failed to demonstrate its rate proposal of \$2.50/kW is just and reasonable.

1. DLC produced no record evidence to support \$2.50 per kW as the Rider 16 Back-up rate.

DLC provides no evidence for a \$2.50/kW back-up rate. No witness testified to support a \$2.50/kW rate. The ALJ, who presided over the proceeding and reviewed the evidence presented, stated that "Duquesne Light provided almost no evidence to support the current rate charged."⁶⁰

The basis of Rider 16 rate design in DLC's last case remains murky.⁶¹ No party contested DLC's \$2.50/kW rate or use of the 30% load factor in the 2013 rate case.⁶² None of DLC's current witnesses in this proceeding testified as witnesses supporting the \$2.50/kW Back-up Power rate in the 2013 proceeding.⁶³ On the stand, DLC witness Mr. Ogden could not identify the reason that

⁵⁹ DLC Exceptions, p. 21.

⁶⁰ R.D., p. 177.

⁶¹ DLC did not examine the historic usage patterns of the Rider 16 customer in developing its Rider 16 proposal originally submitted in this proceeding. Tr. at 413, line 24 – 414, line 7 (Ogden). Nor did it take into account general statistics of CHP utilization rates when it developed its Rider 16 proposal. Tr. at 417, lines 14-17 (Ogden).

⁶² Tr. at 607, line 24 (Crist).

⁶³ See *id.* at 230, lines 10-12 (Davis); *id.* at 323, line 25 (Gorman); *id.* at 405, line 21 – 406, line 1 (Ogden); *id.* at 521, lines 10-15 (Fisher).

the 30% load factor was applied in 2013, suggesting it could have been a customer-specific proposal or "it could have just been a percentage to get to an end result..."⁶⁴ DLC witness Mr. Gorman indicated he did not know why a 30% availability figure was used.⁶⁵

DLC explained its reasons for withdrawing its proposal to more than triple its back-up rates; however, DLC has presented no case law or overriding justification for a \$2.50/kW rate or the 30% load factor used in the prior case. The Commission cannot adopt a position unless it is supported by substantial record evidence.⁶⁶ DLC's position is supported by *no* record evidence.

2. DLC argues that the current \$2.50 rate was not based on cost of service.

DLC remains conceptually committed to its position that no load factor should be included in the calculation of back-up service rates.⁶⁷ It refers to a \$7.00/kW rate as "full cost of service," arguing that the Commission should approve a \$2.50/kW rate because true cost of service must be "at least" that.⁶⁸ Meanwhile, DLC never justifies the \$7.00 rate.⁶⁹ In other words, DLC is all over the map, trying to avoid the R.D.'s conclusion: "[T]he evidence shows the appropriate rate now should be \$0.352 per KW."⁷⁰ DLC implies that accuracy is not required to determine the back-up rate, underscoring the lack of evidence supporting DLC's position.

3. DLC's system peak data exhibit does not support DLC's position.

On Exceptions, DLC states that "DLC witness Gorman assembled, presented and analyzed extensive actual operating data" for Duquesne University, DLC's Rider 16 customer.⁷¹ DLC

⁶⁴ Tr. at 411, line 25 – 412, line 2 (Ogden).

⁶⁵ *Id.* 323-26 (Gorman).

⁶⁶ *Lower Frederick Twp. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980).

⁶⁷ *See, e.g.*, DLC Exceptions, pp. 2, 9, 15, 19.

⁶⁸ On page 24 of its Exceptions, DLC argues "the substantial record evidence demonstrat[es] that the cost of providing back-up distribution service supports the existing Rider No. 16. Rate." *See also* DLC Exceptions, pp. 9, 21, 28.

⁶⁹ DII Exceptions, pp. 9, 27.

⁷⁰ R.D., p. 177.

⁷¹ DLC Exceptions, p. 25.

proceeds to provide a summary of its findings, arguing that the R.D. was "wrong to question whether Duquesne Light 'used any historical data' to substantiate the costs underlying Rider No. 16."⁷² DLC stated that "[a]s recently as June 2016," Duquesne Light's peak demand was coincident with the peak demand of the Rate GL class.

Mr. Gorman conducted his analysis after the Company's original \$8.00/kW rate was challenged, not prior to the submission of the Company's proposal. DLC uses this information as a *post hoc* analysis to justify its theory that "the Company must stand ready" to meet a maximum need for back-up service. Mr. Gorman's analysis does nothing to isolate the true costs of Rider 16 customers at \$2.50/kW or \$8.00/kW. In no way does it lead to DLC's conclusion that "there is not a valid cost-of-service basis for establishing a Rider No. 16 rate that is only 5% of (95% below) the fully-allocated cost of distribution service."⁷³ As stated in DII's Reply Brief:

Initially, as explained by Mr. Crist, the entire analysis is invalid because the table makes no distinction between unplanned back-up and planned maintenance. As a result, it is unknown why the generator may have been unavailable. If DLC's Rider 16 differentiated between Back-up Service and Maintenance Service – as it should – a customer like Duquesne University would negotiate its downtimes for maintenance to ensure they were not during anticipated peaks.⁷⁴

Mr. Gorman's confidential table indicates the current Rider 16 customer is far below its annual peak in most months when the Rate GL class peaks. There was one month where the Rider 16 customer peak was coincident with Rate GL's peak, and *eleven* months where it was not.

Viewed as a whole, Mr. Gorman's analysis does not demonstrate that the Rider 16 customer consistently has its peak backup power usage coincident with the monthly Rate GL or service territory peaks. In addition, DLC presented no evidence to demonstrate that it used or relied on this data in forming its Rider 16 rates. There are simply too many flaws and inconsistencies on

⁷² DLC Exceptions, p. 26.

⁷³ *Id.*

⁷⁴ DII Reply Brief, pp. 12-13. *See also* DII Statement No. 1-S, pp. 12-13 (Crist).

the table for it to form persuasive evidence supporting the \$2.50/kW rate. The Commission should not rely on this data in rendering its decision.

4. The testimony of Peoples witness Daniel and DLC witness Fisher fails to support DLC's current position.

DLC attempts to rely on Peoples witness Daniel to support its position, stating that Mr. Daniel's recommended rate, "for all practical rate design purposes, is the equivalent of the existing Rider No. 16 rate."⁷⁵ However, Mr. Daniel's testimony firmly embraced the use of a load factor, a concept DLC rejects. When submitting written testimony, Mr. Daniel was responding to DLC's proposed increase of the Rider 16 rate from \$2.50/kW to \$8.00/kW. He stated that "continued use of a 30% load factor can be viewed as a compromise."⁷⁶ (Mr. Daniel actually recommended a seasonally differentiated back-up rate, coupled with a new maintenance power rate.)⁷⁷ Based on his "compromise" load factor of 30%, Mr. Daniels then calculated a lower rate of \$2.41/kW; when adjusted to reflect the revenue requirement settlement, the rate is \$2.11/kW.⁷⁸ Significantly, Mr. Daniel also testified in support of Mr. Crist's proposed load factor of 5% as being more accurate based on the performance of the existing Rider 16 customer.⁷⁹ DLC's attempt to "appropriate" Mr. Daniel's "compromise" use of a 30% load factor does not provide support for DLC's \$2.50 rate; rather, it supports a load factor which DLC does not endorse whatsoever.

DLC also attempts to rely on Neil Fisher's "comparability" analysis regarding other Pennsylvania utilities. However, this is not sufficient to carry the burden of proof regarding appropriate back-up service rates, nor is it specific enough for the Commission to determine a just

⁷⁵ DLC Exceptions, pp. 15-16.

⁷⁶ Peoples Statement No. 2-SR, p. 15:8-11 (Daniel). During cross-examination, Mr. Daniel confirmed his use of a 30% load factor was a compromise. Tr. at 663:11-13.

⁷⁷ Peoples Statement No. 2, pp. 22-23 (Daniel); Exhibit No. JWD-5.

⁷⁸ DII multiplied \$7.04/kW (DLC's adjusted litigation position) times 30% to obtain this figure. DII Cross-Examination Exhibit 3.

⁷⁹ Peoples Statement No. 2-S, p. 15:5-8 (Daniel).

and reasonable rate. The Final Policy Statement recognizes that back-up rates for *all* utilities may be obstacles to CHP development. Those obstacles will not be removed by setting comparable, but unnecessarily inflated, back-up rates. Rates must be determined based on each utility's specific costs, as Mr. Crist has done for DLC.

To support its position, DLC also mischaracterizes Duquesne University's position on the \$2.50/kW rate. DLC continues to assert that Duquesne University is not part of the ongoing litigation against DII, even after being corrected by DII.⁸⁰ Duquesne University remains part of DII's litigation on this issue, as permitted by the MOU.⁸¹ Its decision to forego customer impact testimony to limit its rate increase risk only demonstrates its concern about DLC's original proposal. DLC cannot use the MOU as support for its current position on back-up rates.

Finally, DLC reiterates its argument that customers have the "option" of not participating in Rider 16, instead operating on a General Service rate. However, as Mr. Crist testified at hearings, the concept presented by Mr. Fisher that distributed generation facilities would be available 100% of the time and never experience an outage is ridiculous and implausible. Referring to the Peoples Gas case in Mr. Fisher's analysis, Mr. Crist stated that it presents "absolutely not a realistic case."⁸² Mr. Crist's rejection of this scenario was due to the zero-outage projection during peak hours – *not* to the 95% overall availability, which he has consistently defended despite DLC's distortions.⁸³ Mr. Heller from Pitt explained that Mr. Fisher's proposal presented too much risk and uncertainty for customers to accept.⁸⁴

⁸⁰ DII Reply Brief, p. 7.

⁸¹ DLC Exhibit No. CJD-1-R (Davis), paragraphs 5-6.

⁸² Tr. at 619.

⁸³ *Id.* at 612-613 (Crist). Despite DLC's persistent accusations that Mr. Crist has changed positions (*see, e.g.*, DLC Exceptions, pp. 16-17), Mr. Crist has steadfastly maintained the customer-generator availability analysis presented in written testimony and supported at hearing, and the finder of fact found his testimony to be credible. DII Reply Brief, pp. 11-12; R.D. at 177.

⁸⁴ Tr. 573:2-20.

E. The Recommended Decision Correctly Recommends That Rider 16 Service Should Be Treated As A Distinct Class (Reply Exception No. 5).

DLC steadfastly refuses to acknowledge the unique characteristics of customers with onsite generation. On Exceptions, DLC states that it must stand ready to supply the full back-up requirements of a Rider 16 customer. DLC's statements are framed in individual terms and depend entirely on DLC's concurrent refusal to evaluate Rider 16 customers as a class. Generally, DLC applies an NCP approach to its customers, but its arguments on Exceptions indicate that DLC takes an SCP approach to its Rider 16 customers.⁸⁵

DLC's only defense of its hardline stance is a combination of two erroneous ideas: (1) customers obtaining back-up service under Rider 16 must not be evaluated as a separate class; and (2) customers obtaining back-up service must be charged for their full annual peak.

The ALJ's rejection of these ideas in the R.D. is appropriate and sound. Back-up service has unique characteristics that warrant evaluation as a separate class. The evidence demonstrates that DLC is not bound to use peak demand as the sole factor determining cost allocation and rate design for Rider 16. Mr. Gorman acknowledged that he could study Rider 16 customers as a separate class.⁸⁶ Mr. Crist explained that a proper cost of service study would eliminate cross-class subsidies.⁸⁷ Peoples Exhibit JWS-9, page B-5, indicates that evaluating onsite generation customers as a class is a viable option. It states:

To the extent that the usage characteristics of partial requirements customers, and the costs associated with that usage, are demonstrably different from those of related full requirements customers, such customers can be seen as constituting a different class.

⁸⁵ See generally, Section III.C herein, *supra*.

⁸⁶ Tr. at 356.

⁸⁷ *Id.* at 613.

DII agrees with DLC's stated goal of reaching cost of service. This is exactly why DII recommends studying Rider 16 customers as a class. The class of Rider 16 customers should bear the appropriate costs of the distribution system, determined by studies that appropriately reflect the non-coincident nature of the individual customers' reliance on back-up service. In light of the CHP Final Policy Statement, utilities should not shy away from analyses that provide a true cost of service. Rather, all utilities and customers must revisit back-up rate provisions to ensure cost of service principles are upheld. This rate case can be the first step in the Commonwealth's journey towards proper analysis of the rates, terms, and conditions for back-up service.

IV. CONCLUSION

DII has demonstrated that distributed generation customers impose different (and lower) costs on the electric distribution system than full requirements customers.⁸⁸ DII respectfully requests that the Commission approve the R.D.'s conclusions on back-up rates and adopt DII's methodology.

If institutions like Pitt, ACAA, Robert Morris University, and others choose to make multi-million-dollar investments in onsite generation then community safety and well-being will be advanced. During a grid emergency, the ability of public facilities like airports, police stations, campuses, and hospitals to keep operating could limit the public safety ramifications of a blackout. It could provide shelter for people in a crisis situation. It could, quite literally, save lives.

However, it is clear from the record that DLC did nothing to consider the Commission's guidance in the Final Policy Statement in this proceeding.⁸⁹ The Policy Statement was issued on April 5, 2018 — 134 days prior to the final hearing day when DLC withdrew its proposed changes

⁸⁸ See, e.g., DII Statement No. 1-S, p. 11 (Crist); Peoples Statement No. 2, p. 18, lines 15-24 (Daniel); Peoples Statement No. 4, pp. 12-13 (Kefer).

⁸⁹ DII Reply Brief, pp. 24-25; Tr. at 418:10-20.

to Rider 16. In the face of substantial evidence to the contrary, DLC continues to claim its current back-up rate is deeply discounted and fails to affirm the validity of a load factor.

DLC's arguments have made potential onsite generators well-aware that DLC may attempt to triple its back-up rates in a future proceeding in the name of "cost of service."⁹⁰ Without a definitive decision by the Commission in this proceeding, investment in DLC's territory will almost certainly be chilled. Extensive evidence has been presented to enable the Commission to make a clear determination on the cost of service. The Commission must forcefully reject DLC's 100% load factor and adopt DII's properly calculated back-up rate.

WHEREFORE, DII respectfully requests that the Commission adopt the R.D's conclusions (except the delay in establishing a proper maintenance rate) and adopt DII's proposed rates and terms for Rider 16, as set forth in DII Exhibit No. JC-8, attached hereto.

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Dated: November 5, 2018

⁹⁰ Public Input Hearing Transcript (June 14, 2018), p. 103:12-17; DII Brief, pp. 23-24.

Attachment
Exhibit JC-8

STANDARD CONTRACT RIDERS - (Continued)**RIDER NO. 16 - SERVICE TO NON-UTILITY GENERATING FACILITIES****(Applicable to all General Service rates except HVPS)**

The following applies to non-utility generating facilities including, but not limited to cogeneration and small power production facilities that are qualified in accord with Part 292 of Chapter I, Title 18, Code of Federal Regulations (qualifying facility). Electric energy will be delivered to a non-utility generating facility in accord with the following:

A. DEFINITIONS

Supplementary Power is electric energy and capacity supplied by the Company or by an Electric Generation Supplier (EGS) to a non-utility generating facility and regularly used in addition to that electric energy which the non-utility generating facility generates itself. The Company's regular and appropriate General Service Rates will be utilized for billing for Supplementary Power. Customers purchasing Supplementary Power from an EGS will be billed for charges according to their applicable rate and billing arrangement with their EGS.

Back-Up Power is electric energy and capacity supplied by the Company to a non-utility generating facility during any unscheduled outage of the non-utility generating facility's electric generating equipment to replace electric energy ordinarily generated by the non-utility generating facility's generating equipment.

Maintenance Power is electric energy and capacity supplied by the Company to a non-utility generating facility during any scheduled outage of the non-utility generating facility's electric generating equipment to replace electric energy ordinarily generated by the non-utility generating facility's generating equipment.

Supplementary Power Billing Determinants are the monthly billing period billing demand in kilowatts (kW) and the energy usage in kilowatt-hours (kWh) for Supplementary Power during the current billing month under which the on-site generation is operable.

Back-Up Power Billing Determinants are the monthly billing period billing demand in kilowatts (kW) and energy usage (kWh) in excess of those provided as Supplementary Power during periods of an unscheduled outage of the non-utility generating facility's generating equipment.

Maintenance Power Billing Determinants are the monthly billing period billing demand in kilowatts (kW) and energy usage (kWh) in excess of those provided as Supplementary Power during periods of a scheduled outage of the non-utility generating facility's generating equipment.

Supply Billing Determinants for customers on Rate Schedules GL, GLH, L and HVPS are the billing demand (kW) and energy usage (kWh) during the current billing month then in effect under Rider No. 9. Supply Billing Determinants for customers on Rate Schedule GS/GM and GMH shall be the same as those defined above for Distribution.

STANDARD CONTRACT RIDERS - (Continued)

RIDER NO. 16 - SERVICE TO NON-UTILITY GENERATING FACILITIES - (Continued)

(Applicable to all General Service Rates except HVPS)

B. BACK-UP POWER AND MAINTENANCE POWER

The Company will supply such service each month at the following rates:

DISTRIBUTION

A distribution charge of \$0.40 per kW shall be applied to the Back-Up Power Billing Determinants for Back-Up Power.

A distribution charge of \$0.27 per kW shall be applied to the Maintenance Power Billing Determinants for Maintenance Power.

SUPPLY

In any month that the Company provides energy to back up the customer's equipment, supply service shall be supplied and billed under Rider No. 9 for customers with Contract Demand of 300 kW or more. For customers having Contract Demand of less than 300 kW, the Company will bill the applicable supply demand and energy charges then in effect under Rate Schedule GS/GM.

The use of backup power at this price level will be limited to 15% usage for all hours in a year. Incremental usage above this limit will be billed on the applicable general service rates, including all ratchets applicable.

C. INTERCONNECTION

Each non-utility generating facility will be required to install at its expense or pay in advance to have the Company install interconnection equipment and facilities which are over and above that equipment and facilities required to provide electric service to the non-utility generating facility according to the Company's General Service Rates, except as noted below. Any such equipment to be installed by the non-utility generating facility must be reviewed and approved in writing by the Company prior to installation. Nothing in this Rider shall exempt a new customer from the application of Rule No. 7 and Rule No. 9 regarding Supply Line Extensions and Relocation of Facilities.

However, customers may elect to pay the cost of existing or newly required transformation equipment that is over and above that equipment necessary for the Company to supply the customer with its contracted Supplemental Power via a monthly charge rather than in total at the onset of the contract. The monthly charge for transformation equipment for customers with contract demand under this rider of 5,000 kW or more will be determined by the Company on a case-by-case basis. For all others, the rate of \$0.2523 per kW per month will apply.