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September 3, 2021

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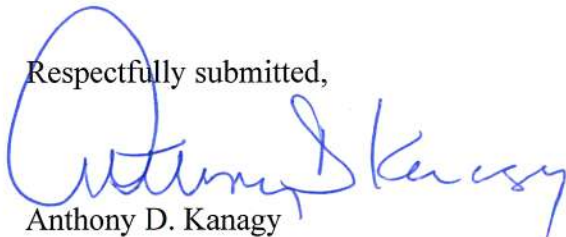
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
Harrisburg, PA 17105-3265

Re: PA Public Utility Commission v. Duquesne Light Company
Docket No. R-2021-3024750

Dear Secretary Chiavetta:

Attached for filing please find the Main Brief filed on behalf of Duquesne Light Company in the above-referenced proceeding. Copies will be provided per the Certificate of Service.

Respectfully submitted,



Anthony D. Kanagy

ADK/cls
Attachment

cc: Honorable Joel H. Cheskis (w/att.)
Honorable John M. Coogan (w/att.)
Certificate of Service

CERTIFICATE OF SERVICE

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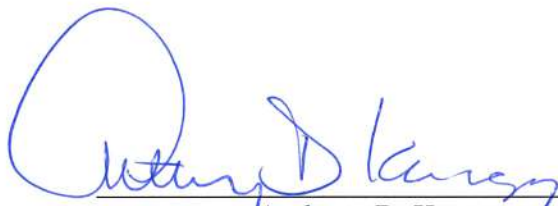
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket Nos.	R-2021-3024750
Office of Consumer Advocate	:		C-2021-3025538
Office of Small Business Advocate	:		C-2021-3025462
Nationwide Energy Partners	:		C-2021-3026057
Sean Ferris	:		C-2021-3026365
Jan Vroman	:		C-2021-3026521
Diane Buzzard	:		C-2021-3027067
	:		
v.	:		
	:		
Duquesne Light Company	:		

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I. INTRODUCTION

On April 16, 2021, Duquesne Light Company (“Duquesne Light” or “Company”) filed with the Pennsylvania Public Utility Commission (“Commission”) its 2021 Base Rate Case Filing (“Filing”), which consisted of Supplement No. 25 to Tariff Electric Pa. P.U.C. No. 25, responses to filing requirements and standard data requests, and supporting direct testimony and exhibits. In Supplement No. 25, the Company proposed a general increase in electric distribution rates of approximately \$115 million, which included approximately \$29.2 million of revenues that are currently being recovered under surcharges. The proposed net increase to customers over current charges was \$85.8 million.

The Parties were able to reach a Settlement that resolved all of the issues in this proceeding except for Nationwide Energy Partners, LLC’s (“NEP”) master metering and electricity redistribution proposal, which was reserved for litigation (“Reserved Issue”) under the Settlement. Pursuant to the schedule adopted by Administrative Law Judges Joel H. Cheskis and John M. Coogan (the “ALJs”), Duquesne Light, on behalf of the Parties, is contemporaneously filing the Settlement and Statements in Support of the Settlement as to the settled issues.

In this Main Brief, Duquesne Light addresses the Reserved Issue. As explained herein, NEP’s master metering and electricity redistribution proposal should be denied because it will allow entities such as NEP to provide unregulated electric service to residential tenants in Duquesne Light’s service territory, to the detriment of those tenants and to the detriment of Duquesne Light’s customers. Attached hereto as Appendix A are proposed Findings of Fact, Conclusions of Law and Ordering Paragraphs as to the Reserved Issue.

II. PROCEDURAL HISTORY

On April 16, 2021, Duquesne Light filed Supplement No. 25 to Tariff Electric – PA PUC No. 25 pursuant to 66 Pa. C.S. § 1308(d). Duquesne Light requested that the Commission approve an overall annual increase in distribution revenue of approximately \$115.0 million. Included in the requested increase is approximately \$29.2 million in revenue currently recovered under surcharges, resulting in a net increase in distribution revenue of approximately \$85.8 million.

The Commission’s Bureau of Investigation & Enforcement (“I&E”) filed a Notice of Appearance. The Office of Consumer Advocate (“OCA”) and Office of Small Business Advocate (“OSBA”) filed Complaints and Public Statements. Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (“CAUSE-PA”), the Pennsylvania Weatherization Providers Task Force, Inc. (“PWPTF”), United States Steel Corporation (“U.S. Steel”), Peoples Natural Gas Company LLC (“Peoples”), the International Brotherhood of Electrical Workers, AFL-CIO, Local Union 29 (“IBEW Local 29”), ChargePoint, Inc. (“ChargePoint”), and the Natural Resources Defense Council, Inc. (“NRDC”) filed Petitions to Intervene. NEP, Sean Ferris, Jan Vroman and Diane Buzzard also filed Complaints.

On May 20, 2021, the Commission entered an Order suspending Supplement No. 25 to Tariff Electric Pa. P.U.C. No. 25 until January 15, 2022, unless otherwise directed by Order of the Commission, pursuant to 66 Pa. C.S. §1308(d). The matter was referred to the Office of the Administrative Law Judge (“OALJ”). The proceeding was assigned to the ALJs, and a Prehearing Conference was scheduled for May 27, 2021.

The Prehearing Conference was held as scheduled on May 27, 2021. Parties participating in the Prehearing Conference filed Prehearing Memoranda identifying potential issues and their

expected witnesses. At the Prehearing Conference, the ALJs adopted a procedural schedule. In addition, the parties agreed to, and the ALJs approved, modified discovery rules for the above-captioned proceeding, which included shorter response times than those provided for in the Commission's regulations at 52 Pa. Code §§ 5.321 et seq.

All of the Petitions to Intervene in the proceeding were granted. In addition, the Complaints were consolidated with the base rate filing.

Two public input hearings were held on June 22, 2021, at 1:00 p.m. and 6:00 p.m.

On June 30, 2021, I&E, OCA, OSBA, CAUSE-PA, ChargePoint, PWPTF, and NRDC served their direct testimony and exhibits. NEP served its direct testimony and exhibits on July 2, 2021 pursuant to an agreement with the parties and approval by the ALJs.

On July 26, 2021, Duquesne Light, I&E, OCA, OSBA, CAUSE-PA, NRDC, NEP and ChargePoint served rebuttal testimony and exhibits.

On August 10, 2021, Duquesne Light, I&E, OCA, OSBA, CAUSE-PA, and NRDC served their surrebuttal testimony and exhibits.

On August 13, 2021, Duquesne Light served its rejoinder testimony and exhibits.

An evidentiary hearing was held before the ALJs on August 17, 2021. At the hearing, parties waived cross examination of witnesses, and pre-served testimony and exhibits were admitted in the record via stipulation. During the evidentiary hearing, the parties advised the ALJs that they anticipated settling all issues, except for the issue regarding NEP's master metering and electricity redistribution proposal, as described in NEP Statement Nos. 1 and 2. As such, a discussion was held regarding the opportunity to submit briefs on the Reserved Issue and when the formal settlement petition and statements in support would be due.

A Briefing Order was issued by the ALJs on August 17, 2021. Duquesne Light hereby submits its Main Brief pursuant to the Briefing Order issued by the ALJs.

III. STATEMENT OF THE CASE

The sole issue reserved for litigation in this proceeding involves NEP's proposal to require Duquesne Light to allow master metering of residential multifamily buildings with submetering of individual units and resale of electricity by the building owner and/or its representative to tenant customers. This proposal would allow non-regulated entities to provide electric utility service to residential customers outside of the jurisdiction of the Commission and without all of the protections afforded by regulated service. The proposal also would require Duquesne Light to unwillingly step in the shoes of a regulator to oversee NEP's proposed tariff conditions.

IV. QUESTIONS PRESENTED

Whether Duquesne Light's existing Commission approved tariff which prohibits master metering, submetering and resale of electricity to residential customers is just and reasonable.

Suggested answer: *in the affirmative.*

Whether NEP's master metering and electricity redistribution proposal, which would allow NEP and other entities to master meter multifamily buildings and provide unregulated electric service to tenants to the detriment of those tenants and Duquesne Light's customers, should be denied.

Suggested answer: *in the affirmative.*

V. LEGAL STANDARDS

A. GENERAL LEGAL STANDARDS

There is no legal requirement that Duquesne Light allow master metering of multifamily residential properties with resale of electricity by non-regulated entities to residential customers. In addition, the tariff conditions proposed by NEP would require Duquesne Light to monitor and regulate other entities' compliance with the proposed tariff, and could subject Duquesne Light to potential complaints and/or penalties for violations. Duquesne Light cannot legally be required to implement these tariff conditions which Duquesne Light opposes.

In *Pa. PUC, et. al v. Columbia Gas of Pennsylvania, Inc.*, Docket Nos. R-2018-2647577, et al., 2018 Pa. PUC LEXIS 432 (Order entered Dec. 6, 2018) ("*Columbia*"), the Commission reviewed whether Columbia's provision of on bill billing service to certain affiliates and not all NGSs constituted unreasonably discriminatory service. The Commission determined that providing the service only to Columbia's affiliates was unreasonably discriminatory. *Columbia*, at *81. However, the Commission explained that Columbia still maintained discretion as to whether or not to offer this service:

Columbia must comply with Section 1502 of the Code and provide its "on bill" billing policy in a way that is nondiscriminatory. In other words, Columbia must either provide such a service to all entities that provide such non-basic services or must discontinue the "on bill" billing policy. Columbia may not continue to provide this ability to only the two entities referenced in this case. Should Columbia provide the service to all entities providing non-basic services, we recognize the potential need for reasonable limitations, such as a requirement that the entities be able to provide information to Columbia in a manner that conforms to Columbia's billing practices, spacing and technologies. As such, we shall require Columbia to report to this Commission's Bureau of Technical Utility Services, within 60 days of the entry day of this Opinion and Order, its methodology for coming into compliance with Section 1502 of the Code.

Columbia, at *81-82 (emphasis added). As such, Columbia was not required to offer this service. *See also, Petition of PPL Utilities Corporation; Requesting Approval of a Voluntary*

Purchase of Accounts Receivables Program and Merchant Function Charge, Docket No. P-2009-2129502, 2009 Pa. PUC LEXIS 266 (Order entered Nov. 19, 2009) (“*PPL POR Order*”). In the *PPL POR Order*, the Commission reviewed PPL’s voluntary purchase of receivables (“POR”) program proposal, which included a right for PPL to terminate service for non-payment of all EGS generation charges purchased by PPL. *PPL POR Order*, at *11. In response to opposition from certain parties to this proposal, PPL “contend[ed] that it voluntarily filed its POR Program with the Commission in response to the Retail Markets Order, and does not believe that the Commission has the authority to require it to purchase an EGS’ receivables.” *PPL POR Order*, at *12. The Commission agreed, quoting *PECO Energy Co. v. Pa. PUC*, 568 Pa. 39, 791 A.2d 1155 (2002) as follows:

The power of the Commission is statutory, arising either from words contained in the enabling statutes or by a strong and necessary implication from those words, and the legislative grant of power in any particular case must be clear.

PPL POR Order, at *12. (quoting *PECO*, 791 A.2d at 1159-1160 (citations and quotations omitted)). The Commission specifically “agree[d] with PPL that authority does not exist for the Commission to compel any...jurisdictional EDCs to create and offer such a POR Program in the competitive electric generation marketplace.” *PPL POR Order*, at *22.¹

NEP proposes multiple tariff conditions which attempt to mimic in part service conditions and requirements provided by Duquesne Light as a regulated entity. If NEP’s proposed tariff conditions were adopted, Duquesne Light would be required to monitor and enforce the tariff conditions, and Duquesne Light would be subject to potential complaints for violations thereof. Duquesne Light opposes NEP’s proposal and opposes the tariff conditions, in

¹ Notably, the Commission “is not empowered to act as a super board of directors for the public utility companies of this state.” *Metropolitan Edison Co. v. Pa. Pub. Util. Comm’n*, 437 A.2d 76, 80 (Pa. Cmwlth. 1981); *see also Bell Tel. Co. v. Driscoll*, 343 Pa. 109, 119-20, 21 A.2d 912, 916-917 (Pa. 1941).

part because they would impose regulatory obligations and requirements on Duquesne Light. Because it is a discretionary program, Duquesne Light cannot be compelled to offer NEP's proposed master metering and submetering program to customers.

B. BURDEN OF PROOF

Under Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), “the proponent of a rule or order has the burden of proof.” It is well-established that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings 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, 602 (Pa. Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167 (1999). This standard is satisfied by presenting evidence more convincing, by even the smallest amount, than that presented by another party. *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008).

If the party seeking a rule or order from the Commission sets forth a *prima facie* case, then the burden shifts to the opponent. *MacDonald v. Pa. R.R. Co.*, 348 Pa. 558, 36 A.2d 492 (1944). Establishing a *prima facie* case requires either evidence sufficient to make a finding of fact permissible or evidence to create a presumption against an opponent which, if not met, results in an obligatory decision for the proponent. Once a *prima facie* case has been established, if contrary evidence is not presented, there is no requirement that the party seeking a rule or order from the Commission must produce additional evidence to sustain its burden of proof. *See Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528, 1980 Pa. PUC LEXIS 20 (Order entered Oct. 9, 1980); *see also Dist. of Columbia’s Appeal*, 21 A.2d 883 (Pa. 1941); *Application of Pennsylvania-American Water Co. for Approval of the Right To Offer, Render, Furnish or*

Supply Water Serv. to the Pub. in Additional Portions Of Mahoning Twp., Lawrence Cnty., Pa., Docket No. A-212285F0148, 2008 Pa. PUC LEXIS 874 (Order entered Oct. 29, 2008).²

Under the Public Utility Code, a public utility's rates must be just and reasonable and cannot result in unreasonable rate discrimination. 66 Pa. C.S. §§ 315(a), 1301, 1304. 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. 66 Pa. C.S. § 315(a); *Pa. PUC v. Aqua Pa., Inc.*, Docket No. R-00038805, 236 PUR 4th 218, 2004 Pa. PUC LEXIS 39, at *48 (Order entered Aug. 5, 2004). "It is well-established that the evidence adduced by a utility to meet this burden must be substantial." *Lower Frederick Twp. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980).

Further, a party that raises an issue that is not included in a public utility's general rate case filing bears the burden of proof. For example, in *Pa. PUC v. Metropolitan Edison Co., et al.*, Docket Nos. R-00061366, *et al.*, 2007 Pa. PUC LEXIS 5 (Order entered Jan. 11, 2007), a party offered proposals to have the companies incur expenses not included in their filings. The ALJ held that, as the proponent of a Commission order with respect to its proposals, the party bears the burden of proof as to proposals that are not included in the companies' filings. The Commission agreed and adopted the ALJ's conclusion that Section 315(a) of the Public Utility Code cannot reasonably be read to place the burden of proof on the utility with respect to an

² In addition, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Grp. v. Pa. PUC*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa. C.S. § 704). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm'n*, 942 A.2d 274, 281 n.9 (Pa. Cmwlth. 2008) (citation omitted). Although substantial evidence must be "more than a scintilla and must do more than create a suspicion of the existence of the fact to be established," *Kyu Son Yi v. State Bd. of Veterinary Med.*, 960 A.2d 864, 874 (Pa. Cmwlth. 2008) (citation omitted), the "presence of conflicting evidence in the record does not mean that substantial evidence is lacking." *Allied Mech. and Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) (citation omitted).

issue the utility did not include in its general rate case filing and which, frequently, the utility would oppose. *Id.*, at *111-12.

In addition, NEP is attempting to change the terms and conditions of Duquesne Light's existing tariff which prohibits residential master metering and the submetering and resale of electricity. Commission-approved tariffs are *prima facie* reasonable. *Kossman v. Pa PUC*, 694 A.2d 1147, 1151 (Pa. Cmwlth. 1997); *Shenango Twp. Bd. of Supervisors v. Pa. PUC*, 686 A.2d 910, 914 (Pa. Cmwlth. 1996) *pet. for allowance of appeal denied*, 698 A.2d 597 (Pa. 1997); *Zucker v. Pa. PUC*, 401 A.2d 1377, 1380 (Pa. Cmwlth. 1979). Moreover, the Commission has previously upheld Duquesne Light's prohibition against residential master metering in *Motheral v. DLC*, 95 Pa.P.U.C. 261 (2001). See Appendix B. As such, NEP carries a very heavy burden to prove that the facts and circumstances have changed so drastically as to render the application of the tariff provisions unreasonable. *Id.*; *Brockway Glass*, 437 A.2d at 1071-72.

The master metering, submetering and redistribution proposal at issue in this proceeding was made by NEP.³ In addition, NEP is attempting to revise the terms of Duquesne Light's Commission-approved tariff. Therefore, NEP bears a very heavy burden of proof as to the Reserved Issue and as explained herein, has failed to meet its burden.

³ In its initial filing, Duquesne Light included a limited master metering proposal for low income multifamily units that did not allow for submetering. This proposal was withdrawn in Duquesne Light's testimony and as part of the Settlement. Duquesne Light St. No. 6-SR, pp. 2-3; Settlement ¶ 49. This was a separate issue from NEP's proposal.

VI. SUMMARY OF ARGUMENT

In this proceeding, NEP has made a proposal that would require Duquesne Light to allow master metering of multifamily residential buildings, with submetering of individual units and resale of electricity by unregulated entities such as NEP to individual tenant customers. NEP proposes to require Duquesne Light to include provisions in its tariff governing the terms and conditions of service provided by third parties to tenant customers. Duquesne Light would be required to monitor and enforce these terms and conditions, despite its opposition to the proposal.

As to the legal issues, there is no legal requirement that Duquesne Light allow master metering of multifamily buildings with submetering and resale of electricity by unregulated third parties. As such, it is a discretionary program, and Duquesne Light cannot be required to offer discretionary programs that it opposes, especially when they impose tariff conditions that Duquesne Light must monitor and enforce. In addition, because this is NEP's proposal which Duquesne Light opposes, NEP bears the burden of proof. NEP cannot meet this burden because it cannot require Duquesne Light to implement a discretionary program. Moreover, as explained herein, NEP also did not meet its burden of proving that the program is in the public interest.

There is no dispute that NEP's proposal would allow third parties such as NEP to provide electric utility service to tenant customers in Duquesne Light's service territory. It is clearly not in the public interest to allow unregulated entities to provide electric utility service to residential customers. The record evidence demonstrated that many of NEP's customers could pay more for service from NEP than from a regulated utility. NEP's customers cannot choose their own electricity generation supplier. NEP's customers also lose critical protections and benefits by taking service from an unregulated entity, such as regulatory oversight over rates, statutory and

regulatory limitations on service termination, regulatory oversight over service conditions, budget billing and others.

In addition, NEP's proposal would harm Duquesne Light's customers by reducing customer base and revenues. NEP's business model is designed to profit on the differential between purchasing bulk electricity at a single commercial rate and reselling to tenant customers at prices modeled in part on individual residential customer rates. This reduces Duquesne Light's customer base, which reduces revenues that offset costs in base rate proceeding. The effect of this is to raise costs for Duquesne Light's customers.

The detriments of NEP's proposal clearly outweigh any purported benefits. The primary benefits alleged by NEP relate to energy efficiency and conservation benefits for owners of multifamily buildings. Duquesne Light's Commission-approved EE&CP already provides many energy efficiency and conservation benefits to owners of multifamily buildings, as well as tenants of these buildings. The other alleged benefits cited by NEP are not clear benefits, can be obtained by taking service from Duquesne Light, or are in fact detriments.

NEP also incorrectly references PURPA as support for its proposal. To the contrary, Duquesne Light's tariff fully complies with PURPA by requiring separate metering of all individual units in new residential buildings. PURPA discourages master metering and does not require Duquesne Light to offer master metering with submetering and resale of electricity by unregulated third parties.

VII. ARGUMENT

A. NEP'S MASTER METERING AND REDISTRIBUTION PROPOSAL IS NOT IN THE PUBLIC INTEREST.

1. The Proposal Would Allow Companies Such As NEP To Provide Utility Service In Duquesne Light's Service Territory.

There is no dispute that NEP's proposal would allow it to provide utility service to tenants of multifamily buildings in Duquesne Light's service territory. NEP admits this in its Direct Testimony, where it states that it provides "installation, submetering, billing, collections electrification and energy efficiency services...." NEP St. No. 1, p. 2. It provides these services to over 32,000 residents in total, including many in PECO Energy Company's ("PECO") service territory. NEP St. No. 1, p. 2; Confidential NEP St. No. 2, p. 26.

In many ways, NEP attempts to model utility service provided by regulated utilities:

- NEP installs advanced meters and other electric infrastructure behind the master meter.
- NEP charges customers a security deposit.
- NEP acquires electricity supply for its customers.
- NEP reads customers' meters.
- NEP bills customers for electricity usage.
- NEP process customers' payments for electricity.
- NEP charges customers late fees.
- NEP terminates service to customers for non-payment.
- NEP charges customers reconnection fees.

See NEP St. No. 1, p. 10; Duquesne Light St. No. 6-R, pp. 13 – 15.

These are all utility services that NEP provides to its customers.

2. NEP Is Not Regulated By The Commission.

Despite attempting to mimic regulated utility service in many ways, NEP is not regulated by the Commission. NEP makes this clear by stating that “tenants behind master metered buildings are *not* utility customers and should not be treated as such...” NEP St. No. 1-SR, p. 4, emphasis in original.

NEP attempts to minimize the issue and importance of Commission oversight by proposing to include extensive rules in Duquesne Light’s tariff over submetering, including customer verifications that they will comply with statutory resale requirements, metering and EV charging requirements, bill credit requirements, collection and billing requirements, tenant notification requirements and mediation requirements. NEP Exhibit TR-22. NEP then states that lack of government oversight is not an issue because the Commission has authority over submetering through “laws governing submetering” and through NEP’s proposed tariff conditions. NEP St. No. 1-SR, p.4.

NEP’s legal arguments regarding Commission oversight over its submetering proposal are flawed and should be dismissed. At no place in its testimony does NEP state that it is a public utility or that the Commission has jurisdiction over its provision of utility service.⁴ The Commission is a creature of statute and its jurisdiction is limited by the authority granted to it by the legislature under statute. *PECO*, 791 A.2d at 1159-1160. Under the Public Utility Code, 66 Pa. C.S. §§ 101 et. seq., the Commission has the authority to regulate public utilities. 66 Pa. C.S. § 501. It does not have the authority to regulate private companies that are not public utilities. In addition, it cannot be given authority to regulate private companies through a public utility’s

⁴ Duquesne Light reserves its right to argue that NEP should be considered to be a public utility in the event that NEP’s proposal is adopted, and NEP offers its services in Duquesne Light’s service territory.

tariff. *Id.* If NEP is not a public utility, the Commission does not have authority to regulate NEP.

The tariff conditions do not give the Commission jurisdiction over NEP. Rather, the tariff conditions require Duquesne Light to enforce them and subject Duquesne Light to risk of complaints and potential violation if the conditions are not followed. The tariff conditions proposed by NEP are quite extensive, including a mandatory minimum \$2 bill credit,⁵ collection and billing requirements and smart meter requirements, among others. It is unreasonable and unlawful for Duquesne Light to be required to implement a program with tariff provisions that it does not support that would allow third parties to provide utility services and then further require Duquesne Light to monitor, regulate and enforce the program.

3. Many of NEP's Customers Pay More For Electric Service Than If They Were Taking Service From The Regulated Utility.

NEP recognizes the statutory obligation that sales for resale of electricity to residential customers may not exceed the amount that the utility would bill the residential customer. See 66 Pa. C.S. § 1313; NEP St. No. 1, p. 10. NEP states that it ensures that its tenant customers pay less by providing a \$2 monthly bill credit off of the bill that the tenant would receive if they were receiving utility default service. The \$2 monthly bill credit is based on a comparison utility bill that NEP calculates on its own. NEP St. no. 1, p. 10.

Contrary to NEP's assertions, however, Duquesne Light's witness, Ms. Phillips, demonstrated that many of NEP's tenant customers would pay more taking service from NEP than they would if they were taking service from Duquesne Light due to additional unregulated fees imposed on tenant customers. NEP charges higher reconnection fees, late payment charges,

⁵ Despite not being regulated by the Commission, NEP is requesting that the Commission regulate rates provided by non-regulated entities and then subject Duquesne Light to complaints for tariff violations if unregulated entities fail to comply with the tariff.

payment processing charges, returned payment charges and deferred payment arrangement charges than Duquesne Light. Duquesne Light St. No. 6-R, pp. 13 – 14.⁶ NEP also may assess other utility related charges that are not regulated by the Commission. Duquesne Light St. No. 6-R, p. 15. Given these circumstances, NEP’s billing practices may violate Section 1313 of the Public Utility Code, 66 Pa. C.S. § 1313.

NEP’s tenant customers also would pay more than a Duquesne Light customer that elects to enroll in the Standard Offer Program (“SOP”), which provides for a 7% discount off of Duquesne Light’s then effective Price to Compare. Ms. Phillips demonstrated that the average Duquesne Light customer that elects the SOP saves about \$3 per month. Duquesne Light St. No. 6-R, pp. 15 – 16. This is more than the \$2 per month bill credit provided by NEP.

The record evidence is clear that many of NEP’s tenant customers pay more for utility service from NEP than they would pay if they took service from a regulated utility.

4. NEP’s Tenant Customers Would Lose Important Protections And Benefits If Its Proposed Tariff Provision Is Approved.

Through its proposed tariff conditions, NEP is attempting to mimic some of the terms and conditions of service that Duquesne Light, as a regulated utility, provides to its customers under Commission regulations and orders. However, NEP’s self-proposed conditions fail to provide tenant customers with critical fundamental protections and benefits that utility customers are provided. These deficiencies include, but are not limited to:

⁶ NEP has attempted to address overdue and collection cost issues in its proposed tariff conditions. See NEP Exhibit TR-22. As noted above, Duquesne Light should not be forced to monitor and regulate terms and conditions of third party resale of electricity to residential customers. Duquesne Light is ultimately responsible for complying with the terms and conditions of its tariff. If NEP violated the tariff, an NEP tenant customer could attempt to file a complaint with the PUC against Duquesne Light for failure to enforce the tariff. This would cause Duquesne Light to incur time and resources litigating these types of issues, which costs ultimately would be borne by Duquesne Light’s customers. This is unreasonable and should not be permitted.

- Regulatory oversight of the development of all rates.
- Regulatory oversight over all service conditions.
- Statutory and regulatory limitations on service termination.
- Low-income customer assistance programs.
- The right to file a complaint with the Commission regarding unreasonable service.
- The right to shop for an alternative supplier.
- Budget billing.
- Long-term payment plans.
- Expanded smart meter functionalities.

See Duquesne Light St. No. 6-R, pp. 13 – 25; NEP Exhibit No. Tr-22.

One of the most important protections listed above that Duquesne Light provides to customers are low-income customer assistance programs, including its Customer Assistance Program (“CAP”), which offers eligible customers a Percent of Income Payment Plan. NEP’s \$2 monthly bill credit does not come close to the bill reductions provided to CAP customers, which average \$57 per month. Duquesne Light St. No. 6-R, p. 17. NEP’s tenant customers also will not have access to Duquesne Light’s Hardship Fund, the Smart Comfort Program, LIHEAP or other low-income programs. Duquesne Light St. No. 6-R, pp. 17-18.

NEP attempts to mitigate these issues by limiting its proposal to non-low-income housing. NEP Exhibit TR-22. NEP defines non low-income housing as housing that does not meet the requirements of “low-income supportive housing” that were included in Tariff Rule 41.1, which has been withdrawn. NEP St. No. 2, p. 21. Rule 41.1 defined “low-income supportive housing” as either a Public Housing Authority development or a building that housed only low-income tenants. However, buildings that do not meet the definition of “low income supportive housing” under Rule 41.1, and therefore would be eligible for master metering and

submetering under NEP's proposal, can still have many low-income residents. Duquesne Light St. No. 6-R, p. 18. Moreover, NEP does not collect income data, so it cannot know if its tenant customers are low-income or not. CAUSE-PA St. No. 1-R, p. 54.

There are many fundamental rights and benefits that utility customers receive pursuant to statutes, regulations and Commission Orders. If NEP's proposal is adopted, NEP's tenant customers, as well as the tenant customers of any other submetering entities operating in Duquesne Light's service territory, will lose these rights and benefits. This is not in the public interest.

5. NEP's Proposal Would Harm Duquesne Light's Customers By Reducing The Customer Base And Revenues.

NEP's business model is premised on purchasing bulk electricity at a single commercial rate and reselling it to tenant customers at individual residential customer rates that reflect (to an extent) the utility's rates. NEP states:

By buying electricity at a commercial customer rate and reselling it to tenants at no more than the utility's residential customer rate, NEP's model creates a purchase and reselling differential that makes funds available to the Property Owner's use.

NEP St. No. 1, pp. 17-18.

In addition to the degradation of utility service previously explained, this model would also reduce Duquesne Light's customer base, thereby reducing Duquesne Light's customer revenues which offset customer costs in base rate proceedings. *See e.g.* Duquesne Light St. No. 15, p. 10 (explaining that the proposed rate increase is determined by comparing the revenue requirement with revenues at present rates). The effect of this is that the "funds available to the Property Owner's use" are funds that currently reduce rates for Duquesne Light's customers. Therefore, adoption of NEP's proposal will increase rates to the remaining customers. This is not a benefit and not in the public interest.

Utilities in Pennsylvania and other states are provided with a monopoly in order to reduce overall costs to customers. As explained in *A Guide to Utility Ratemaking*:

Utilities operate at lower unit costs in a monopoly market than they do under competition, chiefly because they achieve decreasing average costs as output increases.

A Guide to Utility Ratemaking, by James H. Cawley and Norman J. Kennard (2018 Edition), p. 2. In addition, the Commission disfavors competition among fixed electric utilities with overlapping service territories. See *Twp. of Findlay v. Duquesne Light Co.*, Docket No. C-00935374, 1996 Pa. PUC LEXIS 177, at *31-32 (Order entered Sept. 4, 1996) (citing *West Penn Power Co. v. Pa. PUC*, 643 A.2d 125 (Pa. Cmwlth. 1994)). Pennsylvania courts have also acknowledged this principle. See *Painter v. Pa PUC*, 169 A.2d 113, 115 (Pa. Super. 1961) (“Competition within the same territory by noncarrier public utilities, such as water companies, is deleterious and not in the public interest save in rare instances.”); *Perry County Tel & Te. Co. v. Pub. Serv. Comm’n*, 69 Pa. Super. 529 (Pa. Super. 1918).

NEP’s attempts to compete with Duquesne Light are harmful to customers because average costs increase when the number of customers decreases. If NEP’s proposal is permitted, it will allow providers such as NEP to reduce the number of residential customers served by Duquesne Light, thereby increasing the average costs for other customers.

NEP also alleges that its proposal is in the public interest because it “...avoids the costs to the utility of responding to and managing hundreds of accounts.” NEP St. No. 1, p. 20. This statement should not be accepted. Duquesne Light is in the business of providing electric utility service to approximately 600,000 customers. Duquesne Light has a team of customer service representatives trained to respond to and manage hundreds of thousands of customer accounts. See Duquesne Light St. No. 9. As explained above, decreasing the customer base increases

average costs for customers. NEP's argument that it is in the public interest to reduce Duquesne Light's customer base should not be accepted.

6. The Commission Should Not Revise Tariff Rule 41 To Further NEP's Economic Self-Interests.

As explained above, NEP's business model is designed to profit off of the differential between taking commercial service as a single customer and reselling the electricity to residential customers. The Commission has previously found that Tariff Rule 41 is lawful and should not be revised to further the economic interests of third parties. In *Mothersal*, the Commission stated:

We agree with the Respondent that its Tariff Rule 41 is indeed a lawfully adopted tariff provision and, therefore, we cannot waive it solely to assuage the Complainant's economic situation. In *Crown American Corporation v. Pennsylvania Public Utility Commission*, 463 A.2d 1257 (Pa. Cmwlth. 1983) the Commonwealth Court (Court) upheld a Pennsylvania Power & Light tariff provision prohibiting master metering at new multi-tenant service locations. Appellant, the owner of the commercial complex, argued that it would be at an economic disadvantage if it were no longer allowed to master meter its buildings. The Court opined that any economic disadvantage that might result from master metering was not unreasonable, because protection of the owner's economic interest is not the objective of the Code. Specifically, the Court found that the fact that the owner, and those similarly situated, could no longer profit from master metering was not an unreasonable burden for which to invalidate the tariff rule. (Respondent's Exceptions, p. 7). We agree with the Respondent that *Crown, supra*, is analogous to the instant proceeding because the Complainant is also seeking to avoid the Respondent's Tariff Rule for economic reasons.

Mothersal, 95 PA PUC at 265. A copy of this case is provided as Appendix B.

It is unreasonable to revise Tariff Rule 41 to economically benefit unregulated third parties to the detriment of Duquesne Light's customers.

7. The Detriments Of NEP's Proposal Outweigh The Alleged Benefits.

NEP'S primary argument in support of its unregulated master metering and redistribution proposal is that NEP can offer energy efficiency and demand response benefits that Duquesne Light cannot offer. NEP also argues that its proposal allows developers to avoid capital contribution requirements that could be imposed by Duquesne Light, that it reduces construction equipment costs and time, allows for streamlined tenant move-in and move-out and allows for the ability to track usage of an entire building, among others. NEP St. No. 1, pp. 14 – 17. These contentions are addressed below. However, any alleged benefits of NEP's proposal are clearly outweighed by the detriments explained above.

As an initial matter, the majority of NEP's alleged benefits ultimately derive from the fact that Duquesne Light is a regulated utility and NEP is not. Duquesne Light's services and conditions of providing service are reviewed and approved by the Commission pursuant to the Public Utility Code and the Commission's regulations. As an unregulated entity, NEP can offer services that Duquesne Light is not authorized to provide. NEP's ability to offer unregulated services should not be viewed as a benefit in support of its proposal to provide unregulated distribution services.

The primary benefit alleged by NEP is that its proposal provides for better energy efficiency and conservation measures than Duquesne Light, as a regulated utility, can offer. Ms. Phillips explained that this assertion was incorrect in her rebuttal testimony. Duquesne Light St. No. 6-R, pp. 7-9. Ms. Phillips explained that Duquesne Light's EE&CP has programs designed for building owners and tenants of multifamily residential buildings. For building owners, the EE&CP has a direct-install program design which installs energy efficiency measures at no cost to tenants and splits costs with the building owner. The EE&CP also has specific energy efficiency measures that multifamily buildings and tenants can use such as LED lighting,

advanced power strips, ENERGY STAR dehumidifiers, refrigerators, freezers, room air conditioners, smart thermostats, heat pumps, water heaters, insulation and low-flow showerheads, among others. Duquesne Light St. No. 6-R, pp. 7-8. In discovery, Duquesne Light demonstrated that it provided energy efficiency measures to over 70 separate multifamily facilities from June 1, 2019 – May 31, 2021 alone. DLC Exhibit YP-1-SR.

On pages 14 – 17 of its Direct Testimony, NEP lists the alleged benefits of its proposal. Duquesne Light summarizes and responds to each of these below.

(a) *Reduction in construction equipment costs and time.*

NEP provided no study or analysis supporting this statement. Duquesne Light's Contribution in Aid of Construction ("CIAC") requirements are set forth in its tariff which has been approved by the Commission. Further, there is no evidence that Duquesne Light does not timely meet its customers' requests for new service.

(b) *Designed energy infrastructure to maximize space, safety and usage for a multifamily property.*

NEP's proposal is not necessary for building owners to achieve this benefit. Building owners can still accomplish this without master metering.

(c) *Expertise for utility interactions and account decisions to ensure proper billing and servicing of the property.*

Duquesne Light offers customers expertise for interactions and account decisions through its customer service function. Duquesne Light St. No. 9, p. 9; NEP Cross Exhibit No. 14, pp. 40 – 55. In addition, NEP's proposal is not required for building owners to seek third-party expertise.

(d) *Streamlined tenant move-in and move-out process.*

Duquesne Light already offers streamlined tenant move-in and move-out processes. Duquesne Light offers smart meters with remote connect and disconnect functionality. DLC St. 6-R, p. 13, lines 13-16; *see also* Docket No. M-2009-2123948, *Petition of Duquesne Light Company for Approval of Its Final Smart Meter Procurement and Installation Plan*, Initial Decision entered January 13, 2013 at 7 (adopted in relevant part by Order entered April 4, 2013).

Under this alleged benefit, NEP also argues that a master meter eliminates the return of service to a landlord when a tenant moves out. Contrary to NEP's implication, landlords are not required to accept service when a tenant moves out.

NEP further argues that its proposal avoids disputes over utility bill responsibility when service is transferred. This is not an issue because Duquesne Light complies with the Commission's regulations under Chapter 56 and applicable Commission Orders for addressing utility bill responsibility when service is transferred from one customer to another. 52 Pa. Code Chapter 56.

(e) Ability to track usage on a community complex, building and resident level.

It is not clear that tracking usage on a complex or building level is a benefit for individually metered residential customers. Nevertheless, Duquesne Light provides owners of buildings with at least four units with aggregate building usage data via Duquesne Light's website. NEP Exhibit TR-23. As to tracking usage at the resident level, Duquesne Light's residential customers can compare their usage to other residential customers and can adopt energy efficiency measures offered under Duquesne Light's Commission approved EE&CP. NEP Cross Exhibit 14, p. 38.

(f) Tenant complaints to a utility regarding service.

Here NEP argues that a landlord will not know if a tenant complained to a utility if NEP's proposal is not adopted. This is not an overall benefit. To the contrary, it violates the tenant's right to privacy, and therefore is a detriment. Duquesne Light has Commission approved processes for addressing customer complaints and maintains customer privacy. If a customer complains to NEP, NEP's actions with the customer are unregulated, and the customer's due process rights are limited.

(g) Insights into electrical anomalies that may damage property.

NEP provided no studies or evidence to support this statement. It is not clear how frequently this occurs or if there are other means of obtaining this information.

(h) Provides the property owner with payback for energy efficiency and demand response investments.

NEP's proposal is not necessary for this benefit. See Duquesne Light St. No. 6-R, pp. 7-9.

(i) Enables measurement and verification of energy efficiency and energy technology programs.

Duquesne Light's Commission approved energy efficiency program provides for measurement and verification of energy efficiency measures. Duquesne Light St. No. 6-R, p. 8; NEP Cross Exhibit No. 14. Under this alleged benefit, NEP states that it is onerous to obtain access to each tenant's account if they are taking service from a regulated utility which makes it more difficult to measure and verify energy efficiency measures. NEP St. No. 1, p. 16. Again, this alleged benefit relates to NEP's ability as an unregulated entity to require tenants to provide access to information that is deemed to be confidential under the Commission's regulations. 52 Pa. Code § 54.8. This is not a benefit.

(j) *Allows a property owner to move infrastructure.*

Property owners can request that Duquesne Light move infrastructure.

(k) *Allows for water, electricity and natural gas in some instances to be on a single bill.*

It is not clear that this is a benefit to tenant customers. This could confuse tenant customers about their bills for individual utility services. Grouping multiple utility services on the bill also impedes tenant customers' ability to prioritize certain services, because NEP's tenants with arrears over \$100 are subject to termination of all utility services, even if the tenant makes partial payments that would be adequate to pay for one or more services. CAUSE PA St. No. 1-R, p. 19. In addition, Duquesne Light's bills are reviewed by stakeholders and subject to Commission regulation. NEP's bills are not subject to this review. Moreover, it is easy enough for customers to determine their total bill for all of their utilities by simply adding their utility bills.

In conclusion, the benefits alleged by NEP are in many cases not clear, can be obtained by taking service from Duquesne Light or are in fact detriments. The alleged benefits are clearly outweighed by the detriments of NEP's proposal, which limit a tenant's rights to regulated service and Commission protections, including protections from termination of service. NEP's proposal prevents tenant customers from shopping for electricity supply and prevents tenant customers from taking advantage of many Commission-approved programs such as Customer Assistance Programs or budget billing.

In addition, if NEP's proposal is adopted, many other unregulated third-parties would be able to provide service to tenant customers in Duquesne Light's service territory. These other

entities may have completely different terms of service and service conditions than offered by NEP.

It is not a benefit for residential customers to be required to take electric utility service from a non-regulated provider.

B. DUQUESNE LIGHT'S TARIFF COMPLIES WITH PURPA.

NEP argues that Duquesne Light's ban on master metering is not consistent with the Public Utility Regulatory Policies Act of 1978 ("PURPA"). This appears to be based on NEP's statements that removing Duquesne Light's tariff rules preventing master metering and submetering would allow multifamily buildings to achieve higher conservation benefits. NEP St. No. 1, p. 4. These statements misconstrue PURPA and should not be accepted.

Under PURPA, master metering of electric service in new buildings is generally prohibited and separate metering is required with limited exceptions. 16 U.S. Code §§ 2623, 2625. In no case does PURPA require master metering. Duquesne Light's tariff rules comply with PURPA because they require all individual units in new residential buildings to be separately metered. This gives individual tenants control over their electric usage and encourages conservation, which is one of PURPA's primary goals. The Commission has previously determined that Duquesne Light's Tariff Rule 41 complies with PURPA. *Pa. PUC v. Duquesne Light Co.*, 1981 Pa. PUC LEXIS 89 *191 – 192 (vacated in part on other grounds, *Duquesne Light Co. v. Pa. PUC*, 507 A.2d 433 (Pa. Cmwlth. 1986)).

Moreover, NEP, as the party with the burden of proof, did not demonstrate that the energy efficiency and conservation benefits of its proposal are superior to the energy efficiency and conservation benefits provided by Duquesne Light's Commission-approved EE&CP.

VIII. CONCLUSION

For all the foregoing reasons, Duquesne Light Company respectfully requests that Administrative Law Judges Joel H. Cheskis and John M. Coogan and the Pennsylvania Public Utility Commission approve the Joint Petition for Approval Settlement that is being filed contemporaneously with this Main Brief without modification and deny the relief requested by Nationwide Energy Partners, LLC related to its master metering and electricity redistribution proposal.

Respectfully submitted,



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Counsel for Duquesne Light Company

Appendix A

APPENDIX A
PROPOSED FINDINGS OF FACT

Duquesne Light Company (“Duquesne Light” or the “Company”) proposes the following findings of fact:

1. Duquesne Light provides electric distribution and transmission services to approximately 596,000 customers in Allegheny and Beaver Counties, Pennsylvania.

2. Duquesne Light is a “public utility” and an “electric distribution company” as defined under the Public Utility Code, *see* 66 Pa. C.S. §§ 102 & 2803, serving customers within its certificated service territory and subject to the regulatory jurisdiction of this Commission.

3. Duquesne Light also provides default service to customers that are not being served by an electric generation supplier (“EGS”).

4. On April 16, 2021, Duquesne Light filed Supplement No. 25 to Tariff Electric – PA PUC No. 25 pursuant to 66 Pa. C.S. § 1308(d). Duquesne Light requested that the Commission approve an overall annual increase in distribution revenue of approximately \$115.0 million. Included in the requested increase is approximately \$29.2 million in revenue currently recovered under surcharges, resulting in a net increase in distribution revenue of approximately \$85.8 million.

5. Two public input hearings were held on June 22, 2021, at 1:00 p.m. and 6:00 p.m.

6. An evidentiary hearing was held before the ALJs on August 17, 2021. At the hearing, parties waived cross examination of witnesses, and pre-served testimony and exhibits were admitted in the record via stipulation.

7. During the evidentiary hearing, the parties advised the ALJs that they anticipated settling all issues, except for the issue regarding Nationwide Energy Partners, LLC’s (“NEP”) master metering and submetering proposal, as described in NEP Statement Nos. 1 and 2. As

such, a discussion was held regarding the opportunity to submit briefs on the remaining disputed issue and when the formal settlement petition and statements in support would be due.

8. The Parties filed a Joint Petition for Settlement (“Settlement”) on September 3, 2021.

9. The Settlement is supported by Duquesne Light, the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (“CAUSE-PA”), the Pennsylvania Weatherization Providers Task Force, Inc. (“PWPTF”), ChargePoint, Inc. (“ChargePoint”), and the Natural Resources Defense Council, Inc. (“NRDC”), hereinafter collectively the “Joint Petitioners.”

10. The other parties in the proceeding, including United States Steel Corporation (“U.S. Steel”), Peoples Natural Gas Company LLC (“Peoples”), the International Brotherhood of Electrical Workers, AFL-CIO, Local Union 29 (“IBEW Local 29”), and NEP have indicated that they do not oppose the Settlement.

11. The Settlement resolves all issues related to Duquesne Light’s April 16, 2021 distribution base rate increase filing (“2021 Base Rate Case”), except those related to NEP’s complaint and proposal regarding master metering and submetering, as described in NEP Statement Nos. 1 and 2.

12. Issues related to NEP’s master metering and submetering proposal are reserved for litigation.

13. NEP states that it provides “installation, submetering, billing, collections electrification and energy efficiency services....” NEP St. No. 1, p. 2.

14. It provides these services to over 32,000 residents in total, including many in PECO Energy Company's ("PECO") service territory. NEP St. No. 1, p. 2; Confidential NEP St. No. 2, p. 26.

15. NEP: installs advanced meters and other electric infrastructure behind the master meter; charges customers a security deposit; acquires electricity supply for its customers; reads customers' meters; bills customers for electricity usage; process customers' payments for electricity; charges customers late fees; terminates service to customers for non-payment; and charges customers reconnection fees; among other functions. *See* NEP St. No. 1, p. 10; Duquesne Light St. no. 6-R, pp. 13 – 15.

16. NEP proposed to include extensive rules in Duquesne Light's tariff over submetering, including landlord customer verifications that they will comply with statutory resale requirements, metering and EV charging requirements, bill credit requirements, collection and billing requirements, tenant notification requirements and mediation requirements. NEP Exhibit TR-22.

17. NEP states that lack of government oversight is not an issue because the Commission has authority over submetering through "laws governing submetering" and through NEP's proposed tariff conditions. NEP St. No. 1-SR, p. 4.

18. At no place in its testimony does NEP state that it is a public utility or that the Commission has jurisdiction over its provision of utility service.¹

19. NEP recognizes the statutory obligation that sales for resale of electricity to residential customers may not exceed the amount that the utility would bill the residential customer. *See* 66 Pa. C.S. § 1313; NEP St. No. 1, p. 10.

¹ Duquesne Light reserves its right to argue that NEP should be considered to be a public utility in the event that NEP's proposal is adopted, and NEP offers its services in Duquesne Light's service territory.

20. NEP states that it ensures that its tenant customers in Duquesne Light's service territory would pay less by providing a \$2 monthly bill credit off of the bill that the tenant would receive if they were receiving utility default service. The \$2 monthly bill credit is based on a comparison utility bill that NEP calculates on its own. NEP St. no. 1, p. 10.

21. Duquesne Light's witness, Ms. Phillips, demonstrated that many of NEP's tenant customers would pay more taking service from NEP than they would if they were taking service from Duquesne Light due to additional fees imposed on tenant customers.

22. NEP charges higher reconnection fees, late payment charges, payment processing charges, returned payment charges and deferred payment arrangement charges than Duquesne Light. Duquesne Light St. No. 6-R, pp. 13 – 14.²

23. NEP also may assess other utility related charges that are not regulated by the Commission. Duquesne Light St. No. 6-R, p. 15.

24. Ms. Phillips demonstrated that the average Duquesne Light customer that elects the SOP saves about \$3 per month. Duquesne Light St. No. 6-R, pp. 15 – 16. This is more than the \$2 per month bill credit provided by NEP.

25. NEP's self-proposed conditions fail to provide tenant customers with critical fundamental protections and benefits that utility customers are provided, and Duquesne Light identified several of these deficiencies. See Duquesne Light St. No. 6-R, pp. 13 – 25; NEP Exhibit No. Tr-22.

26. NEP's \$2 monthly bill credit is not comparable to the bill reductions provided to CAP customers, which average \$57 per month. Duquesne Light St. No. 6-R, p. 17.

² NEP attempted to address overdue and collection cost issues in its proposed tariff conditions. See NEP Exhibit TR-22.

27. NEP's tenant customers also will not have access to Duquesne Light's Hardship Fund, the Smart Comfort Program, LIHEAP or other low-income customer programs. Duquesne Light St. No. 6-R, pp. 17-18.

28. NEP attempts to mitigate these issues by limiting its proposal to non-low-income housing. NEP Exhibit TR-22.

29. NEP defines non low-income housing as housing that does not meet the requirements that were included in Tariff Rule 41.1, which has been withdrawn. NEP St. No. 2, p. 21.

30. Rule 41.1 defined low-income housing as either a Public Housing Authority development or a building that housed only low-income tenants. However, buildings that do not meet the definition of low income under Rule 41.1 can still have many low-income residents. Duquesne Light St. No. 6-R, p. 18.

31. NEP does not collect income data, so it cannot know if its tenant customers are low-income or not. CAUSE-PA St. No. 1-R, p. 54.

32. NEP states:

By buying electricity at a commercial customer rate and reselling it to tenants at no more than the utility's residential customer rate, NEP's model creates a purchase and reselling differential that makes funds available to the Property Owner's use.

NEP St. No. 1, pp. 17-18.

33. This model would also reduce Duquesne Light's customer base, thereby reducing Duquesne Light's customer revenues which offset customer costs in base rate proceedings. *See e.g.* Duquesne Light St. No. 15, p. 10.

34. NEP also alleges that its proposal is in the public interest because it “...avoids the costs to the utility of responding to and managing hundreds of accounts.” NEP St. No. 1, p. 20.

35. Duquesne Light is in the business of providing electric utility service to approximately 600,000 customers. Duquesne Light has a team of customer service representatives trained to respond to and manage hundreds of thousands of customer accounts. See Duquesne Light St. No. 9.

36. NEP’s claim that its proposal provides for better energy efficiency and conservation measures than Duquesne Light, as a regulated utility, can offer is incorrect. Duquesne Light St. No. 6-R, pp. 7-9.

37. Duquesne Light witness Ms. Phillips explained that Duquesne Light’s EE&CP has programs designed for building owners and tenants of multifamily residential buildings. For building owners, the EE&CP has a direct-install program design which installs energy efficiency measures at no cost to tenants and splits costs with the building owner. The EE&CP also has specific energy efficiency measures that multifamily buildings and tenants can use such as LED lighting, advanced power strips, ENERGY STAR dehumidifiers, refrigerators, freezers, room air conditioners, smart thermostats, heat pumps, water heaters, insulation and low-flow showerheads, among others. Duquesne Light St. No. 6-R, pp. 7-8.

38. In discovery, Duquesne Light demonstrated that it provided energy efficiency measures to over 70 separate multifamily facilities from June 1, 2019 – May 31, 2021 alone. DLC Exhibit YP-1-SR.

39. NEP provided no study or analysis supporting its claim that its proposal would reduce construction equipment costs and time.

40. Duquesne Light's Contribution in Aid of Construction ("CIAC") requirements are set forth in its tariff which has been approved by the Commission.

41. There is no evidence that Duquesne Light does not timely meet its customers' requests for new service.

42. NEP's proposal is not necessary for building owners to design energy infrastructure to maximize space, safety and usage for a multifamily property. Building owners can still accomplish this without master metering.

43. Duquesne Light offers customers expertise for interactions and account decisions through its customer service function. Duquesne Light St. No. 9, p. 9; NEP Cross Exhibit No. 14, pp. 40 – 55.

44. NEP's proposal is not required for building owners to seek third-party expertise.

45. Duquesne Light already offers streamlined tenant move-in and move-out processes. DLC St. 6-R, p. 13, lines 13-16; *see also* Docket No. M-2009-2123948, *Petition of Duquesne Light Company for Approval of Its Final Smart Meter Procurement and Installation Plan*, Initial Decision entered January 13, 2013 at 7 (adopted in relevant part by Order entered April 4, 2013).

46. NEP's claim that its proposal avoids disputes over utility bill responsibility when service is transferred, is a non-issue because Duquesne Light complies with the Commission's regulations under Chapter 56 and applicable Commission Orders for addressing utility bill responsibility when service is transferred from one customer to another. 52 Pa. Code Chapter 56.

47. Duquesne Light's residential customers can compare their usage to other residential customers and can adopt energy efficiency measures offered under Duquesne Light's Commission approved EE&CP. NEP Cross Exhibit 14, p. 38.

48. NEP argues that a landlord will not know if a tenant complained to a utility if NEP's proposal is not adopted. This is not an overall benefit; it violates the tenant's right to privacy, and therefore is a detriment.

49. NEP provides no studies or evidence to support its statement that its proposal provides insights into electrical anomalies that may damage property.

50. NEP's proposal is not necessary to provide a property owner with payback for energy efficiency and demand response initiatives. See Duquesne Light St. No. 6-R, pp. 7-9.

51. Duquesne Light's Commission approved energy efficiency program provides for measurement and verification of energy efficiency measures. Duquesne Light St. No. 6-R, p. 8; NEP Cross Exhibit No. 14.

52. NEP states that it is onerous to obtain access to each tenant's account if they are taking service from a regulated utility which makes it more difficult to measure and verify energy efficiency measures. NEP St. No. 1, p. 16.

53. This benefit relates to NEP's ability as an unregulated entity to require tenants to provide access to information that is deemed to be confidential under the Commission's regulations. 52 Pa. Code § 54.8.

54. Property owners can request that Duquesne Light move infrastructure.

55. It is not clear that NEP's claim that its proposal allows for water, electricity and natural gas in some instances to be on a single bill.

56. The benefits alleged by NEP are in many cases not clear, can be obtained by taking service from Duquesne Light or are in fact detriments.

57. The alleged benefits are outweighed by the detriments of NEP's proposal, which limit a tenant's rights to regulated service and Commission protections, including protections from termination of service.

PROPOSED CONCLUSIONS OF LAW

Duquesne Light Company (“Duquesne Light” or the “Company”) proposes the following conclusions of law:

1. There is no legal requirement that Duquesne Light allow master metering of multifamily residential properties with resale of electricity by non-regulated entities to residential customers.

2. The Commission has recognized that public utilities maintain discretion as to whether or not to offer services not required by the Public Utility Code, the Commission’s regulations or a Commission order. *See Pa. PUC, et. al v. Columbia Gas of Pennsylvania, Inc.*, Docket Nos. R-2018-2647577, et al., 2018 Pa. PUC LEXIS 432 (Order entered Dec. 6, 2018) (“*Columbia*”).

3. “The power of the Commission is statutory, arising either from words contained in the enabling statutes or by a strong and necessary implication from those words, and the legislative grant of power in any particular case must be clear.” *Petition of PPL Utilities Corporation; Requesting Approval of a Voluntary Purchase of Accounts Receivables Program and Merchant Function Charge*, Docket No. P-2009-2129502, 2009 Pa. PUC LEXIS 266 (Order entered Nov. 19, 2009) (“*PPL POR Order*”) (quoting *PECO Energy Co. v. Pa. PUC*, 568 Pa. 39, 791 A.2d 1155 (2002)).

4. NEP’s proposal and tariff conditions would impose regulatory obligations and requirements on Duquesne Light that are not mandatory under the law. Because it is a discretionary program, Duquesne Light cannot be compelled to offer NEP’s proposed master metering and submetering program to customers.

5. Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding.

6. Commission-approved tariffs are *prima facie* reasonable. *Kossmann*, 694 A.2d at 1151; *Shenango Twp.*, 686 A.2d at 914; *Zucker*, 401 A.2d at 1380. A party challenging a tariff carries a very heavy burden to prove that the facts and circumstances have changed so drastically as to render the application of the tariff provisions unreasonable. *Id.*; *Brockway Glass*, 437 A.2d at 1071-72.

7. The Commission has previously upheld Duquesne Light's prohibition against residential master metering in *Motheral v. DLC*, 95 Pa.P.U.C. 261 (2001).

8. A litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence, which is substantial and legally credible. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

9. The preponderance of evidence standard requires proof by a greater weight of the evidence. *Cmwlth. v. Williams*, 557 Pa. 207, 732 A.2d 1167 (Pa. 1999).

10. Only if the proponent of the rule or order present evidence found to be of greater weight than the other parties, will it have carried its burden of proof. *Morrissey v. Commonwealth*, 225 A.2d 895 (Pa. 1986); *Burleson v. Pa. Pub. Util. Comm'n*, 641 A.2d 1234, 1236 (Pa. 1983); *V.J.R. Bar Corp. v. P.L.C.B.*, 390 A.2d 163 (Pa. 1978); *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001).

11. Any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Group v. Pa. Pub. Util. Comm'n*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704).

12. Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary*

Civil Serv. Comm'n, 942 A.2d 274, 281 (Pa. Cmwlth. 2008). The “presence of conflicting evidence in the record does not mean that substantial evidence is lacking.” *Allied Mechanical and Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) (citation omitted).

13. NEP has failed to carry its burden of proof and demonstrate that the Commission should compel Duquesne Light to implement NEP’s master metering and electric redistribution proposals set forth in NEP Statement Nos. 1 and 2.

PROPOSED ORDERING PARAGRAPHS

Duquesne Light Company (“Duquesne Light” or the “Company”) proposes the following ordering paragraphs:

1. That the Joint Petition for Approval Settlement dated September 3, 2021, is approved without modification.
2. That the relief requested by Nationwide Energy Partners, LLC related to its master metering and electricity redistribution proposal set forth in NEP Statement Nos. 1 and 2 is denied.
3. That the Formal Complaint of Nationwide Energy Partners, LLC at Docket No. C-2021-3026057 is denied and the docket is marked closed.

Appendix B

95 Pa.P.U.C. 261, 2001 WL 1557650 (Pa.P.U.C.)

Motheral, Inc.
v.
Duquesne Light Company

Case 00003926

Pennsylvania Public Utility Commission

March 22, 2001; entered March 23, 2001

BY THE COMMISSION:

OPINION AND ORDER

Before the Commission for consideration and disposition are the Exceptions of Duquesne Light Company (Respondent) filed on January 10, 2001, to the Initial Decision of Administrative Law Judge (ALJ) John H. Corbett, Jr. which was issued December 12, 2000, in the above-captioned proceeding. No Reply Exceptions were filed.

History of the Proceeding

On July 17, 2000, Motheral, Inc. (Complainant) filed a Formal Complaint against the Respondent wherein it alleged that the Respondent refused its request to master meter an apartment building that it owns and leases to Carnegie Mellon University as a student dormitory. The Complainant requested that the Commission grant it an exemption based upon economic hardship.

On August 11, 2000, the Respondent filed an Answer and New Matter to the instant Complaint wherein it asserted that its Tariff Rule 41 prohibits residential master metering. On September 14, 2000, the ALJ held an evidentiary hearing. At the hearing, the Respondent and the Complainant were both represented by counsel.

On December 12, 2000, an Initial Decision was issued wherein the ALJ recommended that the Complaint be sustained to the extent that it requests an exemption from the Respondent's Tariff Rule 41.

On January 10, 2001, the Respondent filed Exceptions to the Initial Decision. No Reply Exceptions have been filed.

Discussion

ALJ Corbett made twenty-eight (28) Findings of Fact and reached six (6) Conclusions of Law, which are incorporated herein by reference unless expressly or by necessary implication they are overruled or modified by this Opinion and Order.

The ALJ found that, pursuant to Section 332(a) of the Public Utility Code (Code), **66 Pa. C.S. § 332(a)**, the party seeking relief in a dispute, such as the matter before us, has the burden of proof. The ALJ concluded that, since the Complainant is seeking relief in this matter, it is the Complainant who must bear the burden of proof. (I.D., p. 7).

The ALJ noted that the Complainant has leased its 28-unit apartment building to Carnegie Mellon University as a student dormitory until July 31, 2005. Each apartment has a bathroom and a kitchen that has a range, refrigerator, and dishwasher. The ALJ further noted that the building has a separate residential meter for each of the 28 apartments and one (1) commercial 'house' meter that encompasses the superintendent's apartment and the common hallways for the electric service received from

the Respondent. The Complainant is the party responsible for paying the electric bills; it pays all 29 electric bills with one (1) check each month. (I.D., p. 8).

The ALJ noted the Complainant's assertion that paying 29 separate electric bills each month not only is a bookkeeping and accounting burden but also each electric bill carries a separate basic service charge of \$6.37 a month. The ALJ further explained that if it could receive only one (1) bill each month, the Complainant could eliminate 28 of the 29 separate basic service charges, thus saving nearly \$11,000.00 over the term of the lease with Carnegie Mellon University. (I.D., p. 9).

The ALJ indicated that, although the Respondent believes the Complainant's request for master metering this building possesses some merit, the Respondent notes that each apartment in the Complainant's building is a separate housekeeping unit with space for eating, living and sleeping, and permanent provisions for cooking and sanitation. The ALJ further indicated that the Respondent asserts that its Tariff Rule 41 prohibits master metering this building. (I.D., p. 9). The Respondent adopted this Tariff Rule to comply with Section 2623(b)(1) of the Public Utility Regulatory Policies Act (PURPA), 16 U.S.C. § 2623(b)(1), which states as follows:

To the extent determined appropriate under section 2625(d) of this title, master metering of electric service in the case of new buildings shall be prohibited or restricted *to the extent necessary to carry out the purposes of this chapter*. (Emphasis added).

The ALJ then cited the Commission's determination that the Respondent's Tariff Rule 41 complied with PURPA's master metering standards in *Pa. P.U.C. v. Duquesne Light Company*, 54 Pa. P.U.C. 695 (1981). The ALJ further noted the Respondent's position that it has no choice but to enforce its Tariff Rule 41 and to deny the Complainant's request to master meter this building.

The ALJ noted that the Respondent relied upon *Tiffany Associates v. Duquesne Light Company*, Docket No. C-00981142 (Order entered November 20, 1998), in support of the aforementioned position. In *Tiffany, supra*, the ALJ stated that we upheld the Respondent's refusal to allow master metering of a senior citizen apartment building. There, the presiding ALJ found the public's interest was enhanced by conserving natural resources and keeping overall energy costs low outweighed any economic benefit that the Complainant or its tenants might receive as the result of master metering. In affirming the presiding ALJ in *Tiffany*, we determined that the overriding concern for both PURPA and the Respondent's Tariff Rule 41 is to promote energy conservation.

However, in the instant proceeding the ALJ determined that when the linkage between individual metering and energy conservation is broken, the rationale for the proscription against master metering obviously fails. The ALJ further determined that allowing master metering of the Complainant's building will raise no energy conservation concerns. The ALJ reasoned that students occupying this structure will consume the same amount of electricity, irrespective of whether the building has individual meters for each apartment or a master meter for the entire building. The ALJ reasoned that regardless of how much electricity is consumed, the Complainant will continue to pay the bills.

We note that in *Tiffany*, the individual tenants ultimately would continue to pay their electric bills, if master metering had been permitted. Therefore, the ALJ found that the present case is distinguishable from *Tiffany*, where individual metering held individual tenants responsible for their energy consumption. Since master metering the building in the present case will have no deleterious affect on energy consumption, the ALJ concluded that the legislative concerns underlying the enactment of PURPA do not come into play here. Likewise, he reasoned that the rationale for Tariff Rule 41 no longer exists under these circumstances.

For all of the forgoing reasons, the ALJ granted the instant Complaint to the extent that the Complainant sought an exemption from application of the Respondent's Tariff Rule 41.

Respondent's Exceptions

We note that any Exception which we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by

the parties. (*Consolidated Rail Corporation v. Pennsylvania Public Utility Commission*, 625 A.2d 741 (Pa. Cmwlth. 1993); also see, generally, *University of Pennsylvania v. Pennsylvania Public Utility Commission*, 485 A.2d 1217 (Pa. Cmwlth. 1984)).

In its Exceptions, the Respondent takes the position that its Tariff Rule 41 is a lawfully adopted tariff provision and, therefore, may not be waived solely for the benefit of one (1) customer. Tariff Rule 41 was adopted because PURPA requires that master metering of electric service, in the case of new buildings, shall be prohibited or restricted to the extent necessary to ensure the increased conservation of electric energy, increased efficiency in the use of facilities and resources by electric utilities, and equitable retail rates for electric customers. The Respondent maintains that the Complainant did not meet its burden of proof that it should be granted an exception on the basis that the Respondent's Tariff Rule is unjust, unreasonable, or discriminatory. (Respondent's Exceptions, p. 16).

The Respondent cites *Pennsylvania Electric Company v. Pennsylvania Public Utility Commission*, 437 A.2d 1067 (Pa. Cmwlth. 1981) in which the Commission held that a utility is obligated to uphold its tariff. Moreover, in that proceeding, the Respondent states that the Commission asserted that it lacks the authority to require an electric utility, by grant of waiver of eligibility requirements, to grant a more advantageous rate for which the customer does not otherwise qualify, unless there is a finding that the relevant tariff was unjust, unreasonable, or discriminatory. The Respondent asserts that, in the instant proceeding, any such finding is not supported by substantial evidence of record. Therefore, the Respondent maintains that the Complainant has not met its burden of proving Tariff Rule 41 to be unreasonable and, therefore, we should modify the ALJ's Initial Decision by denying the Complainant a waiver of Respondent's Tariff Rule 41.

Analysis

Before discussing the Exceptions, we shall review the requirements of the law regarding the burden of proof in proceedings before this Commission. Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides as follows:

(a) Burden of proof. — Except as may be otherwise provided in section 315 (relating to burden of proof) or other provision of this part or other relevant statute, the proponent of a rule or order has the burden of proof.

Section 332(a) of the Code is routinely construed and applied by the Commission to require a party seeking affirmative relief from the Commission, as the Complainant is in the instant proceeding, to bear the burden of producing and coming forward with the evidence and to bear the ultimate burden of persuading the Commission, by a preponderance of substantial evidence, that the relief sought is proper and justified under the circumstances. (*Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1954)).

The Supreme Court of Pennsylvania has held that a party's *burden of proof* (in order to prevail on a complaint) means a duty to establish necessary facts by a preponderance of the evidence. *Preponderance of the evidence* means one (1) party must present evidence which is more convincing, by even the smallest amount, than the evidence presented by an opposing party. (*See Se-Ling Hosiery, supra*). Accordingly, the record in this case must be reviewed to determine whether the Complainant has satisfied the burden of proof. If the review indicates that the burden has been satisfied, then it must be determined whether the Respondent has submitted evidence of co-equal value or weight in order to counter or refute the Complainant's evidence, or, otherwise, to support an affirmative defense. If this has occurred, then the burden of proof cannot be deemed to have been satisfied unless the party bearing the burden of proof presents additional evidence causing the Complainant's position to be supported by a *preponderance* of the evidence. (*Morissey v. Pa. Dept. of Highways*, 424 Pa. 87, 225 A.2d 895 (1967); *Burleson v. Pa. P.U.C.*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 443, 461 A.2d 1234 (1983)).

Furthermore, care must be exercised to ensure that the decision of the Commission is supported by substantial evidence in the record. The Pennsylvania appellate courts have defined *substantial evidence* to mean such relevant evidence that a reasonable mind may accept as adequate to support a conclusion: more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. (*Murphy v. Pa. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961)). Finally, a

complainant must show, as part of the complainant's burden of proof, that the involved utility is responsible or accountable for the problem described in the complaint. (*Feinstein, et al. v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300, 302). (I.D., pp. 7-10).

We agree with the Respondent that its Tariff Rule 41 is indeed a lawfully adopted tariff provision and, therefore, we cannot waive it solely to assuage the Complainant's economic situation. In *Crown American Corporation v. Pennsylvania Public Utility Commission*, 463 A.2d 1257 (Pa. Cmwlth. 1983) the Commonwealth Court (Court) upheld a Pennsylvania Power & Light tariff provision prohibiting master metering at new multi-tenant service locations. Appellant, the owner of the commercial complex, argued that it would be at an economic disadvantage if it were no longer allowed to master meter its buildings. The Court opined that any economic disadvantage that might result from master metering was not unreasonable, because protection of the owner's economic interest is not the objective of the Code. Specifically, the Court found that the fact that the owner, and those similarly situated, could no longer profit from master metering was not an unreasonable burden for which to invalidate the tariff rule. (Respondent's Exceptions, p. 7). We agree with the Respondent that *Crown, supra*, is analogous to the instant proceeding because the Complainant is also seeking to avoid the Respondent's Tariff Rule for economic reasons.

We similarly agree with the Respondent that any economic hardship accruing to the Complainant from compliance with the tariff rule's provision of master metering is outweighed by the inequities that would be caused to the Respondent's other customers. Allowing the exception of individual metering is tantamount to granting a rate preference. This indeed creates discrimination in rates between the Complainant and those customers who are similarly situated to the Complainant, but fail to be master metered because they, like the Complainant, are subject to the Respondent's Tariff Rule. We determine that granting the Complainant an exception would be a violation of Section 1304 of the Public Utility Code, 66 Pa. C.S.A. § 1304. Section 1304 provides, in pertinent part, that:

No public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service.

We find that to subvert the mandatory requirements of Respondent's Tariff Rule 41, because the Complainant chose to enter into a lease which makes it responsible for paying electric services on the premises, is clearly beyond the scope of the Code. Accordingly, we find that the Complainant has not carried its burden of proof that the Respondent's Tariff Rule 41 is in any way unjust, unreasonable, or discriminatory.

Conclusion

We have carefully reviewed the record as developed in this proceeding including the ALJ's Initial Decision and the Exceptions filed thereto. Premised on our review, we conclude that the Respondent's Exceptions are meritorious and as a result, they are granted. Accordingly, we shall reverse the ALJ's Initial Decision; THEREFORE,

IT IS ORDERED:

- 1. That the Exceptions of Duquesne Light Company, filed on January 10, 2001, to the Initial Decision of Administrative Law Judge John H. Corbett, Jr. issued on December 12, 2000, in the above-captioned proceeding, at Docket No. C-00982033, are hereby granted.**
- 2. That the Initial Decision of Administrative Law Judge John H. Corbett, Jr. is hereby reversed.**

3. That the Complaint of Motheral, Inc. against Duquesne Light Company at Docket Number C-00003926 is dismissed.

INITIAL DECISION

Before

John H. Corbett, Jr.

Administrative Law Judge

History of the Proceeding

This decision grants a formal complaint, which Motheral, Inc.¹ ('Complainant' or 'Motheral') filed with the Pennsylvania Public Utility Commission ('Commission') on July 17, 2000. In its complaint, Motheral alleges Duquesne Light Company ('Respondent' or 'Duquesne Light') refused its request to master meter an apartment building that it owns and leases to Carnegie Mellon University as a student dormitory. Motheral requests that the Commission grant it an exemption based upon economic hardship.

On August 11, 2000, Duquesne Light answered the complaint and filed new matter denying any wrongdoing. Duquesne Light asserts its Tariff Rule 41 prohibits residential master metering. The Respondent adopted Tariff Rule 41 to comply with Section 2623(b)(1) of the Public Utility Regulatory Policies Act ('PURPA'), 16 U.S.C. § 2623(b)(1). The Commission determined the Respondent's Tariff Rule 41 complied with PURPA's master metering standards in *Pa. P.U.C. v. Duquesne Light Company*, 54 Pa. P.U.C. 695 (1981). The Respondent also moved to dismiss the complaint based upon these facts and the fact the Complainant was a corporation without representation by legal counsel. *See*, 52 Pa. Code § 5.21(d). The Complainant responded by letter to the motion on August 18, 2000.

The Commission held a hearing on this complaint in Pittsburgh on September 14, 2000. Robert M. Danenburg, Esquire, represented the Complainant. Regina M. Sestak, Esquire, represented the Respondent. The presiding Administrative Law Judge ('ALJ') denied the Respondent's motion to dismiss the complaint (N.T. 8). The hearing generated 38 pages of notes of testimony. The Complainant offered one exhibit and the Respondent sponsored three exhibits that were admitted into the record. No briefs were filed. The record closed on October 13, 2000.

Findings of Fact

- 1. The Complainant, Motheral, Inc., owns a residential apartment building at 601 Clyde Street, Pittsburgh, Pennsylvania 15213 (N.T. 9).**
- 2. This building has 28 separate apartments consisting of eight efficiency apartments, eight one-bedroom apartments, and twelve two-bedroom apartments. A superintendent's apartment is situated in the basement (N.T. 13).**
- 3. In the spring of 2000, Motheral entered into a five year lease with Carnegie Mellon University to use the building as a student dormitory (N.T. 9-10, 12).**
- 4. Prior to that time, the structure was used as a 28-unit apartment building (N.T. 12).**
- 5. Each apartment has a bathroom and a kitchen that has a range, refrigerator and dishwasher (N.T. 13).**
- 6. The building receives heat from one gas-fired furnace that supplies hot water to radiators throughout the building. A common tank in the basement supplies hot water to the apartments (N.T. 13).**

7. The term of the lease with Carnegie Mellon University commenced on August 1, 2000 and runs until July 31, 2005 (N.T. 12).

8. The building has a separate residential meter for each of the 28 apartments and one commercial 'house' meter that encompasses the superintendent's apartment and the common hallways for the electric service received from the Respondent, Duquesne Light Company (N.T. 10-13, 21-22).

9. Motheral is the party responsible for paying the electric bills; it pays all 29 electric bills with one check each month (N.T. 10).

10. Motheral claims paying 29 separate electric bills is a bookkeeping and accounting burden (N.T. 10-11).

11. Motheral notes each electric bill carries a separate basic service charge of \$6.37 a month for the Respondent to provide such services as meter reading and bill preparation (N.T. 11).

12. If it could receive only one bill each month, Motheral asserts it could eliminate 28 of the 29 separate basic service charges, thus saving nearly \$11,000.00 over the term of the lease with Carnegie Mellon University (N.T. 11).

13. After complaining to Duquesne Light, Motheral received a letter dated April 18, 2000 from the Respondent, which reads in part:

Rule 41 was established as an energy conservation measure in the early 1970s to make tenants responsible for their own energy usage. There seems to be some consensus today that Rule 41 should be modified to accommodate situations such as yours. I have discussed this matter with our Legal Unit and there does not appear to be any way for us to waive the requirements of Rule 41 without a ruling from the Pennsylvania Public Utility Commission. You may want to inquire with the Pennsylvania Public Utility Commission as to how this might be accomplished.

(N.T. 14-17, 28-29; Complainant's Exh. A).

14. If it is economically feasible, Motheral will install a master meter for the subject building (N.T. 18).

15. Duquesne Light defines 'master metering' as one meter that measures electric usage for an entire building (N.T. 21).

16. Duquesne Light's Tariff Rule 41, 'Prohibition of Residential Master Metering,' reads as follows:

Each residential dwelling unit in a building must be individually metered by the Company for buildings connected after January 1, 1981. For the purposes of the Rule, a dwelling unit is defined as:

One or more rooms for the use of one or more persons as a housekeeping unit with space for eating, living, and sleeping, and permanent provisions for cooking and sanitation.

This Rule does not preclude the use of a single meter for the common areas and common facilities of a multi-tenant building.

This Rule shall not effect any practice undertaken prior to January 1, 1981.

(N.T. 22-23; Respondent's Exh. 1).

17. Duquesne Light bills the account for each apartment in the subject building at the residential rate (N.T. 23; Respondent's Exh. 2).

18. Duquesne Light bills each residential account a monthly customer distribution charge of \$6.38. Based upon a rider to the tariff that rectifies state tax estimates and actual payments, the Respondent applies a 1% credit to this rate for a total charge of \$6.37 per month for each residential account (N.T. 23; Respondent's Exh. 2).

19. Duquesne Light also sponsored a portion of its tariff for Rate GS/GM-General Service Small and Medium (N.T. 25-26; Respondent's Exh. 3).

20. Under commercial Rate GS/GM, Duquesne Light will bill an account a monthly demand charge, which is the rate of usage of electricity (N.T. 25).

21. Under Rate GS/GM, Duquesne Light will determine the rate of demand according to the following standard:

Individual demand, except in unusual cases, will be determined by measurement of the average kilowatts during the fifteen-minute period of greatest kilowatt-hour use during the billing period.

(N.T. 25; Respondent's Exh. 3).

22. If Motheral switches to Rate GS/GM, Duquesne Light opines the Complainant will incur substantial additional charges each month for demand charges (N.T. 26).

23. Without a history of demand usage for the building, Duquesne Light cannot determine the magnitude of demand charges that Motheral will incur if it switches to Rate GS/GM (N.T. 27).

24. Duquesne Light feels the Complainant's request for master metering this building possesses some merit (N.T. 28).

25. Duquesne Light believes consumers still need to be energy conscious (N.T. 28-29).

26. Duquesne Light is familiar with other recently constructed dormitory buildings in the Oakland section of the City of Pittsburgh. These dormitories are master metered, because they have common bathroom facilities for the different dwelling units in the building. Duquesne Light distinguishes these dormitories from the Complainant's building, because in each apartment in the Complainant's building there are separate facilities for a kitchen and bathroom (N.T. 30-31).

27. Duquesne Light bills these other dormitories at the commercial Rate GS/GM (N.T. 32).

28. If the Complainant remodeled its building to provide only a common bathroom on each floor, it would be eligible for master metering (N.T. 32).

Discussion

For every rule, there is an exception. This case provides an exception to the Respondent's Tariff Rule 41. The Complainant has proven that master metering its building will have no deleterious affect on energy conservation, while continuing to employ 28 separate electric meters may impose an unreasonable economic hardship upon it. As the party seeking affirmative relief from the Commission, the Complainant has carried the burden of proving that it is entitled to the relief it seeks. 66 Pa. C.S. § 332(a).

The Pennsylvania Supreme Court has held the term 'burden of proof' means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Marquies*, 364 Pa. 45, 70 A.2d 854 (1954); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. P.U.C. 300 (1976). The term 'preponderance of the evidence' means one party must present evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party. *Id.* Accordingly, one must review the record in this case to determine whether the Complainant has satisfied its burden of proof. If the review indicates the burden has been satisfied, one must then determine whether the Respondent has submitted evidence of co-equal value or weight to refute

the Complainant's evidence. If this has occurred, the burden of proof cannot be satisfied, unless the party bearing the burden of proof presents additional evidence. *Morissey v. Pa. Dept. of Highways*, 424 Pa. 87, 225 A.2d 895 (1967); and *Burleson v. Pa. P.U.C.*, 443 A.2d 1373 (Pa. Cmwlth. 1982), affirmed, 501 Pa. 443, 461 A.2d 1234.

Furthermore, one must exercise care to ensure the decision of the Commission is supported by substantial evidence in the record. See, e.g., Section 704 of the Administrative Agency Law, 2 Pa. C.S. § 704; *Yellow Cab Company v. Pa. P.U.C.*, 524 A.2d 1069 (Pa. Cmwlth. 1987). The Pennsylvania appellate courts have defined the term 'substantial evidence' to mean such relevant evidence that a reasonable mind may accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. P.U.C.*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and *Murphy v. Pa. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984). The Commission has held that a complainant, to establish a sufficient case against a utility and satisfy the burden of proof, must show the utility is responsible or accountable for the problem described in the complaint. *Feinstein, supra*.

As described in detail in the preceding section of this decision, the Complainant has leased its 28-unit apartment building to Carnegie Mellon University as a student dormitory until July 31, 2005 (N.T. 12). Each apartment has a bathroom and a kitchen that has a range, refrigerator and dishwasher (N.T. 13). The building has a separate residential meter for each of the 28 apartments and one commercial 'house' meter that encompasses the superintendent's apartment and the common hallways for the electric service received from Duquesne Light (N.T. 10-13, 21-22). The Complainant is the party responsible for paying the electric bills; it pays all 29 electric bills with one check each month (N.T. 10).

Motheral claims paying 29 separate electric bills each month is a bookkeeping and accounting burden (N.T. 10-11). It notes each electric bill carries a separate basic service charge of \$6.37 a month (N.T. 11). If it could receive only one bill each month, Motheral asserts it could eliminate 28 of the 29 separate basic service charges, thus saving nearly \$11,000.00 over the term of the lease with Carnegie Mellon University (N.T. 11).

Duquesne Light believes the Complainant's request for master metering this building possesses some merit (N.T. 14-17, 28-29; Complainant's Exh. A). However, the Respondent notes each apartment in the Complainant's building is a separate housekeeping unit with space for eating, living and sleeping, and permanent provisions for cooking and sanitation. The Respondent asserts its Tariff Rule 41 prohibits master metering this building (Respondent's Exh. 1). The Respondent adopted this Tariff Rule to comply with Section 2623(b)(1) of the Public Utility Regulatory Policies Act ('PURPA'), 16 U.S.C. § 2623(b)(1), which states as follows:

To the extent determined appropriate under section 2625(d) of this title, master metering of electric service in the case of new buildings shall be prohibited or restricted *to the extent necessary to carry out the purposes of this chapter*. (Emphasis added).

The Commission determined the Respondent's Tariff Rule 41 complied with PURPA's master metering standards in *Pa. P.U.C. v. Duquesne Light Company*, 54 Pa. P.U.C. 695 (1981). Thus, Duquesne Light argues it has no choice but to enforce its Tariff Rule 41 to deny the Complainant's request to master meter this building.

To support its position, Duquesne Light cites *Tiffany Associates v. Duquesne Light Company*, Docket No. C-00981142 (Order entered November 20, 1998), where the Commission upheld the Respondent's refusal to allow master metering of a senior citizen apartment building. There, the presiding ALJ found the public's interest in conserving natural resources and keeping overall energy costs low outweighed any economic benefit that the Complainant or its tenants might receive as the result of master metering. In affirming the ALJ, the Commission stated:

The purpose of PURPA and the Respondent's Tariff Rule 41 is to promote conservation of energy, optimization of the efficiency of use of facilities and resources, and equitable rates to consumers. We find that the interpretation of PURPA as it relates to metering requires the linkage of usage to the cost of the utility service in order to promote conservation. The public interest in the conservation of energy and in keeping energy costs low outweighs the benefits resulting from master metering.

Id., Slip Op. at 10. Thus, the overriding concern for both PURPA and the Respondent's Tariff Rule 41 is to promote energy conservation. When the linkage between individual metering and energy conservation is broken, the rationale for the proscription against master metering obviously fails.

In the case *sub judice*, allowing master metering of the Complainant's building will raise no energy conservation concerns. Students occupying this structure will consume the same amount of electricity, irrespective of whether the building has individual meters for each apartment or a master meter for the entire building. Regardless of how much electricity is consumed, the Complainant will continue to pay the bills. In *Tiffany, supra*, the individual tenants ultimately would continue to pay their electric bills, if master metering had been permitted. Therefore, the present case is distinguishable from *Tiffany*, where individual metering held individual tenants responsible for their energy consumption. Since master metering the building in the present case will have no deleterious effect on energy consumption, the legislative concerns underlying the enactment of PURPA do not come into play here. Likewise, the rationale for Tariff Rule 41 no longer exists under these circumstances.

The case for not enforcing Tariff Rule 41 receives further support from the fact that recently constructed dormitories in the Oakland section of Pittsburgh, which is heavily dominated by college and university buildings, are master metered. These dormitories are master metered, because they have common bathroom facilities for the different dwelling units in each building. Duquesne Light distinguishes these dormitories from the Complainant's building, because in each apartment in the Complainant's building there are separate facilities for a kitchen and bathroom (N.T. 30-31). If the Complainant remodels its building to provide only a common bathroom on each floor, it will be eligible for master metering (N.T. 32). Remodeling the Complainant's building to install common bathrooms will have very little effect, if any, on energy consumption. The important consideration from a regulatory perspective is that the landlord in each instance will remain solely responsible for paying the electric bills. Accordingly, it only seems reasonable to treat ratepayers similarly situated to the benefits of the same rate. *See*, 66 Pa. C.S. § 1502.

However, determining that master metering is permissible under these special circumstances does not end the inquiry. Under its commercial Rate GS/GM, Duquesne Light will bill an account a demand charge, which is the rate of usage of electricity (N.T. 25; Respondent's Exh. 3). A demand charge is not applied to a residential account. If Motheral switches to Rate GS/GM, Duquesne Light opines the Complainant will incur substantial additional charges each month for demand charges (N.T. 26). Without a history of demand usage for the building, Duquesne Light cannot determine the magnitude of these demand charges (N.T. 27). Indeed, the amount of demand charges incurred for commercial service may exceed any savings the Complainant may realize as the result of switching from residential service with its service charges for 28 separate accounts. Therefore, it appears the only way to determine whether Motheral will realize any savings by switching to commercial service is to allow the Complainant to master meter the building, install a demand meter and judge for itself whether one commercial account is more economical than multiple residential accounts.

If it chooses to follow this option, Motheral must perform all electrical work on its premises at its own cost and expense, as well as pay all applicable tariff rates and charges to the Respondent. The Complainant must then notify Duquesne Light when it is ready to receive commercial service. Once commercial service commences, Motheral will have three months within which to notify Duquesne Light whether it wishes to continue to receive commercial service. A three-month trial period should prove sufficient to judge the results, while allowing Duquesne Light some certainty as to what type of service it must provide Motheral. If Duquesne Light receives no word on this subject from the Complainant within 90 days, the Respondent must continue to provide commercial service. If Motheral makes no arrangements to receive commercial service within 90 days of entry of the Commission's final Order in this case, Duquesne Light shall continue to provide residential service.

For all of the forgoing reasons, the complaint will be granted to the extent it requests an exemption from application of the Respondent's Tariff Rule 41.

Conclusions of Law

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. *See, 66 Pa. C.S. §§ 501, et seq.*
2. The Complainant has met its burden of proving that it is entitled to the relief its seeks in this proceeding. *See, 66 Pa. C.S. § 332(a).*
3. The rationale for prohibiting master metering in the Public Utility Regulatory Policies Act, 16 U.S.C. § 2623(b)(1), and the Respondent's Tariff Rule 41 is to promote conservation of energy, optimization of the efficiency of use of facilities and resources, and equitable rates to consumers.
4. Under the circumstances of this case, master metering the Complainant's building will have no affect on energy consumption.
5. Ratepayers similarly situated must be treated to the benefits of the same rate. *See, 66 Pa. C.S. § 1502.*
6. Under the circumstances, the Complainant must be treated the same as other similarly situated landlords of college dormitories. *See, 66 Pa. C.S. § 1502.*

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of *Motheral, Inc. v. Duquesne Light Company*, docketed with the Pennsylvania Public Utility Commission at No. C-00003926, is hereby granted to the extent it requests an exemption from the Respondent's Tariff Rule 41.
2. That if it chooses to apply for commercial service, the Complainant must perform all necessary electrical work on its premises at its own cost and expense, as well as pay all applicable tariff rates and charges to the Respondent. The Complainant must then notify the Respondent when it is ready to receive commercial service. Once commercial service commences, the Complainant will have three months within which to notify the Respondent whether it wishes to continue to receive commercial service. If the Respondent receives no word on this subject from the Complainant within 90 days, the Respondent must continue to provide commercial service. If the Complainant makes no arrangements to receive commercial service within 90 days of entry of the Commission's final Order in this case, the Respondent shall continue to provide residential service to the Complainant.

John H. Corbett, Jr. Administrative Law Judge

DATED: November 22, 2000

Footnotes

- 1 The caption of this case originally read 'Brian Motheral, t/a Motheral, Inc. v. Duquesne Light Company.' This caption was amended at the hearing to read simply 'Motheral, Inc. v. Duquesne Light Company' (N.T. 6).