



COMMONWEALTH OF PENNSYLVANIA

September 13, 2021

**E-FILED**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

**Re: Pennsylvania Public Utility Commission v. Duquesne Light Company 1308(d)  
Proceeding / Docket No. R-2021-3024750**

Dear Secretary Chiavetta:

Enclosed please find the Reply Brief, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Sharon E. Webb

Sharon E. Webb  
Assistant Small Business Advocate  
Attorney ID No. 73995

*Enclosures*

cc: Robert D. Knecht  
Parties of Record

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Pennsylvania Public Utility Commission</b>	:	
	:	
v.	:	<b>Docket No. R-2021-3024750</b>
	:	
<b>Duquesne Light Company</b>	:	
<b>1308(d) Proceeding</b>	:	

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**REPLY BRIEF  
ON BEHALF OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

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**Sharon E. Webb  
Assistant Small Business Advocate  
Attorney ID# 73995**

**For: The Office of Small  
Business Advocate**

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**Date: September 13, 2021**

## **I. Introduction**

### **A. Procedural History**

On or about April 16, 2021, Duquesne Light Company (“Duquesne” or the “Company”) filed proposed Supplement No. 25 to Tariff Electric-Pa. P.U.C. No. 25 with the Commission. The Company’s April 16<sup>th</sup> filing requested an additional \$115 million in annual distribution rate revenue with a return on equity of 10.95%.

On April 22, 2021, the OSBA filed a Complaint and a Public Statement against the proposed increase. By Order entered May 20, 2021, the Commission entered an Order at this docket which suspended the proposed increase for investigation. As a result, the filing was suspended by operation of law through January 15, 2022.

A pre-hearing conference, at which a procedural schedule was established, was held on May 27, 2021. The OSBA, and other parties, filed Direct Testimony on June 30, 2021. Specifically, the OSBA filed the Direct Testimony of its witness, Robert D. Knecht. Rebuttal Testimony was filed by the OSBA and other parties on July 26, 2021. Surrebuttal Testimony was filed by the OSBA and other parties on August 10, 2021.

The OSBA participated in the negotiations that led to the Joint Petition for Approval of Settlement (“Settlement”) and is a signatory to the Settlement. All issues relating to Duquesne’s base rate filing with the exception of one issue have been resolved.

On September 3, 2021 the OSBA and other parties submitted Main Briefs relative to Nationwide Energy Partners, LLC’s (“NEP”) proposal to adopt Tariff Rule 41.2, that allows for metering requirements for multi-family residential customers, as detailed in NEP Statements No.

1 and 2. The OSBA submits this reply brief in accordance with the litigation schedule established at the prehearing conference.

**B. Legal Standards**

Section 1301 of the Public Utility Code, 66 Pa. C.S. § 1301, provides that “every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the commission.”

The burden of proof to establish the justness and reasonableness of every element of the utility’s rate increase rests solely upon the public utility. 66 Pa. C.S. § 315(a). “It is well-established that the evidence adduced by a utility to meet this burden must be substantial.” *Lower Frederick Township v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980).

Although the burden of proof remains with the public utility throughout the rate proceeding, when a party proposes an adjustment to a ratemaking claim of a utility, the proposing party bears the burden of presenting some evidence or analysis tending to demonstrate the reasonableness of the adjustment. *Pa. PUC v. Aqua Pennsylvania, Inc.*, Docket No. R-00072711 (Order entered July 17, 2008). “Section 315(a) of the Code, 66 Pa. C.S. § 315(a), applies since this is a proceeding on Commission Motion. However, after the utility establishes a prima facie case, the burden of going forward or the burden of persuasion shifts to the other parties to rebut the prima facie case.” *Pa. PUC v. Philadelphia Gas Works*, Docket No. R-00061931 (Order entered September 28, 2007), at 12.

Duquesne’s existing tariff is entitled to a presumption of reasonableness and as argued in the OSBA’s Main Brief, NEP has failed to meet its burden of showing that the Company’s current Rule 18 and Rule 41 are unreasonable. <sup>1</sup>

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<sup>1</sup> *Brockway Glass Co. vs. PA PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981)

## **II. Reply Argument**

Two proposals were advanced to modify Duquesne's current requirement that new customers in multi-family residences be individually metered. The first proposal was submitted by the Company pursuant to the settlement of the Company's last base rates case. As OSBA witness Knecht testified in rebuttal, Duquesne's proposal was inappropriate because the Company failed to undertake the analysis necessary to justify the change including any evaluation of the revenue allocation implications of the proposed change.<sup>2</sup> The Company's proposal was ultimately withdrawn in surrebuttal and the Settlement acknowledges that all parties agree that the Company's proposal be withdrawn.<sup>3</sup>

The OSBA submits this reply brief for the limited purpose of responding to argument raised in the OCA's main brief relative to the allocation of costs to residential customers. The OCA argues that the impact on the commercial class is unknown at this time, and therefore, speculative.<sup>4</sup>

As part of the settlement in the Company's last base rate case, it was explicitly agreed that a revenue allocation impact analysis and the Company's ability to meet its projected revenue requirements was a necessary part of any rate change related to proposed changes to master-metering of multifamily housing.<sup>5</sup> No revenue impact analysis was completed.<sup>6</sup> As Mr. Knecht

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<sup>2</sup> OSBA Statement No 1-R at 18-19.

<sup>3</sup> Settlement at Para. 49.

<sup>4</sup> OCA Main Brief at 15.

<sup>5</sup> Duquesne Light Company v. PA PUC, R-2018-3000124, Order entered December 20, 2018. Order at 23.

<sup>6</sup> OSBA Statement No 1-R at 18-19

testified, NEP somehow believes that a revenue allocation impact analysis is not necessary despite the explicit agreement that such a study was necessary.<sup>7</sup>

The OSBA's recommendation remains that NEP's proposal should be rejected. The OSBA's recommendation, relating to revenue allocation of costs relating to master-metered multifamily customers, is simply an effort to protect small business customers from the negative impacts of NEP's proposal absent the necessary revenue impact study.

### **III. Conclusion**

Wherefore, based upon OSBA's Main and Reply Briefs and the written testimony of the OSBA, the OSBA respectfully requests that the ALJs and the Commission reject NEP's proposal in its entirety.

Respectfully submitted,

/s/ Sharon E. Webb

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Dated: September 13, 2021

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<sup>7</sup> OSBA Statement No 1-R at 23

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**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing have been served via email only (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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