



September 13, 2021

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

Reply Brief of CAUSE-PA

Your Honors:

Enclosed, please find the **Reply Brief of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)** in the above noted proceeding.

Pursuant to the Commission's Emergency Order issued on March 20, 2020, and as indicated on the attached Certificate of Service, service on the parties was accomplished by email only.

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :
: **Docket No. R-2021-3024750**
v. :
: **Duquesne Light Company** :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served copies of the **Reply Brief of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)** upon the parties of record in the above captioned proceeding in accordance with the requirements of 52 Pa. Code § 1.54 and consistent with the Commission’s March 20, 2020 Emergency Order at Docket M-2020-3019262.

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Date: September 13, 2021

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

Duquesne Light Company

:
:
:
:
:

Docket No. R-2021-3024750

**REPLY BRIEF OF
THE COALITION FOR AFFORDABLE UTILITY SERVICES AND
ENERGY EFFICIENCY IN PENNSYLVANIA**

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I. INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), through its counsel at the Pennsylvania Utility Law Project, files this Reply Brief in response to the Main Brief of Nationwide Energy Partners, LLC (NEP or Nationwide), as well as other parties to this proceeding, including the Office of Small Business Advocate (OSBA).

II. SUMMARY OF THE COUNTER ARGUMENT

Consistent with the arguments advanced in CAUSE-PA's Main Brief and as further explained herein, NEP's proposed Tariff Rule 41.2 is inadequately designed and contains broad ambiguities that will serve to strip tenants in DLC's service territory of access to dozens of consumer protections and sources of assistance that the General Assembly and the Commission have carefully developed over the span of many decades to ensure tenants can access and maintain utility services based on just and reasonable terms. In its Main Brief, NEP attempts to shift focus away from the broad ambiguities and unworkable provisions of its tariff proposal, and the obvious negative impact on tenants, and instead places considerable emphasis on the needs of property owners – and the alleged efficacy of NEP's own business practices and procedures. NEP's approach is myopic in scope and does not account for the broad effects and variations in master/sub-metering schemes that will be permissible in Duquesne Light Company's (DLC or Duquesne) service territory if NEP's tariff proposal would be approved.

Ultimately, NEP has failed to meet its burden of proof in this proceeding. To the contrary, the evidence in the record of this proceeding clearly demonstrates that NEP's tariff proposal is largely unenforceable, devoid of critical detail, and wholly inadequate to remediate the likely harm to tenants in DLC's service territory – leaving these tenants with little to no protection or recourse. As discussed at length below, NEP's own "business model" – with it touts as a "success" in PECO's service territory – provides substantial and undeniable evidence that the services it

provides to tenants are vastly inferior to the services and protections available to tenants who reside in an individually metered tenant unit. NEP's ill-conceived and imprecise tariff proposal is not supported by substantial record evidence, is categorically unjust and unreasonable, and is not in the public interest. NEP has not met its heavy burden in this proceeding to show how DLC's existing tariff rules are unjust, unreasonable, or against the public interest. CAUSE-PA urges the Administrative Law Judges and the Commission to reject NEP's tariff proposal in its entirety, with prejudice, and affirm DLC's current Tariff Rules 18 and 41.

III. COUNTER STATEMENT OF THE CASE

In its Statement of the Case, NEP includes a section devoted specifically to describing its business model, in essence selling its product to the Commission in an attempt to distract from the critical vagaries in its broad tariff proposal. In relevant part, NEP describes its services as follows:

NEP's business model is a service provided to multifamily Property Owners or developers who construct or renovate such properties. Our client and contractual relationship is with and directed by the Property Owner or developer. We are hired to handle the design, construction, management and billing of all energy services. Our most common service is for electricity and water; however, we also have natural gas clients.¹

CAUSE-PA expert witness, Mr. Harry Geller, summarizes NEP's business model: "NEP contracts with landlords to install and maintain metering infrastructure for residential tenant units in multifamily buildings, and performs all aspects of residential billing, collections, and termination for residential electric, water, and natural gas services."² In short, NEP's business model would enable NEP to eliminate the role of the public utility for all tenants in a given master-metered building, allowing NEP or companies like it to perform all functions of billing, collections,

¹ NEP St. 1 at 8: 20-9:1.

² CAUSE-PA St. 1-R at 9: 10-12.

and termination for residential tenants at the behest and direction of the landlord. Rather than complying with the carefully laws and policies carefully constructed by the General Assembly and the Commission to protect tenants' rights to service, NEP's proposal would allow critical functions of residential billing, collections, and terminations to be governed by the terms and conditions of a private contract between the landlord and the submetering/rebilling company - largely outside of the purview of the Public Utility Commission.

NEP declares that it is "time for Duquesne to recognize that Property Owners and their tenants can and should have more choices for how they live and how they procure their electric energy, conservation and efficiency benefits."³ However, its proposal provides far fewer choices to tenants – consolidating all power and decision making with the landlord. NEP notes that it serves "in excess of 1,600 tenant residents in PECO's service territory"⁴ – and claims that its business practices in PECO's service territory are evidence of success. Yet NEP fails to also disclose that it involuntarily terminates service to residential consumers at a much higher rate than PECO. In other words, NEP's business model quite literally leaves more tenants in the dark and the cold than those served directly by PECO.⁵ NEP likewise fails to disclose the fact that the average arrears carried by the tenants indebted to NEP is substantial – ranging between \$177 - \$694 in 2019, \$250 - \$694 in 2020, and \$235 - \$665 in 2021, depending on the building served in PECO's service territory.⁶ These tenants have no ability to obtain assistance through PECO's universal service programs to assist them to resolve this debt. This evidence does not support NEP's bold declaration of "success" in PECO's service territory. Indeed, it shows the opposite.

³ NEP MB at 2.

⁴ Id. at 2.

⁵ CAUSE-PA St. 1-R at 52-53.

⁶ Id. at 53.

It is important to note here that NEP's business model is only of tangential relevance to the issue at bar in this proceeding, which is limited to determining whether NEP's tariff proposal to allow largely unfettered resale of public utility service to residential consumers in DLC's service territory – circumventing statutory and regulatory protections, is just, reasonable, and in the public interest. NEP is just one entity which could begin operating in DLC's service territory. As such, while its business model may provide a glimpse into some of the unsavory and legally questionable practices enabled by its proposed tariff, which we will explore below, it is by no means a full picture of the range of practices which utility resellers could employ in DLC's service territory. As explained throughout this Reply Brief and in CAUSE-PA's Main Brief, NEP's proposal opens the door to a broad range of possible entities – any one of which may strip tenants of dozens of rights, foreclose access to universal service programs, and undermine other critical policy goals.

IV. COUNTER ARGUMENT

CAUSE-PA's Reply Brief responds directly to many of the arguments raised in NEP's Main Brief. For ease of reference, CAUSE-PA's Reply Brief follows the format and presentation of NEP's Main Brief. We note that our silence in response to any specific argument of NEP does not indicate our agreement therewith. Except as necessary for context, we do our best to not reiterate the arguments raised in our Main Brief – though we stand firmly on the arguments and conclusions presented therein. As explained throughout, the “evidence” set forth in NEP's Main Brief in support of its proposal rests on speculation and obfuscation of essential facts and legal precedent, minimizing concerns about the impact of NEP's tariff on tenants in favor of creating a new profit stream in DLC's service territory for property owners and utility resellers like NEP. NEP's proposal – as plainly evidenced by its own practices in other service territories – seeks to bypass an entire canon of law, in essence rebalancing the scales set by the General Assembly and

the Commission to protect a tenant's ability to access service to a leased premise without interference by a landlord or property owner. This result is unjust, unreasonable, and contrary to the public interest. As such, NEP's proposal must fail.

A. NEP's "business model" - and others like it - provide speculative benefits to property owners, impose significant unfunded administrative burdens on DLC and the Commission, and present substantial risks of harm to tenants.

NEP alleges in its Main Brief that its "business model" would provide substantial benefits to owners/customer, tenants, Duquesne, and the public interest.⁷ Throughout its Main Brief, NEP conflates the services it provides under its individual business model with the master/sub-metering policies and procedures that would be permissible amongst master/sub-metering companies if its tariff proposal were approved. While this Reply Brief will show that NEP's business model for the resale of utility service is illustrative of the type of harmful master/sub-metering schemes that would be permitted under NEP's proposed tariff, NEP's practices represent only one concrete example of the many business models which would be permissible if NEP's tariff proposal were approved. As explained in this Reply Brief and CAUSE-PA's Main Brief, NEP has wholly failed to meet its heavy burden of showing that its ill-defined tariff proposal is just, reasonable, and in the public interest, and that DLC long-standing tariff rules regarding master/sub-metering should be overturned. As such, CAUSE-PA urges your Honors and the Commission to deny NEP's tariff proposal and dismiss NEP's Complaint in this matter with prejudice.

⁷ NEP MB at 17.

1. The purported benefits of NEP's tariff proposal to property owners/commercial customers – as evidenced by its own business model – are unsubstantiated, and do not mitigate the substantial threat to tenants in DLC's service territory.

In its Main Brief, NEP places considerable emphasis on the alleged benefits of its tariff proposal to commercial customers and property owners – arguing that its proposal will advance energy efficiency and clean energy goals.⁸ NEP alleges that opponents of NEP's master/sub-metering proposal have failed to give weight to innovations in the sub-metering space in previous decades, or the importance of property owners being able to demonstrate energy efficiency to tenants and investors.⁹

NEP also emphasizes that master-metering will provide property owners with numerous advantages, including the ability to track usage at the residential unit level, and “full control... of an entire property” that allows baseline measurements for future investments.¹⁰ In particular, NEP argues that without master-metering, property owners have little control over the type of energy consumed in the property.¹¹ NEP emphasizes how providing property owners and landlords with this significant level of control will allow property owners and other commercial customers to be able to demonstrate to investors that their properties practice certain energy efficiency and conservation – which NEP claims is viewed as highly desirable to investors and banks.¹²

NEP's claim that its business model promotes greater conservation and energy efficiency in master/sub-metered buildings is wholly unsubstantiated in the record. In fact, the opposite is

⁸ See NEP MB at 17-20.

⁹ Id. at 19.

¹⁰ Id. at 18-19.

¹¹ Id. at 20.

¹² Id. at 22-23.

likely true: Approval of NEP’s proposal would strip tenants and property owners of the ability to access tens of millions of dollars in energy efficiency and conservation incentives available only to individually metered tenants.

In Rebuttal Testimony, CAUSE-PA’s expert witness Harry Geller concluded that NEP failed to present evidence showing that master metering improves the overall energy efficiency of properties – or otherwise reduces usage in individual tenant units.¹³ The fact is, NEP is largely removed from the property owner’s decisions regarding installation of energy efficiency measures – and it has been unable to produce any evidence to support its claim that building owners are better able to achieve energy efficiency goals.¹⁴

In response to basic questions requesting NEP to provide evidence of energy efficiency measures installed in the buildings it serves, and to quantify the savings achieved, NEP was unable to produce any evidence whatsoever – explaining: “Because NEP is not the property owner, [sic] may not always be aware of energy efficiency measure property owners choose to install and therefore cannot provide the requested information.”¹⁵ To be clear, NEP did not provide a partial list of measures installed and savings achieved – it provided no information whatsoever about efficiency measures installed or savings obtained, indicating clearly that there was no information to produce. In other words, NEP was unable to substantiate with data or evidence that its “business model” increases adoption of energy efficiency and conservation measures by multifamily building owners. When asked whether the cost of energy efficiency upgrades are included on the customer bill, NEP responded that it “is not part of the arrangements between its customers (the

¹³ CAUSE-PA St. 1-R at 56: 16-17.

¹⁴ Id. at 56: 16-57: 2.

¹⁵ CAUSE-PA St. 1-R at 56, Appx. A CAUSE-PA to NEP I-25.

Property Owners) and their tenants as [sic] relates to energy efficiency measures” – but that NEP “may credit tenants for Property Owner programs which the Property Owner directs NEP to manage.”¹⁶ But again, NEP was unable to provide any evidence that it actually administers any successful energy efficiency programming on behalf of a property owner – or provide any analysis or assessment of any savings achieved.

NEP’s claims that its data collection services facilitate increased energy efficiency adoption are equally unsubstantiated. In its Main Brief, NEP asserts that it provides a “convenient and readily available baseline measurement of the entire property’s usage through master metering, from which reductions in usage can be documented, is a requirement for investors, loan programs and LEED certifications.”¹⁷ It is certainly true that NEP’s proposal *may* provide landlords with granular data regarding individual tenant usage, as the proposal would allow landlords to circumvent critical confidentiality requirements that currently protect tenant usage data from disclosure to a landlord.¹⁸ However, NEP has not shown why a landlord cannot use *aggregate* building data, which is already available to multifamily building owners in DLC’s service territory regardless of metering structure, to benchmark savings and attract capital investments.¹⁹ NEP’s Main Brief lists a few examples of banks and lenders who prioritize green investments, none of which even remotely suggest that a building must be master/sub-metered or that an owner must present granular details about individual tenant usage in order to access certain financing options.²⁰

¹⁶ CAUSE-PA St. 1-R at 56, Appx. A CAUSE-PA to NEP I-71.

¹⁷ NEP MB at 24.

¹⁸ See CAUSE-PA MB at 52-53 (discussing the inherent risks to tenants created by disclosure of granular usage data to a landlord, and the gross violation of tenant privacy and confidentiality created by NEP’s proposal).

¹⁹ See Pa. PUC v. DLC, Opinion and Order, Docket No. R-2018-3000124, at 20, para. 53 (order entered Dec. 20, 2018) (requiring DLC to “provide anonymized aggregate energy usage data for residential multifamily buildings that are 50,000 square feet or larger”).

²⁰ See NEP MB at 23-24.

The fact is, NEP has not demonstrated any nexus between the ability of a landlord to track detailed usage data of each tenant in their building with the ability of a building owner to access capital for energy efficiency projects.

In reality, NEP's business model cuts low and moderate income residential consumers off from numerous energy efficiency programs, including the Low Income Usage Reduction Program (LIURP) and Act 129 programming offered by DLC, as well as the federal Weatherization Assistance Program administered by the Department of Community and Economic Development.²¹ These programs provide tenants – *and property owners* – with millions of dollars of energy efficiency and conservation benefits each year, yet would be unavailable to tenants under NEP's proposal. This fact directly contradicts NEP's claims that its proposal would promote energy efficiency and conservation goals.

Important to this discussion – though tangential to NEP's direct claim – is the fact that NEP's business model charges tenants DLC's applicable residential rates of service, which includes the costs for LIURP and Act 129 energy efficiency programming. This means that tenants in a master/sub-metered building are forced to pay NEP for the costs of residential Act 129 and universal service programming – even though they will be unable to access energy efficiency and conservation services through those programs.²²

Again, while NEP's business model offers a tangible example of the uncertain claims around energy efficiency engendered by master/sub-metering companies, it is only one example of the numerous master/sub-metering schemes that would be permissible if NEP's tariff proposal

²¹ CAUSE-PA St. 1-R at 57: 3-11.

²² Id.

were approved. Under the terms of NEP's tariff proposal, numerous master/sub-metering companies might operate without *any* emphasis on conservation or energy efficiency, as no such emphasis is required under the plain terms of NEP's proposal.

Like NEP's claims regarding improved energy efficiency and conservation, there is also no evidence to support NEP's claim that its proposal will advance other clean energy and "carbon neutral" goals. In fact, NEP's tariff proposal could serve to frustrate clean energy goals, as it would eliminate the ability of tenants to choose an alternative energy supplier – without imposing any requirement for a property owner to select a renewable energy or "carbon neutral" energy supply contract. Individually metered tenants in DLC's service territory can currently opt to contract with any supplier serving their territory, and can choose amongst available pricing, clean and renewable generation options, carbon neutrality, and other terms and conditions of service. NEP's proposal would ban tenants from exercising prudent choices under the Choice Act and instead place undue control with property owners and landlords to make shopping decisions on behalf of tenants. Importantly, NEP's proposal fails to address what steps will be taken if a tenant has an existing contract with a EGS and relocates or otherwise comes under NEP's master-meter scheme. This is a serious flaw, as it could interfere with an existing contract between the tenant and supplier.

NEP does not dispute that tenants will lose access to energy efficiency and conservation programs.²³ It simply disregards that this is a relevant issue, asserting that "[l]ow income tenants are not a focus of the Property Owners that use companies like NEP to facilitate master metering with smart sub-meters."²⁴ NEP supposes that for the property owners it serves, the emphasis is not on serving low income tenants - but rather on the fact that "large banks and investors are looking

²³ NEP MB at 22-23.

²⁴ Id. at 23.

for the businesses they lend to or invest in to provide environmental and climate data.”²⁵ Placing the sole emphasis of its argument on commercial property owners and landlords will voluntarily choosing to practice energy efficiency and conservation is a flawed approach not borne out by the weight of the evidence in this case. The actual result will be to sever tenants – who are the direct energy users – from programs that would reduce usage and result in bill savings.

In sum, NEP has failed to present evidence that its master/sub-metering proposal will provide any tangible benefit to property owners/landlords that would further the public interest, and its claims regarding improved energy efficiency, carbon neutrality, and access to capital are – at best – speculative. Indeed, NEP’s own business practices belie its assertions – failing to provide any concrete data to prove that its business model is capable of producing enhanced energy efficiency and conservation services. To the contrary, there is strong evidence that its proposal may actively undermine residential consumer choice and other important energy efficiency and conservation goals. As such, and in light of substantial evidence that its proposal will actively harm tenants in other respects, its proposal must fail.

2. Implementation of NEP’s master metering and sub-metering program would impose significant unfunded administrative burdens on DLC and the Commission.

In its Main Brief, NEP next alleges that its master/sub-metering proposal is beneficial to DLC. In relevant part, NEP claims its proposal will (1) reduce administrative expenses by providing service through a single meter, with a single customer contact; (2) streamline DLC’s default service load management because tenants will no longer be able to switch suppliers; (3)

²⁵ Id.

will improve collection risk by shifting collections to the landlord; and (4) reduce the up-front capital requirements imposed on multifamily building owners for individual metering.²⁶

NEP has not quantified a single one of these claims – and attempts to improperly shift its burden of proof onto DLC, arguing that DLC should have devoted time and resources to study the impact of NEP’s proposal on collections costs.²⁷

In its Main Brief, DLC fully rebutted NEP’s unsubstantiated claims, and extensively detailed how NEP’s tariff proposal would harm DLC, and reduce its customer base and revenues.²⁸ Specifically, DLC detailed how NEP’s business model would result in degradation of utility services, and will reduce DLC’s customer base and revenues which ultimately offset customer costs in base rate proceedings.²⁹ DLC concluded that NEP’s attempts to compete with DLC are harmful to DLC and its customers, and squarely against the public interest.³⁰

Ultimately, the evidence in this proceeding fails to prove that NEP’s proposal will provide *any* quantifiable benefit to DLC or its customers. To the contrary, the evidence *does* reveal that NEP’s proposal would *increase* the administrative burden on both DLC and the Commission to implement and enforce NEP’s tariff proposal – without any funds to support such enforcement efforts.³¹ This fact is discussed further in CAUSE-PA’s Main Brief, which we incorporate by reference herein.

²⁶ Id. at 25-26.

²⁷ NEP MB at 26.

²⁸ DLC MB at 17-19.

²⁹ Id. at 17.

³⁰ Id. at 18.

³¹ See CAUSE-PA MB at 57-58.

3. NEP's business model severs tenants from critical protections under Pennsylvania law and Commission regulation, and thereby poses a substantial risk of harm to tenants in DLC's service territory.

NEP attempts to argue that its business model provides numerous benefits to tenants, including: (1) the ability to pay weekly, bi-monthly, or on the date set during the month; (2) access to daily usage information; (3) access to bills showing usage trends relative to neighbors; (4) notifications if bills exceed a given amount; (5) energy efficient electricity chosen by property owners; and (6) use of shopped electricity without burden of contract negotiation or renewal.³²

First, these purported benefits are largely illusory. There is nothing which prohibits a residential tenant from paying DLC more frequently if they so choose, so the fact that NEP allows more frequent tenant payments is not a relative benefit to tenants. Moreover, DLC's residential tenants already have access to smart meter data.³³ Likewise, DLC's existing Act 129 programs include home energy reports, which already offer customers a comparative analysis of their usage data relative to comparable neighbors.³⁴ As discussed above, there is also no clear benefit to tenants achieved by leaving energy efficiency investments up to a building owner – or by stripping a tenant of their current right to participate in energy efficiency and conservation programming or to select an alternative supplier of their own choosing.

Even still, NEP's purported benefits are not certain to materialize under the plain terms of NEP's proposed tariff. NEP conflates its individual business model with the variations of master/sub-metering companies that would be permissible if NEP's tariff proposal were granted.

³² NEP MB at 27.

³³ DLC Tariff Electric – Pa. PUC No. 25, Original Page No. 18, available at: https://www.duquesnelight.com/docs/default-source/default-document-library/currenttariff.pdf?Status=Temp&sfvrsn=e69ca442_125.

³⁴ See Petition of Duquesne Light Company for Approval of its Energy Efficiency and Conservation Phase IV Plan, Opinion and Order, at 10, Docket No. M-2020-3020818 (Opinion and Order entered March 25, 2021).

While NEP’s tariff proposal requires some form of smart sub-metering, which *could* facilitate some level of enhanced usage information to tenants, NEP’s tariff proposal does not require any of the capabilities detailed above that NEP touts as benefits to tenants. While NEP claims that it provides tenants with these alleged benefits, NEP represents only one of many master/sub-metering companies that would be permitted in DLC’s service territory under NEP’s tariff proposal. Under the plain terms of NEP’s tariff proposal, these companies would be permitted to offer tenants far fewer capabilities, even with smart meters in place.

Quite the opposite of NEP’s claims, NEP’s proposal – *as evidenced by its own business model* – poses a substantial threat of harm to tenants in DLC’s service territory. In our Main Brief, CAUSE-PA provided an in-depth legal analysis of NEP’s proposal, and discussed the many ways in which NEP’s proposal threatened dozens of specific rights which are currently available to individually metered tenants in DLC’s service territory. However, CAUSE-PA did not explicitly address NEP’s practices and procedures because NEP’s specific practices and procedures bear little more than tangential relevance to the decision at hand – namely, whether NEP’s tariff proposal in DLC’s service territory is just, reasonable, and in the public interest. However, given NEP’s intensive reliance on its own business practices through its Main Brief to support its tariff proposal, we believe it prudent to discuss NEP’s business practices in PECO’s service territory, and how those practices serve to profoundly and negatively impact the rights of tenants to access and maintain affordable electric service to their home. We discuss those rights in turn:

a. Definition of Customer

CAUSE-PA described in its Main Brief how the definition of “customer” contained in Chapter 14 of the Pennsylvania Utility Code and Chapter 56 of the Commission’s regulations is “foundational to the provision of residential service, and determines which consumers have access

to certain rights”.³⁵ We explained that NEP’s tariff proposal does not require tenants under master and sub-meters be treated as utility “customers” under Pennsylvania statute and Commission regulation, and how that would expose tenants to broad inconsistencies in service and billing standards and will allow master and sub-metered companies to exclude tenants in newly master metered buildings from numerous crucial protections that flow from being utility “customers.”³⁶

While NEP’s business model represents only one of many different variations of master/sub-metering practice that would be allowable under the broad and imprecise language of NEP’s tariff proposal, NEP’s specific policies and procedures represent a concrete example of how tenants in master and/or sub-metered building would be excluded from the definition of a customer, “truncating a plethora of other rights currently available to tenants who reside in tenant units that are individually metered by DLC.”³⁷

NEP’s business model is structured so that the landlord is the utility customer.³⁸ While the landlord’s name is on the DLC bill, NEP is the authorized representative on the utility account.³⁹ Under NEP’s service model, tenants have access to usage information but do not have the ability to receive a bill directly from the utility, and NEP acts as an agent of the landlord in providing utility services to tenants. As NEP explained, it “does not have any contracts with tenants” and “[a]ll of NEP’s contracts are with, and all of NEP’s services are performed on behalf of, property owners or condominium associations.”⁴⁰ Thus, NEP’s current business practices serve as an example of how master/sub-metering practices currently operating in Pennsylvania sever the

³⁵ CAUSE-PA MB at 24-25.

³⁶ CAUSE-PA MB at 25.

³⁷ CAUSE-PA St. 1-R at 13: 16-20.

³⁸ Id. at 14: 1-9.

³⁹ Id. at 14: 1-9, citing DLC to NEP I-12.

⁴⁰ Id. at 14: 1-9, citing DLC to NEP I-5.

currently existing relationship between the tenant and the utility and thereby constrain the rights of tenants under Pennsylvania statute and Commission regulation that are currently available to, and actively benefitting tenants residing in multifamily properties with individual meters.

b. Billing and Payment Standards

As described in CAUSE-PA's Main Brief, tenants who reside in multifamily buildings which are master and/or sub-metered under NEP's tariff proposal will lose access to a host of consumer protections related to billing and payment standards.⁴¹ NEP's billing and payment standards, policies, and procedures in PECO's service territory serve as a concrete example of how NEP's proposal will strip tenants of various statutory and regulatory billing and payment protections.

- *Budget Billing*: NEP indicates in response to discovery that it does not offer budget billing, in any form.⁴² As such, tenants served by NEP are not able utilize budget billing to create more predictable bills throughout the year and financially plan for future utility expenses. This is particularly harmful for tenants who might experience fluctuating or seasonal income who rely on budget billing to maintain services throughout the year.
- *Billing for Merchandise, Appliances and Nonrecurring and Recurring Services*: Tenants who reside in NEP master metered properties elsewhere in the state receive bills with a singular balance, including multiple components unrelated to energy usage. For example, in PECO's service territory, NEP's electric bills include common area usage, trash, water, and other community services fees.⁴³ These additional charges can be unrelated to basic utility services, but are nevertheless incorporated into a singular balance on customer's bills.⁴⁴ Tenants who are unable to keep up with these consolidated charges are subject to termination, regardless of whether the customer fails to pay their electric charges, or another charge within the consolidated bill.⁴⁵ Tenants who reside in a building served by NEP who are unable to keep up with these costs may face additional ramifications, including eviction at the recommendation of NEP.

⁴¹ CAUSE-PA MB at 26-28.

⁴² CAUSE-PA St. 1-R at 17-19, citing DLC to NEP at I-6.s.

⁴³ CAUSE-PA St. 1-R at 17-19, citing DLC to NEP at I-35.b.

⁴⁴ CAUSE-PA St. 1-R at 17-19, citing DLC to NEP at I-53.

⁴⁵ See CAUSE-PA St. 1-R at 17-19, citing CAUSE-PA to NEP I-1.

- *Billing Information:* NEP’s bills to tenants lack the detail provided to residential customers who are individually metered. In particular, NEP’s bills do not provide a statement related to the rate schedule, or an explanation of how to verify the accuracy of the bill.⁴⁶ NEP does not inform tenants of options to file a formal or informal complaint with the Commission.⁴⁷ The public utilities providing electricity and water service are not mentioned anywhere on the bill to contact in the event of an emergency.
- *Fees:* Tenants in NEP master metered properties may be charged a number of fees without regard to whether these fees have been included in DLC’s approved tariff. This may include, but is not limited to, Walmart and Kroger fees,⁴⁸ NEP’s service fee for phone payments,⁴⁹ “Water Billing Fees”,⁵⁰ trash collection fees,⁵¹ and late payment fees determined by NEP – rather than the utility.⁵² These fees are consolidated into a singular billing amount, and it is unclear whether the fees compound month to month.⁵³
- *Accrual of Late Charges:* Tenants in NEP master metered properties must abide by NEP’s terms and conditions related to late charges and fees. In response to discovery, NEP indicated that bills it issues in PECO’s service territory are due a minimum of 14 days from the date that the bill is issued, with a 7-day grace period following the due date in which no action is taken.⁵⁴ Following the grace period, a \$20 late payment fee is applied to the account for past-due balances greater than \$100.⁵⁵ NEP’s \$20 late fee is assessed regardless of the amount of the overdue balance. In other words, a customer with a \$100 balance is charged a 20% late fee – exponentially higher than the 1.5% cap on late fees in the Commission’s regulations. Again, it is not clear whether NEP’s late fees compound month to month.
- *Application of Partial Payments:* Tenants served by NEP elsewhere in the state receive a bill with a singular, consolidated balance for multiple utility services. If a customer tenders partial payment of their bill, NEP indicates that these partial payments are applied to the

⁴⁶ CAUSE-PA St. 1-R at 17-19, citing DLC to NEP I-7.a, attachment.

⁴⁷ CAUSE-PA St. 1-R at 17-19, citing DLC to NEP I-46.

⁴⁸ CAUSE-PA St. 1-R at 17-19, citing DLC to NEP at I-50.

⁴⁹ CAUSE-PA St. 1-R at 17-19, citing DLC to NEP at I-51.

⁵⁰ CAUSE-PA St. 1-R at 17-19, citing DLC to NEP at I-53; see also CAUSE-PA to NEP I-12 (in communities where a water billing fee is charged, residents are billed the bulk commercial rate for water and NEP then charges a “water billing fee” to cover the administrative costs).

⁵¹ CAUSE-PA St. 1-R at 17-19, citing DLC to NEP I-53.

⁵² CAUSE-PA St. 1-R at 17-19, citing id. at I-53.

⁵³ Id.

⁵⁴ CAUSE-PA St. 1-R at 17-19, citing DLC to NEP I-6.h; CAUSE-PA to NEP I-46.

⁵⁵ Id.

oldest portion of the resident’s balance first,⁵⁶ regardless of whether the charges were for basic utility services or some other fee that a tenant incurs. While NEP notes that accounts with \$100.00 or more in arrears for “electric usage” may be subject to termination, its payment posting standards appear to apply any partial payment first to the full past due balance – including fees for trash, water billing fees, late payment fees, or any other charges which may appear on a bundled utility bill.⁵⁷ This compounds payment trouble – resulting in termination of all utility services, even if payment was adequate to pay for one or more of those services.⁵⁸

While NEP amended its proposed Tariff Rule 41.2 to include a few token additional billing requirements, these makeshift additions do not address the many shortcomings addressed in CAUSE-PA’s Main Brief and described above – especially given that it is uncertain whether these amendments would be legally enforceable by the Commission.⁵⁹

Again, while NEP’s practices serve as a concrete example of how master/sub-metering practices remove tenants from critical protections available to individually metered tenants residing in multifamily properties, they represent only one potential model of master/sub-metering that tenants may encounter if NEP’s proposal were approved. Other models could impose even more egregious billing, collections, and terminations practices that further complicate the ability of residential consumers to access and maintain utility services to their home.

c. Credit and Deposit Standards

CAUSE-PA’s Main Brief extensively describes credit and deposit standards available to tenants residing in individually metered multifamily properties.⁶⁰ As described in CAUSE-PA’s Main Brief, NEP’s tariff proposal is silent on the security deposit standards that tenants under

⁵⁶ CAUSE-PA St. 1-R at 17-19, citing CAUSE-PA to NEP I-1.

⁵⁷ Id.

⁵⁸ CAUSE-PA St. 1-R at 17-19, citing CAUSE-PA to NEP I-6.

⁵⁹ CAUSE-PA MB at 28.

⁶⁰ Id. at 30-31.

master/sub-metering schemes would have to comply with to establish or maintain service.⁶¹ Thus, under NEP's proposal, landlords and third-party sub-metering companies would be unconstrained in their ability to impose security deposits.

Again, NEP's business model serves as a concrete example of the sharp divergence between credit and deposit standards available to individually metered tenants, and the credit and deposit standards that tenants would face under NEP's proposal. NEP's security deposit standards are determined based on a contractual arrangement with the property owner/ landlord, opening the door to discriminatory and exclusionary practices which could have a uniquely detrimental impact on low and moderate income consumers.⁶² Currently, pursuant to its contractual arrangements with property owners in PECO's service territory, NEP imposes a \$100 security deposit on every tenant it serves, which is due along with the first bill – without exception and without the ability to pay the deposit over time.⁶³ It is unclear whether NEP later imposes additional deposit requirements on tenants who later fall behind on their bill.⁶⁴

CAUSE-PA describes in its Main Brief that this kind of policy is in direct contravention multiple provisions in Chapters 14 and 56, and can have a uniquely detrimental impact on low and moderate income consumers.⁶⁵ But it is also worth mentioning that NEP's security deposit standards in PECO's service territory may also violate other provisions of Pennsylvania law which restricts security deposits to two months' rent.⁶⁶

⁶¹ Id. at 31.

⁶² CAUSE-PA MB at 31-32.

⁶³ CAUSE-PA St. 1-R at 21: 4-18.

⁶⁴ Id.

⁶⁵ CAUSE-PA MB at 29-32.

⁶⁶ 68 P.S. §§ 250.511a-250.512.

NEP is clear in its Main Brief that it does not particularly concern itself with how vulnerable low income customers are affected by master/sub-metering schemes, and goes so far as to claim that it does not serve any low income tenants – though it has never attempted to collect income information or other supporting data to confirm this assertion.⁶⁷ The fallacy of this argument is addressed in CAUSE-PA’s Main Brief.⁶⁸ Nevertheless, even assuming, *arguendo*, that NEP does not serve any low income tenants, and that no tenants ever become low income or otherwise experience financial hardship while being served by NEP, its service model represents but one of many possible models of credit and deposit standards that would be permissible under NEP’s proposed tariff.

Ultimately, NEP’s proposal would allow landlords and other third-party entities to impose unjust and unreasonable security deposit standards in a manner which contradicts the residential deposit standards established by the legislature in the Public Utility Code and contained elsewhere in Pennsylvania law.⁶⁹ As such, its proposal must fail.

d. Payment Arrangements

CAUSE-PA’s Main Brief extensively describes the payment arrangements standards available to individually-metered tenants residing at multifamily properties under Chapter 14 of the Public Utility Code and Chapter 56 of the Commission’s regulations.⁷⁰ NEP’s amended tariff proposal would require landlords and third-party master/sub-metering entities to offer tenants in a master/sub-metered building a single payment plan no greater than the lesser of 12 months or the remaining term of the tenant’s lease, and leaves open the possibility that a landlord or third-party

⁶⁷ See NEP MB at 23.

⁶⁸ CAUSE-PA MB at 31.

⁶⁹ *Id.* at 32.

⁷⁰ *Id.* at 32-33.

master/sub-metering company could opt to evict tenants who are behind on their bills or to not renew their lease if a tenant is late with their utility payments.⁷¹ As CAUSE-PA’s Main Brief described, even with the amendment to NEP’s proposed Tariff Rule 41.2, NEP’s tariff proposal does not ensure that tenants in master/sub-metered multifamily properties would be able to access payment plans that are anywhere near comparable to the payment arrangements available to tenants who reside in individually metered buildings.⁷²

Again, NEP’s business model serves as a concrete example of practices allowable under NEP’s tariff proposal. Although NEP indicates that they offer payment plans for residential customers who are scheduled for disconnection and are unable to pay the full past due balance by the date indicated on the disconnection notice,⁷³ the payment plans offered by NEP are distinct from, and inferior to, the Chapter 14 payment arrangements available to residential customers who reside in an individually metered multifamily building. Further, the payment plans offered by NEP require large upfront payments, regardless of a tenant’s ability to pay or their income status.⁷⁴ As Mr. Geller notes in his Rebuttal Testimony, for low income tenants or tenants who have faced recent changes in income or financial circumstances, producing 40-50% of past due balances “may pose an insurmountable barrier – a barrier not faced by residential customers who reside in an individually metered residential unit.”⁷⁵

Again, NEP’s policies regarding payment arrangements are just one of many possible policies that could be imposed by a landlord on a residential tenant. Under NEP’s ill-conceived

⁷¹ Id. at 33.

⁷² CAUSE-PA MB at 33.

⁷³ CAUSE-PA St. 1-R at 24: 13-15, citing DLC to NEP I-6.k.

⁷⁴ CAUSE-PA St. 1-R at 25.

⁷⁵ Id.

tariff proposal, tenants that currently have access to Chapter 14 payment arrangement protections would be deprived those required protections – leaving tenants with access to only a meager and inadequate façade of payment plans. This fact is discussed in greater detail in CAUSE-PA’s Main Brief.⁷⁶

e. Termination of Service Procedures

CAUSE-PA’s Main Brief describes the termination of service procedures required under Chapter 56 of the Commission’s regulations to which tenants in individually metered multifamily properties have access.⁷⁷ As described therein, NEP’s proposed tariff, as amended, provides that notices of disconnection must match the number and type of notices provided for under Pennsylvania statute and regulations, and requires that utility services may only be terminated for non-payment.⁷⁸ However, there are numerous uncertainties with the termination notice procedures proposed by NEP, including enforceability of the amended tariff proposal and lack of specificity to ensure that tenants in master/sub-metered properties are able to access the equivalent termination procedures set forth under law and regulation, and currently available to tenants with individual meters.⁷⁹

NEP’s service delivery model again offers a concrete example of the types of termination practices and procedures that tenants may encounter if NEP’s master metering proposal were approved. As Mr. Geller describes in his Rebuttal Testimony, NEP’s termination procedures substantially diverge from the notice procedures provided to residential customers who are individually metered, and are driven exclusively by the contractual terms agreed to by the property

⁷⁶ See CAUSE-PA MB at 32-34.

⁷⁷ CAUSE-PA MB at 34-35.

⁷⁸ *Id.* at 35.

⁷⁹ *Id.*

owner and NEP.⁸⁰ Specifically, NEP’s written notice for involuntary termination of service to residential tenants lacks many (if not *most*) of the explicit notice requirements set forth in the Commission’s regulations, and is merely appended to a regular bill – with the label “Disconnect Notice” at the top.⁸¹ There is no information in Spanish or other languages anywhere on the bill, nor is there any information about the availability of essential winter protections, medical protections, payment arrangements, or protections for victims of domestic violence.⁸² The notice contains no information about the ability of a consumer to dispute their bill or to file an informal or formal complaint with the Public Utility Commission.⁸³ In fact, there is no information on the bill or the “Disconnect Notice” which indicates that PECO is the electric distribution company, or that a tenant should contact PECO if in the event of an emergency.⁸⁴

Mr. Geller also describes how NEP’s course of action and sanctions for non-payment by tenants venture well outside those allowed for nonpayment by a tenant who resides in an individually metered multifamily building.⁸⁵ Specifically, Mr. Geller describes how NEP performs collections actions against tenants as directed by a property owner or condominium association pursuant to the contract between the landlord and NEP.⁸⁶ These remedies may include not only termination of services ***but also eviction***.⁸⁷ Where a tenant’s balance exceeds \$500, NEP may actually direct a landlord to initiate an eviction.⁸⁸

⁸⁰ CAUSE-PA St. 1-R at 28: 3-15.

⁸¹ CAUSE-PA St. 1-R at 28: 3-15, Appendix A CAUSE-PA to NEP I-7.

⁸² Id.

⁸³ Id.

⁸⁴ Id.

⁸⁵ CAUSE-PA St. 1-R at 29-30.

⁸⁶ Id.

⁸⁷ Id.

⁸⁸ Id.

Again, NEP's policies and procedures represent only one concrete example of the various policies and procedures allowable under NEP's tariff proposal. NEP's imprecise tariff proposal raises numerous uncertainties about master/sub-metering companies' termination practices in DLC's service territory, and presents a serious threat to the health, safety, and wellbeing of tenants who may be exposed to NEP's master/sub-metering scheme. As such, NEP's proposal must fail.

f. Winter Protections from Termination

As described in CAUSE-PA's Main Brief, Section 56.100(b) prohibits an electric distribution utility from terminating service to customers with household incomes at or below 250% FPL between December 1 and March 31, unless otherwise allowed under the regulations.⁸⁹ As described more fully in CAUSE-PA's Main Brief, NEP's tariff proposal fails to carve out any protections from termination during the winter months. While tenants under 250% FPL in individually metered multifamily properties are protected from termination of essential utility services during the winter, tenants who are master/sub-metered under NEP's proposal will have to rely solely on the policies and goodwill of their respective landlords and master/sub metering companies if they are unable to afford their utility services during the winter.⁹⁰

Again, NEP's policies and procedures are instructive. NEP asserts that it adheres "as closely as possible to the procedures" of the "Winter Disconnect Rule."⁹¹ However, its actual winter termination rules are far less protective than the winter moratorium imposed in Chapters 14 and 56. Specifically, between November 1 and April 15, NEP provides 10 additional days for tenants from the date a notice of termination is postmarked to the scheduled disconnection date,

⁸⁹ CAUSE-PA MB at 36, citing 52 Pa. Code § 56.100(b).

⁹⁰ CAUSE-PA MB at 36-37.

⁹¹ CAUSE-PA St. 1-R at 31: 8-13, citing DLC to NEP I-6.i.

and postpones or cancels termination only if (1) the scheduled low for the day is less than 10 degrees Fahrenheit; or (2) the high for the date of termination and the following day are both scheduled to be below 32 degrees.⁹² In other words, NEP currently terminates service in the winter to tenants in PECO's service territory – regardless of the tenant's income.

NEP's own practices provide a clear warning. Under NEP's imprecise tariff proposal, tenants residing in master/sub-metered properties may be forced to go without heat if they cannot afford to make payments in the winter months. At the same time, recall that tenants served under NEP's proposal would also lack access to budget billing, payment arrangements, appropriate notice of termination, and universal service programming – compounding the fact that tenants may be terminated for nonpayment by NEP or other utility reseller in winter. Such a result is a squarely unjust and unreasonable, and against the strong public interest in Pennsylvania of ensuring financially vulnerable consumers are able to heat their home in the winter.

g. Protections for Customers with Medical Conditions

As more fully described in CAUSE-PA's Main Brief, the Public Utility Code prohibits a public utility from terminating service to a residential premise when a customer has submitted a medical certificate.⁹³ However, NEP's tariff proposal does not include any protections from termination for tenants who suffer from a serious illness or medical condition and reside in master/sub-metered properties.⁹⁴

Again, NEP's business practices are illustrative of the wide inconsistencies that medically vulnerable tenants in master-metered properties would face if NEP's tariff proposal were

⁹² CAUSE-PA St. 1-R at 31: 8-13, citing CAUSE-PA to NEP I-39.

⁹³ CAUSE-PA MB at 37, citing 66 Pa. C.S. § 1406(f), 52 Pa. Code §§ 56.111-56.118.

⁹⁴ CAUSE-PA MB at 37-38.

approved. NEP indicates that, in PECO's service territory, it will stop a pending termination to a sub-metered tenant unit if a customer provides a correctly completed medical certificate.⁹⁵ However, NEP fails to provide any information regarding its policies and procedures for how its tenants might obtain and submit an NEP accepted medical certificate, or what NEP criteria for completion or acceptance may be, or whether the tenants will have to meet other requirements to postpone termination.⁹⁶

NEP's business model represents but one of many variations of medical protections that will be permissible under NEP's tariff proposal. As discussed at greater length in CAUSE-PA's Main Brief, given the broad uncertainties about what protections medically vulnerable tenants might access under NEP's proposal, and the inherent obstacles to enforcement of those protections, CAUSE-PA submits that NEP's proposal is fundamentally unreasonable, unjust, and contrary to the public interest. As such, NEP's tariff proposal must fail.

h. Disputes, and Informal and Formal Complaints

NEP claims in its Main Brief that no party has alleged any systemic problems with tenants in NEP-served buildings in non-DLC service territories that justify identical consumer protections as provided to DLC's individually metered tenants.⁹⁷ NEP points to the fact that CAUSE-PA expert witness, Mr. Geller, has no *specific* knowledge of (1) unique complaints, lawsuits, or other disputes filed or asserted against NEP for services in Pennsylvania, (2) specific consumers served by NEP in PECO's service territory where a tenant was unable to access the statutory or regulatory rights previously available to them prior to re-metering; (3) instances where a NEP sub-metered

⁹⁵ CAUSE-PA St. 1-R at 34-35, citing CAUSE-PA to NEP I-34.

⁹⁶ CAUSE-PA St. 1-R at 34-35.

⁹⁷ NEP MB at 40.

bill resulted in material harm and costs to tenants; (4) instances where NEP was charged or claimed that NEP treated tenants unjustly, inequitably, and/or discriminatorily regarding security deposit policies and procedures in connection with metering/sub-metering in PECO's service territory.⁹⁸ NEP touts that it is unaware of claims that its services in PECO's service territory are inadequate and that it has a very low level of complaints.

NEP's argument that its tariff proposal and individual business operations are in the public interest because there is a lack of evidence of consumer complaint or legal matters against NEP in another service territory is fundamentally flawed.

First, NEP is proposing a tariff revision *in DLC service territory* which would *eliminate* the currently existing rights of individually metered tenants and all the associated protections available under DLC's present tariff – which have been in place for 40 years. There has been no showing that a comparable situation exists or existed anywhere else NEP has been doing business. As Mr. Geller explained in response to discovery, he did not conduct any independent research into whether and to what extent consumers may have filed complaints against NEP or similar utility resellers in other service territories. This was not his burden to carry, nor would the information be particularly relevant to NEP's proposal in DLC's service territory – where tenants have been and remain protected from master/sub-metering schemes since 1981. Indeed, the inquiry in this case is whether NEP's proposal to circumvent dozens of *currently effective* tenant protections in DLC's service territory is just, reasonable, and in the public interest.

Second, lack of complaint should not be equated with the reasonableness, justness, or properness of NEP's operations in other service territories. Rather, the lack of complaints is more

⁹⁸ NEP MB at 40-41.

likely a result of the lack of clear and accessible dispute rights for aggrieved tenants. In its Main Brief, CAUSE-PA described how – with very limited exception regarding violations of Section 1313 and DSLPA – it is unclear whether tenants who reside in master/sub-metered buildings may seek relief through the Commission, or must attempt to redress issues in front of Pennsylvania Courts.⁹⁹ For *pro se* tenants who do not have the time, resources, or intricate legal knowledge required to navigate the Pennsylvania Court system, raising issues with landlords, property owners, or master/sub-metering companies can represent insurmountable barriers.

Third, the plain language of NEP’s tariff proposal does not necessarily require that master/sub-metering companies provide tenants any notice of their rights or ability to raise disputes. Instead, as discussed above, landlords may rely on a variety of tools – including eviction – if a tenant is unable to afford their monthly payments – further complicating the ability of tenants to seek legal relief for improper termination or to rectify billing disputes. If a tenant is not informed of the right to dispute their bill or other adverse action against them, they cannot reasonably exercise that right – presuming that right exists at all.

Finally, even if NEP were the most outstanding utility reseller in the state, with no consumer complaints or disputes, that fact would not support a conclusion that NEP’s tariff proposal is in the public interest. Again, NEP conflates its own business operations with the businesses that may begin to operate in DLC’s service territory if its proposal were approved. Indeed, NEP’s allegedly low number of suits and complaints against it in PECO’s service territory is no indication that other master/sub-metering companies who operate in DLC’s service territory will do so in strict compliance with the limited requirements of NEP’s proposed tariff language.

⁹⁹ CAUSE-PA MB at 40-41.

Ultimately, NEP has not advanced any evidence that the number of disputes in other service territories is indicative of a lack of consumer complaints – it simply underscores that residential tenants subject to sub-metering schemes have little options for recourse, given resellers largely operate outside of the Commission’s clear jurisdictional bounds.

i. Protections for Victims of Domestic Violence

As described more fully in CAUSE-PA’s Main Brief, the General Assembly exempted victims of domestic violence from the billing and collections standards contained in Chapter 14 of Title 66 of the Pennsylvania Consolidated Statutes in recognition of the unique and harmful barriers victims of domestic violence face when attempting to access utility services.¹⁰⁰ However, NEP’s tariff proposal fails to address whether victims of domestic violence will have access to any additional protections, or will be able to access any of the existing protections afforded to qualifying victims of domestic violence under the Commission regulation.¹⁰¹

Again, NEP’s own practices are instructive. NEP does not carve out any specific protections available to tenants who have experienced domestic violence. Instead, under NEP’s business model, all tenants are responsible for utility arrears to the extent their name appears on the lease – without any consideration of whether the tenant is a victim of domestic violence.¹⁰² NEP’s specific policies and procedures sidestep critically important protections for victims of domestic violence – and would be permissible under the plain terms of NEP’s tariff proposal. NEP’s failure to account for the unique challenges and needs of victims of domestic violence

¹⁰⁰ CAUSE-PA MB at 41.

¹⁰¹ *Id.* at 42.

¹⁰² CAUSE-PA St. 1-R at 39-40, citing CAUSE-PA to NEP I-23.

creates unreasonable and unjust ambiguity in its tariff language, and poses dangers to the health and safety of victims of domestic violence and their children.

j. Notification of Increased Rates

As more fully described in CAUSE-PA’s Main Brief, under NEP’s tariff proposal, tenants subject to master/sub-metering would not receive notice from DLC of a proposed or approved rate change.¹⁰³ Without adequate notice of rate changes, tenants will be unable to determine if violations of Section 1313 occur, financially plan for upcoming changes in rates, or challenged proposed residential rate increases.¹⁰⁴

NEP’s business practices again provide an example of how tenants would be separated from critical sources of information if NEP’s tariff proposal were approved. As Mr. Geller describes in his Rebuttal Testimony, NEP does not notify residents of proposed or upcoming changes in rates.¹⁰⁵ Mr. Geller also raises significant questions as to whether NEP adjusts its residential rates in line with proposed tariff changes as of the effective date of rates.¹⁰⁶ Mr. Geller notes that NEP explained that it adjusts residential rates “on a monthly basis” – without specifying whether rates charged are adjusted on the utility’s effective date of rates.¹⁰⁷ These practices raise significant uncertainty about NEP’s practices when utilities implement rate increases or other tariff changes. Moreover, while NEP’s amendments to its tariff proposal require that the number of days due from the bill issue date including the number of days grace period must match the current DLC tariff in effect for the month the bill is issued, this language is imprecise and does not necessarily

¹⁰³ 52 Pa. Code § 53.45. CAUSE-PA MB at 51.

¹⁰⁴ CAUSE-PA MB at 51.

¹⁰⁵ CAUSE-PA St. 1-R at 48: 15.

¹⁰⁶ Id. at 48: 16-19.

¹⁰⁷ Id.

require a master/sub-metering company to completely align its billing with rate and other tariff changes. Once again, NEP's individual practices serve as an example of the wide uncertainties and variations in practices that would be permissible under NEP's tariff proposal.

k. Affordability Assistance for Low Income Customers

As CAUSE-PA's Main Brief described in extensive detail, NEP's tariff proposal would remove tenants from their present status as customers of utilities and therefore deprives those tenants of their existing right to access universal service programs – causing substantial harm to low income tenants.¹⁰⁸

As a concrete example, NEP reported significant termination rates compared to the termination rates of PECO's residential customers.¹⁰⁹ Moreover, tenants serviced by NEP also experienced significant levels of arrears.¹¹⁰

NEP has stated at numerous times in this proceeding that it does not believe that it serves low income tenants and that its business model does not specifically concern itself with low income customers.¹¹¹ But in reality, NEP has no idea whether low income customers reside in the properties it serves, as NEP does not collect residential income data.¹¹² Moreover, while NEP paints the picture that it only serves high-end residential properties, there is no guarantee that a tenant will not lose their job or encounter other unexpected financial hardships that cause the household to struggle financially or become low income.¹¹³ Without data on household income

¹⁰⁸ CAUSE-PA MB at 53-56.

¹⁰⁹ CAUSE-PA St. 1-R at 52-53.

¹¹⁰ Id.

¹¹¹ See NEP MB at 23; CAUSE-PA St. 1-R at 54: 6-16,

¹¹² CAUSE-PA MB at 55; CAUSE-PA St. 1-R at 64: 6-16.

¹¹³ Id.

of tenants in NEP-served properties, it is impossible to determine how many low income customers reside in NEP's serviced communities.¹¹⁴

Again, while NEP's business practices represent a concrete example of the pitfalls of master/sub-metering practices that will occur in NEP's tariff proposal is approved, the determining inquiry in this case is not whether NEP serves low income customers, but whether NEP's proposal in this case will sever the currently existing ability of DLC's low income tenants to access universal service programs to help maintain service to their home. NEP's tariff proposal, if approved, opens the way for various other master/sub metering companies to operate in DLC's service territory, which may provide submetering and billing services to a more diverse range of communities than NEP claims to serve – including low income communities, who struggle to maintain service without access to assistance.

B. NEP's proposed master/sub-metering tariff rule is inconsistent with the purpose of PURPA.

NEP argues in its Main Brief that its master/sub-metering program and tariff proposal are consistent with the Public Utility Regulatory Policies Act of 1978, 16 USC 2601 *et seq.* (PURPA).¹¹⁵ NEP describes how PURPA was enacted to encourage (i) conservation of electricity; (ii) increased efficiency in the use of facilities and resources of electric utilities; and (iii) equitable rates for electric consumers. NEP describes how PURPA did not impose a complete ban on master metering of new buildings under Section 115(d), and argues that PURPA is not rooted in customer protection – and is not focused on providing consumer protections.¹¹⁶ This is a direct nod to its later assertion that DLC's concerns about the impact of NEP's proposal on tenants is somehow

¹¹⁴ Id.

¹¹⁵ NEP MB at 29.

¹¹⁶ Id. at 30-31.

feigned, and that such concerns must be ignored absent “empirical or other hard data” evidencing specific harms.¹¹⁷

NEP’s argument that its policies and procedures and tariff proposal are consistent with PURPA is an extension of NEP’s argument that its tariff proposal will result in greater conservation and energy efficiency compared to individually metered multifamily buildings. As previously discussed, NEP’s assertions regarding the impact of its proposal on energy efficiency and conservation are wholly unsupported by the record.¹¹⁸ To the contrary, the record is replete with evidence and information about the many ways in which NEP’s proposal undermines the accessibility and availability of numerous energy efficiency and conservation programs.¹¹⁹

Moreover, the fact that PURPA was not driven by concerns for consumer protections irrelevant. Chapters 14 and 28 of the Public Utility Code were enacted long after PURPA was promulgated, and provide *independent legal basis* for upholding DLC’s current tariff prohibiting the practice of master/sub-metering in its service territory.¹²⁰ Once again, NEP flagrantly overlooks the real-world implications that its tariff proposal – and its practices and procedures – have on the tenants it serves in favor of focusing solely on the narrow and largely speculative business interests of commercial property owners. Regardless of PURPA, the fact remains that NEP’s proposal will eviscerate the currently effective rights of tenants in DLC’s service territory – circumventing dozens of statutory, regulatory, and policy protections designed to ensure tenants can access and maintain safe and stable service to their home. This is not just, reasonable, or in the public interest.

¹¹⁷ Id. at 35.

¹¹⁸ See supra Section III.A.1.

¹¹⁹ Id.

¹²⁰ See generally CAUSE-PA MB at VI.B-C.

C. NEP’s master/sub-metering proposal is inconsistent with Pennsylvania law, as affirmed by multiple prior decisions of the Commission and the Commonwealth Court.

NEP argues that its tariff proposal is consistent with Pennsylvania law and attempts to distinguish its proposal from several other Pennsylvania cases that speak to the need for inherent caution when approving master/sub-metering schemes. In doing so, NEP attempts to distinguish multiple cases which repeatedly denied similar claims. In reality, there is no practical difference between this case and those that have come before.

First, NEP claims that in Pa. PUC v. West Penn Power, the Commission accepted a limitation – but not a ban – on master metering.¹²¹ NEP argues that this case supports its proposed tariff because its proposal supports conservation efforts. Second, NEP argues that Motheral, Inc. v. DLC, in which the Commission upheld DLC’s existing tariff and denied Motheral, Inc.’s request to master meter student housing in DLC’s service territory is distinguishable from this case. NEP argues that, unlike Motheral, Inc., NEP “is not solely seeking personal economic advantage” from its proposal – but instead seeks to bring economic and conservation benefits to property owners, tenants, and the Company.¹²² Similarly, NEP argues that Tiffany Associates v. DLC, in which the Commission denied a master-metering request and emphasized the public interest in conservation of energy, is distinguishable from the present case because “NEP clearly demonstrated that [its tariff proposal] provides lower energy costs and energy efficiency and conservation benefits...”¹²³ Finally, NEP attempts to distinguish this case from Crown American Corp. v. Pa. PUC, in which

¹²¹ NEP MB at 32, citing Pa. PUC v. West Penn Power, 1970 Pa. PUC LEXIS 37, 32 PUR 4th 245 (Aug. 27, 1979).

¹²² NEP MB at 32-33, citing Motheral, Inc. v. DLC, 2001 Pa. PUC LEXIS 4 (March 23, 2001).

¹²³ NEP MB at 33-34, citing Tiffany Assoc. v. DLC, 1998 Pa. PUC LEXIS 206 (Nov. 20, 1998).

the Court upheld a limitation by PPL on master metering, and argues that – under NEP’s proposal – customers can be aware of energy costs.¹²⁴

In short, NEP attempts to distinguish this matter from the weight of Pennsylvania cases upholding restrictions on master/sub-metering schemes by claiming that its tariff proposal will promote greater access to conservation and energy efficiency. As discussed above, this is a flawed argument that is unsupported by the weight of evidence in this case.¹²⁵ NEP’s tariff proposal does not require, or even encourage, property owners to practice any degree of conservation and energy efficiency, save for the paltry requirement that tenants must be provided some form of AMI or other smart sub-meter. As discussed, individually metered tenants in DLC’s service territory already have access to smart meter data and information. Providing tenants with access to usage information which is already available – while eviscerating the rights of tenants to access programs that assist consumers to adopt energy efficiency and conservation measures, such as LIURP and Act 129 programs – plainly undermines energy efficiency and conservation goals.

Moreover, while NEP attempts to argue that its proposal in this proceeding is not solely driven by profit – but is instead an ecologically-minded altruistic effort to bring broad benefits to DLC’s service territory – is belied by NEP’s own Complaint, which is based primarily on its assertion that DLC “is depriving certain of [NEP’s] commercial customers of the opportunity to reduce their rates for service.”¹²⁶ In fact, in response to DLC’s Preliminary Objections challenging NEP’s standing to participate in this proceeding, NEP argued that its “legitimate business interests in providing service in DLC’s territory are and will continue to be directly and substantially

¹²⁴ NEP MB at 34-35, citing Crown Am. Corp. v. Pa. PUC, 463 A.2d 1257 (Pa. Cmwlth. 1983).

¹²⁵ See supra Section III.A.1.

¹²⁶ NEP Complaint at 3-4, para. 9.

impaired” by the continued application of DLC’s current tariff rules.¹²⁷ In its Answer, NEP references energy efficiency only once, in reference to DLC’s alleged impairment to its “business model” and its inability to obtain any market share in DLC’s service territory.¹²⁸

Ultimately, NEP’s proposed tariff is no different than the profit-driven proposals which have previously been struck down by the Commission. NEP has shown a clear disregard for the rights of the tenants it currently serves and seeks to serve in DLC’s service territory, and its tariff proposal clearly reflects this disregard – placing its pursuit of profit over the protections of tenants. Consistent with the Commission and the Commonwealth Court’s prior decisions in Pa. PUC v. West Penn Power, Motheral, Inc. v. DLC, Tiffany Associates v. DLC, and Crown American Corp. v. Pa. PUC, NEP’s proposal to invalidate DLC’s currently effective master/sub-metering restrictions and to allow largely unrestricted master/sub-metering in DLC’s service territory must fail.

D. DLC and other parties raise legitimate concerns that NEP’s tariff proposal will eviscerate the rights of tenants in DLC’s service territory.

NEP devotes an entire section in its Main Brief to allegations that DLC’s current prohibition on master-metering is unduly prejudicial and biased against it and other utility resellers like it.¹²⁹ NEP derides DLC’s “cautious position” on master-metering as unsupported by evidence, claiming the potential harm from master/sub-metering is not “actual or real.”¹³⁰ NEP argues that DLC’s reliance on consumer protections is feigned – suggesting that concerns about the impact of NEP’s proposal on consumer protections are somehow illegitimate because these concerns were

¹²⁷ Answer of NEP to Preliminary Objections of DLC, at 5, para. 17.

¹²⁸ Id. at 5, para. 17.

¹²⁹ See NEP MB at 35-37.

¹³⁰ See NEP MB at 35-36.

not the original basis for DLC's restrictions.¹³¹ It argues that any concern about the impact of its proposal on consumers is "based on wholly speculative concerns about potential customer harm."¹³²

There is nothing speculative about the impact of NEP's proposals on the current rights of tenants who reside in individually metered buildings. If approved, NEP's proposal will create a second-class service for tenants in sub-metered properties, stripping tenants of rights currently enjoyed under DLC's existing tariff. This second-class service will be provided without guaranteed access to budget billing, without payment posting requirements, without required details about the charges imposed, without clear or enforceable restrictions on various fees, without parameters and prohibitions on security deposits, without protection from termination in the winter months, without access to protection from termination for medically vulnerable consumers, without access to protections for victims of domestic violence, without access to universal service programs for low and moderate income consumers, without access to energy efficiency and conservation programming paid for through residential rates, without access to Commission dispute rights, and without a clear path to relief for tenants aggrieved by a utility reseller under NEP's proposal. **These are not speculative or imagined harms – they are real and demonstrated consequences of NEP's proposal to the rights of tenants in DLC's service territory.** Frankly, NEP's flippant and repeated dismissal of legitimate concerns for the health, safety, and welfare of tenants in DLC's service territory should serve as a red flag to the Commission – a canary in the coal mine – indicating the lack seriousness with which NEP treats

¹³¹ NEP MB at 38.

¹³² Id. at 36.

consumer issues in other areas of the state and the manner in which it may treat consumer issues in DLC’s service territory if its tariff proposal were approved.

E. Concerns raised by the parties related to NEP’s tariff proposal are reasonable and supported by the weight of the evidence.

1. Criticisms of NEP’s tariff proposal are supported by the weight of the evidence.

a. NEP has failed to show that its tariff proposal is in the public interest, as it would restrict tenants in master-metered properties from access to numerous consumer protections.

NEP claims that the opponents of its tariff proposal unreasonably impose on NEP the legal and regulatory standards applicable to regulated utilities in Pennsylvania.¹³³ NEP makes clear that they do not seek to ‘step into the shoes’ of a utility – but rather propose a different form of utility services for property owners and their tenants whereby master/sub-metering companies will provide “infrastructure installations on private property, billing or supply services that are unrelated to Duquesne public utility services”.¹³⁴ NEP tellingly and incorrectly claims that “there is no reason for these different products and services to provide the same protections to consumers/tenants.”¹³⁵

As discussed above and in CAUSE-PA’s Main Brief, NEP’s business practices – and the practices that would be allowable under NEP’s tariff proposal – differ sharply from the protections offered to individually metered tenants residing in multifamily properties.¹³⁶ While NEP does not see a reason to offer more robust protections than the paltry offerings under its tariff proposal, CAUSE-PA does. These tenants will ultimately bear the responsibility to pay the electric bills

¹³³ Id. at 39.

¹³⁴ Id. at 39-40.

¹³⁵ Id. at 40.

¹³⁶ CAUSE-PA MB at Section VI.B-C.

under NEP’s proposal – and will face the consequences if they are unable to afford these payments. Their interests and protection should not be shunted aside, but rather should be a central focus of any and every inquiry into the justness and reasonableness of a tariff proposal that would disrupt access to existing tenants’ rights – including the one presented by NEP in this case.

NEP asserts that no party has alleged systemic problems regarding tenants in NEP-served buildings in other, non-DLC, service territories and claims that Mr. Geller has failed to allege any specific knowledge of consumer issues with NEP-specific services.¹³⁷ However, as previously discussed, the circumstances in other service territories are not parallel or relevant to the current case in which an existing tariff is proposed to be amended.¹³⁸ Regardless of the service territory, tenants in master/sub-metered multifamily buildings face steep challenges to asserting their rights, and often lack the means to do so.¹³⁹

In an attempt to shift focus from the fact that NEP has failed to meet its own burden of producing evidence capable of showing that its tariff proposal is reasonable and in the public interest, NEP points to testimony of CAUSE-PA expert witness, Sarah Ralich, in DLC’s 2018 rate proceeding.¹⁴⁰ NEP selectively and incompletely cites to Ms. Ralich’s testimony in that proceeding, arguing that CAUSE-PA’s proposal supported master metering – and that NEP’s tariff proposal in this case is “the logical parallel” to CAUSE-PA’s prior proposal.¹⁴¹ This assertion bears no basis in fact, is a mischaracterization of Ms. Ralich’s testimony, and must be ignored.

¹³⁷ NEP MB at 40-41.

¹³⁸ See supra at Section A.3.h.

¹³⁹ CAUSE-PA MB at 20.

¹⁴⁰ NEP MB at 41. Ms. Ralich was *not* a witness in this case.

¹⁴¹ NEP MB at 41. NEP also attempts to shift focus from the issue at hand by claiming that there has been no outcry or concern about these 130 master-metered properties operating in DLC’s service territory as a result of

As more fully described in CAUSE-PA's Main Brief, Ms. Ralich initially supported changes to DLC's master metering tariff restrictions to help reduce costs for low income multifamily housing providers.¹⁴² This initial proposal never contemplated sub-metering, and was focused exclusively on permitting low income housing providers to master meter a building where the housing provider was already required to cover all utility costs – *without passing those costs on to a tenant through rent*.¹⁴³ However, in recognition of the legitimate and complex concerns surrounding a master metering proposal, Ms. Ralich withdrew her proposal in its entirety, instead proposing DLC host a collaborative meeting to discuss the issue and determine whether a solution could be reached that would both improve the availability of low income affordable housing while preserving the rights of tenants to access tenant protections and programming.¹⁴⁴ CAUSE-PA was an active participant in the multi-stakeholder collaborative process to develop DLC's original proposed tariff revision in this proceeding, and was supportive of the narrow and well designed exception.¹⁴⁵ Again, CAUSE-PA's original proposal in the 2018 rate case never contemplated sub-metering which, as discussed below, is particularly egregious in that it provides the building owner or third-party re-billing entity the ability to independently bill, collect from, and terminate service

grandfathering. To be clear, CAUSE-PA is concerned about tenant protections in these properties. However, this is not the inquiry in this matter, and should not be treated as such. The inquiry in this matter is in regard to the rights of tenants who reside in the hundreds of residential properties built or restored after 1981, and who may reside in any future residential properties built or restored after the conclusion of this proceeding.

¹⁴² CAUSE-PA MB at 13-14.

¹⁴³ Id.; Pa. PUC v. DLC, Docket Nos. R-2018-3000142; R-2018-3000829, CAUSE-PA St. 2-SR at 5-6 (Surrebuttal Testimony dated August 6, 2018). Note that CAUSE-PA's testimony from the 2018 Duquesne Light rate proceeding was attached as an appendix to NEP Statement 2.

¹⁴⁴ CAUSE-PA MB at 13-14.

¹⁴⁵ CAUSE-PA MB at 13-14. See Pa. PUC v. DLC, Docket Nos. R-2018-3000142; R-2018-3000829, CAUSE-PA St. 2-SR at 5-6 (Surrebuttal Testimony dated August 6, 2018). Note that CAUSE-PA's testimony from the 2018 Duquesne Light rate proceeding was attached as an appendix to NEP Statement 2.

to residential units – evading Commission oversight of these highly sensitive and heavily regulated essential public utility functions.¹⁴⁶

The dangers and uncertainties posed by NEP’s tariff proposal are certain, supported, and well founded. As extensively described in CAUSE-PA’s Main Brief and this Reply Brief, NEP’s own business practices provide a palpable example of how failure to properly restrict master/sub-metering strips tenants in multifamily properties of crucial protections carefully crafted under Pennsylvania law and Commission regulation. As discussed below, NEP’s business practices and tariff proposal will also severely constrain tenants’ ability to assert their rights under Section 1313 and the DSLPA.

b. NEP has failed to show that its tariff proposal allows tenants to assert their rights under Section 1313 and DSLPA.

NEP claims that it is inappropriate to assert that master-metering should only be permissible if tenants in master-metered properties are given access to consumer protections provided for under Pennsylvania Statute and Commission regulations, and instead points to Section 1313 as sufficient protection for these tenants. NEP further points to the Discontinuance of Service to Leased Premises Act (DSLPA), which NEP acknowledged would be applicable to landlords under NEP’s proposal.¹⁴⁷ However, NEP’s business practices and tariff proposal raise significant questions about the practical application of tenants’ rights under these provisions:

i. Section 1313

¹⁴⁶ CAUSE-PA MB at 13-14.

¹⁴⁷ NEP MB at 44.

NEP acknowledges that Section 1313 would apply to master/sub-metered properties under its tariff proposal.¹⁴⁸ CAUSE-PA extensively describes in its Main Brief how NEP’s tariff proposal – while providing some meager tariff rule requirements – falls short of aligning all fees and charges with DLC’s rates, and leaves open the possibility that electricity charges could be bundled with other services, which can serve to mask overcharging and further complicate issues with payment posting, discussed above.¹⁴⁹ Violations of Section 1313 would moreover prove difficult to enforce, given that the methods of resale of utility services can vary widely and are often determined by lease or other written or oral rental agreement between landlords and tenants.¹⁵⁰ Tenants may find it incredibly difficult to determine the accuracy of their bills. Again, as explained in CAUSE-PA’s Main Brief, it is quite possible that tenants would not even have the right to seek redress from the Commission for individual violations of Section 1313.¹⁵¹

NEP’s business model offers a concrete example of the ways in which a submetering company may charge tenants, further complicating enforcement of Section 1313. Mr. Geller described in his Rebuttal Testimony how NEP is charged at commercial/ industrial rates of service, and tenants served by NEP are subsequently charged the utility’s applicable residential rates of service – in addition to NEP’s other fees and charges.¹⁵² Residential rates for services are generally higher than comparable industrial commercial rates of service, thus allowing NEP to make a profit on the difference.¹⁵³ Moreover, while NEP shops for competitive rates from suppliers, it charges

¹⁴⁸ See id. at 50-51.

¹⁴⁹ CAUSE-PA MB at 48-50.

¹⁵⁰ Id. at 49-50.

¹⁵¹ CAUSE-PA MB at 18-20, 48-51.

¹⁵² CAUSE-PA St. 1-R at 47: 3-15.

¹⁵³ CAUSE-PA St. 1-R at 47: 3-15, citing CAUSE-PA to NEP I-32. See also Company’s April 16, 2021 Filing Letter, indicating that, if DLC’s entire request is approved, the total bill for an average residential customer using

tenants the applicable default rates for residential generation services.¹⁵⁴ While NEP provides some very basic itemization on its bills, there is no information on bills about where a tenant may look to verify the charges or any description of what those charges include or how they were calculated.¹⁵⁵

Given the multiple steps and intricacies involved in distilling rates charged by the utility into the bill amounts tenants will ultimately have to pay, it is both unjust and unreasonable to expect tenants to identify and redress violations of Section 1313. Again, NEP's specific business model serves as only one example of numerous master/sub-metering schemes that might permissibly exist if NEP's tariff proposal were approved. This result for tenants – especially for low and moderate income tenants who rely on affordable and transparent rates in order to financially plan and make ends meet – is unjust, unreasonable, and squarely against the public interest.

ii. DSLPA

As more fully described in CAUSE-PA's Main Brief, Chapter 15 of the Public Utility Code sets forth various provisions related to utilities' services and facilities, including the provision of services to residential tenants. Contained in subchapter B of Chapter 15, the Discontinuance of Services to Leased Premises Act (DSLPA) sets forth the rules and requirements related to both the voluntary discontinuance or termination of services to tenant-occupied premises.¹⁵⁶ The rules and

600 kilowatt-hours would increase from \$100.12 to \$107.85 per month – amounting to approximately 0.18 per kWh. The total bill for an average commercial customer using 10,000 kilowatt-hours would increase from \$862.14 to \$916.99 per month, and the total bill for an average industrial customer using 200,000 kilowatt-hours would increase from \$16,546.49 to \$17,246.75 per month – amounting, respectively, to approximately 0.09 per kWh.

¹⁵⁴ CAUSE-PA St. 1-R at 47: 3-15, citing CAUSE-PA to NEP, I-32, I-33.

¹⁵⁵ CAUSE-PA St. 1-R at 47: 3-15.

¹⁵⁶ CAUSE-PA MB at 43-44. 52 Pa. Code § 56.1 et seq.

requirements under the DSLPA are applicable to all tenants, regardless of the building meter configuration.¹⁵⁷ However, master and sub-metering configurations overtly complicate and frustrate the ability of consumers to meaningfully access the protections available through DSLPA.

While NEP acknowledges in its Main Brief that protections contained in the DSPLA would apply to tenants residing in master/sub-metered multifamily properties if NEP's tariff proposal were approved,¹⁵⁸ CAUSE-PA described in its Main Brief how NEP's proposal complicates the ability of tenants to prevent termination based on landlord nonpayment and undermines tenant protection against voluntary disconnection of services to leased units without notice and/or consent of tenants.¹⁵⁹ Under NEP's master/sub metering proposal, landlords will effectively gain full control over the services to each unit in sub-metered buildings and can turn service on or off without contacting the utility – thus evading requirements under the DSLPA to provide notarized attestation that the unit is either unoccupied or that a tenant consents to the disconnection of service.¹⁶⁰

Overall, NEP's tariff proposal frustrates the intent and purpose of Section 1313 and the DSLPA. While NEP acknowledges that these provisions would apply to tenants' master/sub-metered under NEP's tariff proposal, NEP fails to provide reasonable means for tenants to access their rights under these laws. Again, NEP has failed to meet its burden of showing that its tariff proposal is properly designed, and in just, reasonable, and in the public interest.

2. Cost shifting between classes is inappropriate, and fails to address the weight of issues raised by NEP's tariff proposal.

¹⁵⁷ CAUSE-PA MB at 43. CAUSE-PA St. 1-R at 11: 20 – 12: 2.

¹⁵⁸ See NEP MB at 44.

¹⁵⁹ CAUSE-PA MB at 46-47.

¹⁶⁰ Id. at 47.

OSBA expert witness Mr. Robert Knecht recommended in his rebuttal testimony that master-metered multifamily service be included as part of the Residential class for cost allocation and revenue allocation purposes.¹⁶¹ In its Main Brief, NEP argues that concerns about cost-shifting between classes should not delay implementation of its proposal – which it argues will have only minimal impacts on cost of service and revenue.¹⁶² In support of this claim, NEP again attempts to shift the burden of proof onto DLC – suggesting that DLC should have studied the impact of its proposal on cost given the 130 existing master metered buildings which predated its 1981 tariff revisions.¹⁶³ NEP asserts that its experience in PECO’s service territory - where it serves approximately 1,600 consumers – as well as other service territories outside of Pennsylvania – confirms that DLC “would not trigger significant shifts in Duquesne’s inter or intra class revenue allocations” before DLC’s next rate case.¹⁶⁴

CAUSE-PA questions the validity and basis for NEP’s claims regarding the impact of its proposals on DLC’s revenue. Its experience in PECO’s service territory and other service territories is not relevant here, as there is no evidence that those service territories were substantially similar to DLC when master and/or sub-metering was first authorized.

Nevertheless, CAUSE-PA urges the Commission to reject NEP’s master/sub-metering proposal in its entirety, rendering moot Mr. Knecht’s argument related to cost shifting. However, if the Commission ultimately does approve a master-metering proposal, master-metered multifamily service should not be included as part of the residential class for cost allocation and revenue allocation purposes. In his Surrebuttal Testimony, Mr. Geller explained (1) there is no

¹⁶¹ OSBA St. 1-R at 19: 19-22.

¹⁶² NEP MB at 46-49.

¹⁶³ *Id.* at 46-47.

¹⁶⁴ NEP MB at 9, 47.

basis for Mr. Knecht’s claim that load shape should be reasonably similar to those of single-family residences; and (2) it is inappropriate to shift the cost of multifamily buildings to residential customers, as multifamily buildings are often medium and large size users, and are thus separate and distinct from smaller users under RS rates.¹⁶⁵ Thus, if any master metering proposal is approved by the Commission, it should not result in shifting of costs of servicing business, government, or non-profit customers to the residential class – thus further adding to the pervasive unaffordability faced by DLC’s residential customers – particularly its low income customers.

3. *NEP’s commitment to ensuring tenants pay no more to property owners for electric service than they would pay to DLC, as required by the Code is ultimately irrelevant.*

In Section E.3 of its Main Brief, NEP repeats its claims that (1) it has “successfully delivered” services in PECO’s service territory since 2018; and (2) Section 1313 and NEP’s tariff proposal, as amended, will provide reasonable constraints on master/sub-metering and ensure that NEP’s total bill amount will never exceed the amount that would be applied by a utility on a total bill basis.¹⁶⁶ In particular, NEP points to the amended language of its tariff proposal, which requires matching of certain fees and bill issue dates to DLC’s tariff.¹⁶⁷ Finally, NEP repeats that – while tenants residing in master-metered properties under its tariff proposal would not have access to universal services – prospective tenants would get notice that such programs would not be accessible.¹⁶⁸

NEP does not specify, under what definition NEP has “successfully delivered” services in PECO’s service territory. As discussed extensively in this Reply Brief and CAUSE-PA’s Main

¹⁶⁵ CAUSE-PA St. 1-SR at 17-18.

¹⁶⁶ NEP MB at 50-51.

¹⁶⁷ *Id.* at 50-51.

¹⁶⁸ *Id.* at 52.

Brief, NEP's business policies and procedures in another service territories are irrelevant in the context of a DLC rate case in which NEP's proposed tariff would strip DLC tenants of numerous protections afforded to individually-metered tenants under Pennsylvania law and Commission regulation. As discussed, the slapdash provisions contained in NEP's tariff proposal contain numerous ambiguities and fail to provide meaningful protections to tenants who would reside in master/sub-metered multifamily properties. While Section 1313 protections would apply to these tenants, it is uncertain whether tenants will be able to learn about and exercise their rights under Section 1313 – and seek redress for any violations thereof.

Finally, it is not sufficient protection to simply inform tenants just before lease signing that they will not have access to universal service programs and other basic consumer protections. NEP's proposal lacks critical details about what would be included in such a disclosure, when in the process that disclosure would be provided (beyond a vague reference that it would be prior to lease signing), and how the information must be presented. Timing of such a disclosure is critical, as a potential tenant may be under pressure to quickly identify new housing, and may not understand the gravity of the information contained in the disclosure. At the same time, the content of the disclosure – and the manner in which the information will be provided – is of critical import to ensure that a tenant is fully informed of the substantial consequences to their utility rights if they agree to take service from a utility reseller. Information must be detailed, accessible, and clearly state each and every right that a tenant would lose. There is also no requirement that such a disclosure be signed by a potential tenant – raising substantial questions about whether such a disclosure would be effective to fully advise potential tenants of the rights they may forego by agreeing to take service from a utility reseller.

Moreover, providing a written disclosure to new tenants does not account for low income customers who currently reside in properties that may later be master and/or sub-metered under NEP's proposal. While NEP's initial proposal would apply to newly metered buildings, the procedures set here – if approved – may set the stage for future changes, making it critically important that the procedures here are well vetted and developed to protect consumer rights. Providing tenants notice prior to lease signing that they will lose access to universal services does not equate to actually providing vulnerable and low income tenants with assistance – instead, it serves to categorically exclude at-need tenants who rely on universal services to afford utility services from residing in certain properties. Indeed, at the time of lease signing, or just prior to, a tenant is often unable to reasonably foresee that they may encounter a medical emergency, the loss of employment, the death of a primary wage earner, or other cataclysmic life event which may force tenant to seek assistance from a universal service program and avoid termination or possible eviction which may follow if they are unable to pay their bill. This result is contrary to the public interest.

Importantly, the provisions of the Public Utility Code and the Commission's regulations exist not only for the safety of consumers, but also for the safety of the surrounding communities. As such, NEP's proposal to force consumers to waive their rights by signing a lease after providing a vague and undefined disclosure statement not only raises questions about whether these protections should be waived, but also whether they can legally be waived by individual customers – given their impact on public health and safety.

Courts in other states have found that a statutory right cannot be waived if the provision is intended to benefit the public. For example, the Connecticut Supreme Court stated:

[A]lthough it is generally true that privately held statutory and constitutional rights are waivable, not every mandatory provision can be waived, even by the party who benefits or

is protected under the statute. ... The public interest may not be waived. [When] a law seeks to protect the public as well as the individual, such protection to the state cannot, at will, be waived by any individual.¹⁶⁹

Similarly, the United States Supreme Court has stated that “[i]t has been held in this court and other courts that a statutory right conferred on a private party, but affecting the public interest, may not be waived or released if such waiver or release contravenes the statutory policy.”¹⁷⁰

In this instance, the consumer protections contained in Chapter 14 of the Public Utility Code and Chapter 56 of the Commission’s regulations protect individual rights, as well as public health and safety, from the dangers and societal ills associated with a lack of basic utility service. As such, the OCA submits that these protections should not, and arguably cannot legally be waived by the Commission’s approval of NEP’s tariff – or by the provision of subsequent disclosures to individuals impacted by NEP’s tariff proposal as a condition of signing the lease.

4. NEP’s proposal that the Commission staff review implementation under Rule 41.2 creates broad confusion about the scope of Commission authority and availability of Commission resources.

NEP argues that its recommendation that Commission staff review Rule 41.2 requests is necessary and appropriate, and that customers whose Tariff Rule 41.2 requests are rejected would be required to file a complaint against DLC – requiring Commission resources.¹⁷¹ As fully discussed in CAUSE-PA’s Main Brief, NEP is proposing what amounts to a novel mediation process to be administered by the Commission - without presenting any evidence that the Commission is willing or equipped to carry out this role.¹⁷² Further, it is unclear that the Commission has authority to require third parties to comply with these implementation procedure,

¹⁶⁹ Pereira v. State Bd. Of Edu., 37 A.3d 625, 653-54 (2012) (internal quotations omitted) (quoting In re Application for Petition for Writ of Habeas Corpus by Dan Ross, 866 A.3d 554 (2005)).

¹⁷⁰ Brooklyn Sav. Bank v. O’Neil, 324 U.S. 697, 704 (1945).

¹⁷¹ NEP MB at 52.

¹⁷² CAUSE-PA MB at 57-58.

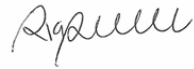
that the Commission would be able to identify potential violations, or to what extent the Commission's compulsory or punitive powers over landlords and third-party master/sub-metering companies would extend if violations were to occur.¹⁷³ Moreover, while NEP wholly dismisses DLC's ability to police Tariff Rule 41.2, it is unclear to what extent – if at all – DLC would be able to identify issues under the tariff proposal or compel adherence to its provisions by landlords and third-party master/sub-metering companies.

V. CONCLUSION

As described in CAUSE-PA'S Main Brief and this Reply Brief, NEP fails to meet its burden of proof to show that its proposed Tariff Rule 41.2 is just, reasonable, or in the public interest. To the contrary, there is overwhelming record evidence that NEP's tariff proposal is inadequately designed and contains broad ambiguities that could sever tenants in DLC's service territory from numerous customer protections, allow landlords and third-party master/sub metering companies to circumvent applicable laws, regulations, and Commission policy, and endanger residential tenants' ability to access numerous forms of customer assistance. As this Reply Brief evidences, NEP's own policies and procedures in PECO's service territory serve as a red flag – foreshadowing the types of predatory consumer practices that NEP and other utility resellers like it may employ in DLC's service territory. For these reasons, CAUSE-PA urges the ALJs and the Commission to reject NEP's tariff proposal in its entirety, with prejudice, and to uphold DLC's current Tariff Rules 18 and 41.

Respectfully submitted,
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¹⁷³ Id. at 57-58.



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