Buchanan
Ingersoll·Rooney

John F. Povilaitis
717 237 4825
john.povilaitis@bipc.com

409 North Second Street
Suite 500
Harrisburg, PA 17101-1357
T 717 237 4800
F 717 233 0852

September 13, 2021

VIA EFILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission, Office of Consumer Advocate, Office of Small Business Advocate v. Duquesne Light Company;
Docket No. R-2021-3024750, C-2021-3025538, C-2021-3025462, C-2021-3026057

Dear Secretary Chiavetta:

In accordance with the Presiding Administrative Law Judges' Briefing Order dated August 17, 2021 in the above-referenced proceeding, enclosed for electronic filing is the Reply Brief of Nationwide Energy Partners, LLC.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Thank you.

Very truly yours,

John F. Povilaitis

JFP/tlg
Enclosure
cc: Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission, Office of Consumer Advocate, Office of Small Business Advocate	:	Docket No. R-2021-3024750
	:	C-2021-3025538
	:	C-2021-3025462
v.	:	C-2021-3026057
	:	
Duquesne Light Company	:	

REPLY BRIEF OF NATIONWIDE ENERGY PARTNERS LLC

BUCHANAN INGERSOLL & ROONEY PC

John F. Povilaitis (I.D. #28944)
Alan M. Seltzer (I.D. #27890)
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357
Phone: 717 237 4800
Fax: 717 233 0852
E-mail: john.povilaitis@bipc.com
E-mail: alan.seltzer@bipc.com

Counsel to Nationwide Energy Partners LLC

September 13, 2021

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I. INTRODUCTION

Dispelling the Myths Around Master-Metering and NEP's Proposal

There is an undeniable chasm between NEP's desire to have master metering and smart sub-metering available in Duquesne's service territory and the perspective of the opposition. The opponents would have the Commission decide this matter based on some clear misunderstandings and/or mischaracterizations of master metering generally and NEP's specific proposal in this proceeding. While NEP understands its burden of proof with respect to its proposal, that burden has been set inappropriately too high by CAUSE-PA, Duquesne and selected others out of an unsupported fear of material loss of protections to primarily low income customers who will no longer be Duquesne's direct customers under NEP's proposal. However, the tariff Rule 41.2 proposal does not target the low income customers driving this speculative fear. Further, where NEP and others have been implementing its master meter and smart sub-metering program (i.e., PECO's service territory, Ohio and New York), there has been no issue of the loss of low-income tenant protections raised by NEP's opponents.

To set the record straight and provide the ALJs and the Commission a fair road map for deciding this matter, below are the key undisputed principles on which NEP's proposal should be decided:

- **The substantial array of potential and actual benefits and savings (i.e., rate, green energy supply, electric vehicle ("EV"), climate impacts and energy conservation and efficiency technology) to tenants in multi-family buildings, Duquesne, Property Owners and the public under tariff Rule 41.2 substantially outweigh the speculative and unproven billing, collection and service termination harms to tenants in these buildings.**

- **There is no statute (including PURPA), regulation or order banning the use of master metering and sub-meters as proposed by NEP for deployment in Duquesne's service territory**.

- **The limitation on the redistribution of electricity in Duquesne tariff Rule 18 and the ban on master metering in Duquesne tariff Rule 41 were borne out of concerns related to *energy conservation and efficiency*, not in providing tenants**

in master metered and sub-metered building protections relating to billing, payment and service termination.

- **NEP is not a public utility and should not be required to provide protections to tenants in multi-family commercial properties that are identical in all respects to what electric utilities like Duquesne are required to provide to customer tenants in such buildings. Code Sections 1313 (limitations on resale of electric energy) and subpart B of Code Chapter 15 (service terminations to leased premises) will continue to be the bedrock protections available to tenants in multi-family buildings electing to take service under proposed tariff Rule 41.2 as they are today.**

- **NEP's proposed master meter and smart sub-meter service offering is *different* than what Duquesne provides to customers and tenants in utility metered multi-family buildings, and Property Owners in multi-family buildings and their tenants should have the freedom to choose master meter and smart sub-meter service after disclosure of the benefits and risks of that service.**

- **NEP's proposed tariff Rule 41.2 contains a new class of service to qualifying Property Owners who will be Duquesne customers. It is not unreasonable or inconsistent with typical utility operations for Duquesne to be responsible for administering its tariff provisions, including implementation and enforcement. Therefore, administering tariff Rule 41.2 will not impose a material incremental obligation on Duquesne.**

- **The Commission does not lack the jurisdiction or the ability to enforce the provisions of proposed tariff Rule 41.2, which is an additional utility service that would be available to qualifying Property Owners of residential multi-family buildings in the Duquesne service territory.**

- **NEP's proposed master meter and smart sub-meter program is *not* geared to low-income tenants and the potential that a tenant, who has been given notice and exercises an informed waiver of alternative of utility service before signing a lease, becomes a low income tenant should not be a basis for precluding all master metering service.**

- **The claimed consumer protection concerns relating to such matters as billing, collection and service termination under NEP's proposal have *not* materialized in PECO's service territory in the 12 years NEP has been implementing the program or in connection with the presently existing 130 master metered buildings in Duquesne's service territory.**

- **There is no basis supporting any claimed material loss of customers, revenue and/or shifts in the allocation of costs among Duquesne's various rate classes as a result of implementing tariff Rule 41.2. After forty years of a master meter ban, the number of master meter installations likely to occur is speculative, and they are capped in number, much like a pilot program. In**

any event, any such impacts can be evaluated and debated in Duquesne's next base rate proceeding.

II. SUMMARY OF REPLY ARGUMENT

In the face of NEP's overwhelming evidence in support of its proposed master meter and smart sub-meter program, the Opposing Parties have failed to produce evidence of their hypothetical concerns or demonstrate any reason why Duquesne's service territory should not be opened to master metering of multi-family buildings for the first time in 40 years, as it is in PECO Energy's service territory. Property Owners and their tenants should have a choice in determining from whom they obtain their energy, efficiency and conservation benefits and related savings.[1] Duquesne's complete ban on master metering is longer reasonable. Property Owners (along with the assistance of agents like NEP) provide a different service to the public than offered by Duquesne and should be permitted to bring savings and benefits to Property Owners and their tenants that arise from the substantial improvements in master metering and smart sub-metering that have occurred in the last 40 years. NEP's proposed tariff Rule 41.2 is *not* primarily addressed to low income tenants, includes consumer protections, and there is no reason why NEP's program should be evaluated based on meeting the requirements established for public utilities in connection with billing, collection and service termination.

[1] As further described below, the benefits to Property Owners and their tenants in multi-family buildings of NEP's master meter and smart sub-meter program are derived from the differential between the price the Property Owner pays for electricity from the local utility and resells that electricity to its tenants. However, a resident never pays more than they would have with the utility and receives different services than those offered by the utility. The purchase and resell differential in no way is pure profit, but rather funds the work NEP provides the Property Owner to accomplish the energy conservation and decarbonization of the multi-family building.

III. ARGUMENT

A. There Is No Legal Barrier To The Commission Finding That Duquesne's Current Tariff Rules Banning Master Metering Are Unreasonable And Proposed Tariff Rule 41.2 Is Just And Reasonable.

The method by which an electric utility meters its customers is a fundamental element of how electric utility service is provided. None of the opponents of NEP's proposed master metering tariff Rule 41.2, Duquesne, CAUSE-PA, OCA or OSBA ("Opposing Parties"), have cited a statute, regulation or order that bars the use of master meters by commercial customer Property Owners who own multi-family buildings in Duquesne's service territory. The legal issue is whether Duquesne's ban of master meters continues to be reasonable forty years after going into effect, regardless of how a proposed new tariff rule allowing them is conditioned. NEP submits the ban is no longer reasonable.

As a threshold matter, the Opposing Parties have produced no evidence that NEP's proposal is an unprecedented "game changer" that will adversely impact tenants in multi-family buildings located in Duquesne's service territory. In fact, there are 130 master metered commercial buildings with residents in Duquesne's territory, and no evidence that the Duquesne commercial customers redistributing electric service to these tenants are "eviscerating" tenant rights. Furthermore, master metering was proposed by Duquesne in this case to be available to affordable housing developers via Rule 41.1 for low income tenants *without the full array of utility "customer protections"* demanded by the Opposing Parties. This fact makes the Opposing Parties' claims that utility customer protections are required by law in master metering scenarios very dubious.

Contrary to Duquesne's assertions,[2] PURPA does not compel the Commission to ban master metering, and any ban that was allowed to go into effect can and should be re-examined and re-evaluated in this proceeding. Section 2627 of PURPA makes it clear there is no preemptive

[2] Duquesne MB at 25.

federal mandate that compels the Commission or Duquesne to ban master metering. That Section states "[n]othng in this title prohibits any State regulatory authority or nonregulated electric utility from adopting, pursuant to State law, any standard or rule affecting electric utilities which is different from any standard established by this subtitle."[3] And even under federal standards, PURPA provides an exception for use of master metering.[4]

The Commonwealth Court confirmed the advisory nature of PURPA standards in *Romeo v. Pa.P.U.C.* in which it stated:

> If a federal statute has an express preemption provision, the plain words of that expression of preemption guide our preemption. Id. Section 2627(b) of PURPA, 26 U.S.C. § 2627(b), entitled 'Relationship to State law,' explicitly provides that it does not preempt state law: 'Nothing in this chapter prohibits a State regulatory authority or nonregulated electric utility from adopting, pursuant to State law, any standard or rule affecting electric utilities which is different from any standard established by this subchapter.' Congress has not enacted a provision that preempts Act 129, but rather, has expressly provided for state agencies such as the Commission to adopt standards or rules affecting electric utilities that are different from the standards set forth in PURPA or the Energy Policy Act.[5]

Further evidence that there is no legal prohibition on master metering is that master metering is currently available in PECO's service territory without even the specific required tenant protections and conservation/climate benefits proposed in tariff Rule 41.2. Duquesne's forty year old tariff Rule 41 banning master metering in residential buildings is not mandated by statute and predates smart sub-meters, modern conservation and energy efficiency measures, smart thermostats, demand response, green/climate sensitive investment and green electricity supply. Notwithstanding these advances, the Opposing Parties refuse to take a fresh look at whether master and smart sub-metering with conditions could be reasonable and in the public interest in 2021.

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[3] 16 U.S. C. § 2627(b).
[4] 16 U.S.C. § 2625(d). See NEP MB at 29-31.
[5] *Romeo v. Pa.P.U.C.*, 154 A.3d 422, 428 (Pa. Cmwlth. 2017).

B. The Opposing Parties Incorrectly Hold Commercial Customers Using Master Metering With Smart Sub-meters To The Same Rules For Tenants As Are Applied By Public Utilities For Residential Customers Individually Metered By The Public Utility.

The Opposing Parties mistakenly focus on differences between utility rules and programs for residential customers and sub-metering practices employed by Property Owners of multi-family buildings. There is no indication that Duquesne's tariff Rule 41's master metering ban and its requirement that tenants be individually metered by the Company, were put in place for the purpose of providing those tenants, that otherwise might be served behind master meters, with the same customer rules applicable to residential customers served by the utility. The mere existence of rules and regulations applicable to residential customers of electric utilities and set in place by the General Assembly and the Commission cannot be relied on by the Opposing Parties as the equivalent of a statute that bans commercial customers' any option of requesting and using a master meter.

A statute banning master metering does not exist. Rather, there are provisions of the Public Utility Code ("Code") that presume master metering is available to commercial customers. Code Sections 1313 and 3313 and Subchapter B of Code Chapter 15 all presume there are tenants served behind a commercial customer's master meter. These Code provisions address the protections available to tenants that the General Assembly has deemed to be the most important, i.e., protection against overcharges by Property Owners for the same amount of electric service sold by the utility and protection from termination of service when the commercial customer/Property Owner is at risk of having its service terminated. By making the availability of utility residential customer account "protection" rules to tenants the litmus test for allowing master metering, Duquesne, CAUSE-PA, OCA and OSBA have read these public utility law provisions completely out of the Code.

The Opposing Parties' criticism that Property Owners and their agents such as NEP are acting as utilities, that proposed Rule 41.2 cannot be enforced and that master metering lacks sufficient customer protections is a circular and illogical argument. Adding more customer protections to the tariff so that it perfectly matches utility rules on billing, collection, credit, payments plans etc. forces the tariff Rule 41.2 commercial customer applicant into the role of a public utility and only exacerbates what Duquesne, CAUSE-PA and OCA see as an enforceability problem. The Opposing Parties fail to accept that the Code does not prohibit master metering[6], and that the General Assembly has specified what it considers appropriate tenant protections in Code Sections 1313, 3313 and Subchapter B of Chapter 15. This is a different regulatory regime than what is required of utilities for utility customers, but it is up to the General Assembly to set the parameters of those protections, which it can revisit if at any point it deems these protections to be in need of updating.

C. The Enforcement of Proposed Tariff Rule 41.2 And Code Section 1313 Is Neither Problematic Nor Unavailable.

The Opposing Parties express concerns regarding future enforcement of issues related to NEP's proposed tariff Rule 41.2. CAUSE-PA believes it is unclear whether a tenant could file a complaint against a landlord or third party for a violation of the tariff rule.[7] It also posits that it will be difficult for the Commission and Duquesne to monitor an "unknown" number of landlords for purposes of adhering to Rule 41.2.[8] Duquesne worries that a tenant could file a complaint against the Company for not enforcing its tariff.[9]

[6] CAUSE-PA MB at 9, arguing rules prohibiting master metering are needed to protect tenants and such protection is required by the Code. OCA MB at 10-11.
[7] CAUSE-PA MB at 17.
[8] CAUSE-PA MB at 35.
[9] Duquesne MB at 15, FN 6.

Proposed tariff Rule 41.2 does not burden Duquesne with any type of enforcement obligation that is fundamentally different from the many tariff rules it already applies and enforces. Under its existing tariff, Duquesne must enforce against customers all the terms and conditions it establishes in Contracts and Special Contracts with customers.[10] Duquesne must establish whether developers meet Duquesne's specifications for excavating and backfilling for underground service in new developments which, if improperly done, Duquesne must evaluate and require to be corrected or redone.[11] Similar to a commercial customer establishing that it has met the requirements of Rule 41.2, Duquesne must be given proof of compliance with insulation standards in residential buildings.[12] Under Duquesne's tariff, customers must use electric service only at their premises and any change in connected load, demand or other condition of use requires Company notification.[13] Presumably the Company takes action if such notice is not provided. Duquesne's current tariff requires that residential service be used for lighting, appliance operation and general household purposes and less than 25% of total monthly usage can be for "commercial or professional activity."[14] Duquesne is presumably able to monitor and enforce this requirement applicable to hundreds of thousands of residential customers, yet CAUSE-PA doubts that proposed Rule 41.2, which would be applicable to no more than 130 potential commercial customer master meter applications, could be properly enforced. In some respects, the more detailed provisions and requirements of proposed tariff Rule 41.2 impose *fewer* obligations on Duquesne from an enforcement and monitoring perspective than does the discretionary and open-ended approach to obtaining relief from the master meter ban in its current tariff.

[10] The Commission can take notice of this and other Duquesne tariff provisions. Duquesne Tariff Electric-PA.P.U.C. NO. 25, Original Page No. 9.
[11] Duquesne Tariff Electric-PA.P.U.C. NO. 25, Original Page Nos. 20-24.
[12] Duquesne Tariff Electric-PA.P.U.C. NO. 25, Original Page No. 24.
[13] Duquesne Tariff Electric-PA.P.U.C. NO. 25, Original Page No. 25, Rule 16 Use of Service By Customer.
[14] Supplement No. 23 to Electric-PA.P.U.C. NO. 25, Original Page No. 25, First Revised Page No. 26.

CAUSE-PA asserts it is unclear how a tenant would seek relief for enforcement of its right under Code Section 1313 to not be charged more for the same electric service it would be charged by the utility.[15] The Commission has made this clear. In *Coggins v. PPL Electric Utilities Corporation,*[16] a campground resident alleged in his Complaint that the Echo Valley Campground, PPL's customer, overcharged him for electric service. The Commission determined that PPL was properly dismissed from the Complaint, but that the Complainant may have standing to file a Complaint under Code Section 1313, which addresses the resale of utility service by non-utilities, against the Campground. The Commission confirmed that "[u]nder Section 1313, a non-public utility entity cannot resell electricity it purchases from a public utility to any residential consumer for an amount greater than what the utility would charge its own residential customers for the same quantity of service."[17] The Commission went on to say that "[u]nder Sections 501(c) and 1313 of the Code, 66 Pa.C.S. §§ 501(c) and 1313, *it appears clear that the Commission has jurisdiction to award refunds if deemed appropriate for these violations*. Further, a Section 1313 violation may also involve the imposition of civil fines under Section 3301(a), 66 Pa.C.S. § 3301(a). In either case, the Commission has clear jurisdiction over resale price cap complaints."[18] (Emphasis added). Finally, the Commission in *Coggins* gave the Complainant the choice of filing an amended Complaint, substituting the Campground for PPL as the Respondent and proceed before the Commission seeking a refund and/or an investigation, or the Complainant could proceed with a private criminal complaint before a Magisterial District Court seeking the imposition of per violation penalties for summary offenses.[19]

[15] CAUSE-PA MB at 40.
[16] *Coggins v. PPL Electric Utilities Corporation,* Docket No. C-2012-2312785 (Order Entered July 18, 2013) ("*Coggins*"). *See* Appendix A.
[17] *Coggins* at 5.
[18] *Coggins* at 7, FN 3.
[19] *Coggins* at 7.

Thus, it is clear that the Commission has jurisdiction over the Property Owner/commercial customer for purposes of considering if refunds to a tenant are appropriate for violations of Code Section 1313. Regarding Duquesne's concern that tenants will file complaints against it for failure to enforcement the requirements of tariff Rule 41.2, the Company can easily protect itself by applying the tariff Rule fairly and consistently to the no more than 130 commercial customers that may seek master meters. And, as always, Duquesne's obligation is to provide reasonable, not perfect, service.

D. Duquesne's Claim that NEP's Proposed Master Meter and Smart Sub-Meter Proposal Reflected in Tariff Rule 41.2 is a Discretionary Service that the Commission Cannot Compel Duquesne to Implement is Incorrect and Unsupportable.

Duquesne argues that the Commission is powerless to require it to implement via tariff Rule 41.2 NEP's master meter and smart sub-meter program.[20] In support of this position, Duquesne relies upon two Commission cases, neither of which are pertinent to or dispositive of NEP's proposal here.[21]

In *Pa. PUC, et al.* v. *Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2018-2647577, et al., 2018 Pa. PUC LEXIS 431 (Order entered December 6, 2018) ("*Columbia*"), the Commission addressed the continued applicability of "on-bill" billing by Columbia Gas of Pennsylvania, Inc. ("Columbia Gas"). On-bill billing is the practice of some utilities to include as a separate line item on a customer's regular utility bill the charges associated with non-commodity goods and services offered by the utility itself or by third parties.[22] In *Columbia*, the utility was providing on-bill billing for goods and services offered by non-Commission regulated third parties.[23] The two third

[20] Duquesne MB at 5-6.
[21] It should also be noted that none of the cases cited by the Opposing Parties appear to limit master metering due to the inability to provide all utility-type billing, collection and service termination to tenants that are not public utility customers.
[22] *Columbia*, 218 Pa. PUC LEXIS 431, *54.
[23] *Columbia*, 218 Pa. PUC LEXIS 431, *55.

party recipients of these on-bill billing services were former affiliates of Columbia Gas. When certain competitive Natural Gas Suppliers ("NGSs") sought similar on-billing services, Columbia Gas refused to do so, and the NGS's claimed that Columbia Gas' selected provision of on-bill billing services to its former affiliates constituted service discrimination and a violation of Code Section 1502 (prohibiting discrimination in any provision of service by a utility).[24] In reversing the ALJ's view to the contrary, the Commission found that Columbia Gas' on-bill billing practice constituted a public utility "service", was unreasonable and discriminatory and, if Columbia Gas was willing to provide such service to *all* entities providing non-basis services, it could elect to do so.[25]

Duquesne suggests that the *discretion* afforded to Columbia Gas to discontinue on-bill billing or provide it to all entities requesting such service is the same discretion Duquesne has with respect to the implementation of tariff Rule 41.2 and the Commission cannot compel Duquesne to allow master metering.[26] Such assertion is erroneous. First, the on-bill billing at issue in *Columbia* was *not* a core utility function, unlike the metering at the heart of NEP's proposal in this case. Because Columbia's billing of non-commodity third party services could be provided by the third parties themselves (unlike the primary meter serving a utility customer), it was easy for the Commission to give the utility a choice in whether to provide such service prospectively – i.e., either to all or none of the parties requesting it. Second, the Commission in this case is not "compelling" Duquesne to do anything. Rather, accepting NEP's proposal in this proceeding will effectively allow Property Owners their right to choose whether electric service to their multi-family buildings will be provided by Duquesne (with both a commercial customer meter for the Property Owner and Duquesne-owned residential meters for each dwelling unit) or via a single

[24] *Columbia*, 218 Pa. PUC LEXIS 431, *57.
[25] *Columbia*, 218 Pa. PUC LEXIS 431, *72-73, 81.
[26] Duquesne MB at 5-6.

Duquesne master meter along with sub-meters installed by the Property Owner (working on their own or in tandem with NEP or similar companies). Nothing in *Columbia* (or in any other case cited by Duquesne) precludes a Property Owner from choosing how it desires to take electric service behind the property line to its building. In this sense, tariff Rule 41.2 ratifies the rights of Property Owners to determine how to use and maximize the value of their property, a right that cannot be eliminated or diminished as proposed by Duquesne in this proceeding.[27] Third, the effective ban on master metering reflected in Duquesne's existing tariff Rules 18 and 41 that *was permitted to go into effect by the Commission*[28] decades ago under vastly different circumstances (especially before the availability of smart sub-meter technology that allows Property Owners the ability to provide tenants information about their energy usage, participate in PJM demand response programs, provide energy conservation and green supply options, and provide bill credits for such programs) can be undone or reversed by the Commission as requested by NEP in this proceeding in the routine exercise of its jurisdiction over Duquesne's rates, services and facilities.[29] Duquesne has no discretion to eliminate a Property Owner's choice on how to meter electricity within its multi-family building(s), especially in circumstances where NEP and other third party

[27] The rights of property owners in Pennsylvania to use their property are substantial. Under Pennsylvania law, "property" includes the right to possess, use, enjoy and dispose of a thing. *Willcox v. Penn Mut. Life Ins. Co*., 357 Pa. 581, at 595 (1947); *DiGirolamo v. Apanavage*, 454 Pa. 557 (1973). Also included in the bundle of rights constituting "property" is the right to exclude other persons from using the thing in question. *Petition of Borough of Boyertown*, 77 Pa. Cmwlth. 357, 370, (1983) *quoting Loretto v. Teleprompter Manhattan CATV Corp*., 458 U.S. 419 (1982); *Kaiser Aetna v. United States*, 444 U.S. 164 (1979).

[28] Duquesne relies on the Commission's order in *Pennsylvania Public Utility Commission v. Duquesne Light Company*, 1981 Pa PUC LEXIS 89 (February 20, 1981) for the Commission's prior determination that its tariff Rule 41 banning master metering "complies with PURPA." Duquesne MB at 25. However, the Commission's 1981 order merely concludes that Duquesne was then in compliance with PURPA's master metering standards. 1981 Pa PUC LEXIS 89, *191. There is no discussion of then-tariff Rule 41 whatsoever. To suggest that the Commission has explicitly endorsed a ban on master meters or determined expressly that such rule complies with PURPA is a gross overstatement. Moreover, in the 40 years since the Commission allowed Duquesne's tariff Rule 41 to go into effect, much as changed the meter and smart sub-metering world, justifying a fresh look at these issues as proposed by NEP in this proceeding.

[29] Code Chapters 5, 13 and 15.

service companies can provide tenants in multi-family buildings the energy usage and related information necessary to conserve electricity consistent with the policy objectives of PURPA.

Duquesne's reliance on *Petition of PPL Utilities Corporation; Requesting Approval of a Voluntary Purchase of Accounts Receivables Program and Merchant Function Charge*, Docket No. P-2009-2129502, 2009 Pa. PUC LEXIS 266 (Order entered November 19, 2009) ("*POR Order*") is similarly misplaced. In the *POR Order*, the Commission considered PPL's voluntary Purchase of Receivables Program which provided, among other things, that PPL had the right to terminate service for the non-payment of all electric generation supplier ("EGS") charges purchased by PPL.[30] PPL argued that it voluntarily filed its Purchase of Receivables Program and that the Commission did not have the authority to require PPL to purchase an EGS' receivables. The Commission agreed, finding that no provision of the Code, expressly or by strong and necessary implication, provides the Commission the authority to require electric distribution companies like PPL to purchase accounts receivable from EGS's.[31]

The *POR Order* is completely inapposite to this case. The Purchase of Receivables at issue there was undeniably a PPL voluntarily-issued program intended to confer some benefit on EGS's, subject to compliance with various PPL-mandated conditions. In this proceeding, NEP's proposal is intended to end a decades long ban on master metering in Duquesne's service territory given changing conditions, including: (i) many years of experience with a form of master metering and smart sub-metering in PECO's service territory without adverse effects on PECO, its customers, Property Owners, tenants or the public; (ii) substantial changes in smart metering technology that allow Property Owners and third party metering companies to cost-effectively install and operate smart meters that provide tenants in multi-family buildings a significant amount of information

[30] *POR Order,* 2009 Pa. PUC LEXIS 266*10.
[31] *POR Order,* 2009 Pa. PUC LEXIS 266*12.

regarding energy usage, efficiency and conservation; and (ii) substantial rate, energy efficiency and conservation benefits available to Property Owners and tenants, often superior to those available through Duquesne. As noted above, Duquesne is not being compelled to do anything or deprived of some discretion. Rather, qualifying Property Owners are being provided a choice in how they obtain energy, energy efficiency and conservation benefits as an incident of ownership of their property.

It is clear that the provision of master metering is not some discretionary service offering that may be permitted or banned on the whim and in the sole discretion of the utility. As the Commonwealth Court found in *Crown American Corp.* v. *Pa.P.U.C.*[32], "… the requirement that tenants of multi-tenancy commercial buildings be individually metered and billed by PP&L is a condition-of-service rule, which the PUC clearly had the authority to review and approve under the above-quoted provisions of the Code."[33] If the Commission had the authority to ban master metering in support of energy reduction and conservation, as was the case in *Crown American*, it surely has the same authority to approve master metering and smart sub-metering in this case in support of the same energy conservation objectives.

E. CAUSE-PA's Reliance on the Commonwealth Court's Decision in *Tenant Action Group v. PaPUC*[34] is Misplaced.

In *Tenant Action*, a case decided over 25 years ago, the Commonwealth Court reversed a Commission decision finding that certain "Emergency Provisions" regulations, jointly developed by PECO Energy and Tenant Action Group, did not apply to tenants where their service has been terminated due to a landlord's failure to pay its bill.[35] The Court rejected the Commission's arguments that the Emergency Provisions were effectively terminated by the subsequently enacted

[32] *Crown American Corp.* v. *Pa.P.U.C.,* 463 A2d 1257 (Pa. Cmwlth. 1980) ("*Crown American*").
[33] *Crown American Corp.* v. *Pa.P.U.C.,* at 1259.
[34] *Tenant Action Group v. PaPUC*, 514 A.2d 1003 (Pa. Cmwlth. 1986) ("*Tenant Action*").
[35] *Tenant Action*, 514 A.2d 1003, 1004.

Code provisions at Sections 1521-1533 and the Commission's implementing regulations at 52 Pa. Code §§ 56.121-56.126. The Emergency Provisions generally provided that a utility could not terminate or refuse to restore service to any premises when any occupant in that premise is certified by a physician to be seriously ill or suffering from a medical condition that will be aggravated by a cessation of service or failure to restore service.[36] The Court held that the Emergency Provisions apply to landlord and tenant service terminations.[37]

CAUSE-PA erroneously claims that *Tenant Action* "… recognized the practical importance of a public utility requiring individual metering of residential buildings to enable the public utility to comply with critical protections for medically vulnerable customers."[38] Importantly, there is nothing in *Tenant Action* stating or suggesting that any of the buildings at issue in that case had "individual meters." Therefore, concluding that *Tenant Action*, an over two decade old case arising under unusual and unique circumstances involving termination rules that have since been modified, is an endorsement or requirement for *individual utility meters* in multi-family buildings is a leap too far. And, even if *Tenant Action* is a clear legal endorsement/mandate for individual meters in multi-family buildings (which it is not), NEP's proposal specifically calls for individual smart sub-meters in these buildings, albeit with meters owned by the Property Owner and *not* Duquesne as the local utility.

In its zeal to strike down NEP's reasonable master meter and smart sub-meter model, CAUSE-PA also overstates the implications of *Tenant Action* by suggesting that "master/sub-metering schemes may be [sic] subject to some provisions of the Public Utility Code."[39] It is unclear how *Tenant Action's* consideration of the Emergency Provisions, which were expressly

[36] *Tenant Action*, 514 A.2d 1003, 1004
[37] *Tenant Action*, 514 A.2d 1003, 1006.
[38] CAUSE-PA MB at 39.
[39] CAUSE-PA MB at 39.

written to apply to a "utility," could apply to a Property Owner customer of Duquesne or third party metering companies like NEP that are not public utilities.

Like many of the Opposing Parties' arguments against NEP's master meter and smart sub-meter model, CAUSE-PA's reference to and reliance on *Tenant Action* is a meaningless search for a solution to a non-existent problem.

F. NEP Has Demonstrated Significant Energy Conservation, Efficiency and Other Benefits of its Master Meter and Smart Sub-Meter Proposal

NEP devoted thirteen pages of its Main Brief to demonstrating the significant benefits of its master meter and smart sub-meter proposal to all relevant stakeholders, i.e., Property Owners, utilities, tenants and the public interest.[40] In contrast, CAUSE-PA devotes less than a page in its Main Brief to energy efficiency and conservation issues under NEP's proposal, concluding that (i) NEP produced no evidence that master metering/sub-metering improves overall energy efficiency and reduces usage, (ii) NEP does not require any standards for energy conservation, and (iii) NEP has not substantiated that master metering inherently leads to conservation.[41] These conclusions are false and contrary to the preponderance of evidence presented by NEP.

NEP painstakingly demonstrated energy efficiency and conservation related benefits of its master meter and smart sub-meter program from the perspective of each key stakeholder. Those benefits are highlighted below:

Property Owner/Customer Perspective:

- Much greater flexibility and control of the building's internal electrical infrastructure.
- Availability of various energy services, such as advanced tenant billing options, a carbon free or green total property supply guarantee offered to prospective tenants, electric vehicle charging stations, demand response and energy efficiency technologies.

[40] NEP MB at 16-29.
[41] CAUSE-PA MB at 56.

- Property Owner has greater control over the energy decisions for the entire property; under Duquesne's current tariff Rules, the Property Owner must cede control over electric service in all the residential dwelling units to Duquesne.

- Master metering can provide a multi-family Property Owner with: (i) the ability to make long-term investments, (ii) the ability to track usage at the community complex, building and resident level, (iii) predictive insights and control for maintenance/troubleshooting for equipment failures without waiting for the utility to respond to a tenant complaint, (iv) comparisons of usage for residents interested in conservation, (v) an incentive and payback for energy efficiency and demand response investments lacking when a tenant reducing usage has no impact on the Property Owner/commercial customer's bill (as opposed to increasing rent charges to recover conservation/efficiency investments), (vi) full control and a single consistent, measureable and verifiable account for the entire property allowing a baseline measurement for reductions and investor requirements, loan programs or certifications such as LEED[42] for the measurement of complete property electric usage (not dependent on access to tenant account information by the utility), (vi) better ability for older properties to compete in the rental market through new customized design and energy options that better utilize space and increase safety (without costly or refused requests to the utility for relocation of their equipment), the ability to offer a tenant a holistic combined electric, water, and in some circumstances, natural gas bill, (vii) relief from utility mandates for installed infrastructure at utility dictated costs, equipment specifications and construction timetable (avoiding delays that jeopardize the start of receipts from tenants), (viii) the ability to quickly and efficiently install demand controls across all rental units in a property, aggregating at the master meter, permitting participation in PJM demand response programs that reduce demand on the utility grid with a single account and master metered baseline (with participating tenant bill credits – a participation unlikely by the tenant due to lack of property ownership and move-in/move-out patterns).[43]

- Allows Property Owners to take advantage of incentives offered by investors, loan programs or green certifications.[44]

- Allows the Property Owner or its agent (like NEP) to shop for carbon free or renewable energy supply. This ensures that the entire property can claim the carbon or renewable benefit. It aligns Property Owner interest in climate change and carbon reduction control with the properties they own.

- Allows a Property Owner to pass along to tenants a bill credit based on the lower cost of a commercial load versus a residential load.

[42] LEED or "Leadership in Energy and Environmental Design."
[43] NEP St. No. 1, at 12:13-14; NEP St. No. 1, at 13:6-20; NEP St. No. 1, at 15:1-23; NEP St. No. 1, at 16:1-20; NEP St. No. 1, at 17:1-8; NEP St. No. 1, at 20:1-14.
[44] NEP St. No. 1, at 16:8-12.

- Allows the Property Owner to attract investors and lenders interested in making more climate sensitive deployments of capital.

- Allows the Property Owner potential access to investment opportunities and loan programs designed around Renewable/Resilient/Climate/Energy Efficiency/Demand Response programs unrelated to Duquesne.[45]

- Allows for convenient and more readily available baseline measurement of the entire property's usage through master metering, from which reductions in usage can be documented. This is often a requirement for investors, loan programs and LEED certifications. Master metering makes compliance with these dictates faster and easier.

Duquesne Perspective:

- Avoids the cost to the utility of responding to and managing potentially hundreds of accounts.

- Utility call centers can operate more efficiently and the utility has one customer contact during a service outage.

- The time, costs and effort to install and replace metering within a multi-family development or building is reduced with a master meter.[46]

- A utility's service load is more stable with master metering because, as tenants move-in and move-out, load is not shifted on and off default service, but maintained by a supplier contract arranged by the Property Owner.[47]

- Collection risk is shifted away from the utility with master meters because uncollectible accounts are typically greater for residential customers than commercial customers.[48]

- Master metering can also reduce the capital requirements Duquesne can obligate the commercial customer to supply compared to individual utility meters for each tenant.

Tenants' Perspective:

- Benefits to tenants from master metering start with the smart sub-meter. The smart sub-meter information and control options available to a tenant under master metering give them detailed insight into their electricity usage and provides them with control over the consumption of electricity in their unit.[49]

[45] NEP St. No. 2, at 23:11-17.
[46] NEP St. No. 1, at 20:20-23.
[47] NEP St. No. 1, at 21:7-9.
[48] NEP St. No. 1, at 21:9-11.
[49] NEP St. No. 1, at 21:14-17.

- NEP's modern smart sub-meters provide substantial benefits to tenants in a building with more than four units, including: (i) a tenant can choose to pay weekly, bi-monthly or on a date they set for the month[50]; (ii) tenants receive or have access to *daily* usage information allowing them to actively make decisions about their energy usage to encourage conservation and reduce costs to meet their budget[51]; (iii) the tenant's bill shows usage trends in their building relative to neighbors[52]; (iv) notifications when the tenant's bill exceeds a particular amount or is estimated to exceed a specified amount by the end of the billing period[53]; (v) tenants enjoy using a carbon free and climate focused electricity supply without the usual premium cost over default service or the plain vanilla system mix electricity supply from a competitive supplier[54]; (vi) use of a shopped electricity supply throughout the term of their lease without the burden of shopping or contract renewal issues[55]; (vii) tenant access to participation in PJM demand response programs, rooftop solar and Electric Vehicle charging stations that can be part of a Property Owner's green smart building, financed thought the master meter model[56]; and (viii) a minimum credit of $2.00 per month below what the utility would charge for the same electricity service.[57]

As summarized above, NEP produced substantial evidence of real, significant energy conservation, efficiency and other benefits of its proposed master meter and smart sub-meter program. That program offers a different service and opportunity for savings than reflected in utility programs offered by Duquesne in the context of no master metering and third party sub-metering. Property Owners and their tenants in multi-family buildings in the Duquesne service territory should have the opportunity to choose a different service for obtaining energy and conservation benefits than what is available through the jurisdictional utility, much like others are able to do in PECO's service territory.

In the face of the overwhelming benefits of NEP's master meter and smart sub-meter proposal, Duquesne nevertheless incorrectly asserts that the detriments to that proposal outweigh

[50] NEP St. No. 1, at 21:18-20.
[51] NEP St. No. 1, at 21:20-22, 22:1-4.
[52] NEP St. No. 1, at 22:4-6.
[53] NEP Exhibit TR-10.
[54] NEP St. No. 1, at 22:14-19.
[55] NEP St. No. 1, at 22:19-21.
[56] NEP St. No. 1, at 23:10-18.
[57] NEP St. No. 1, at 23:19-22, 24:1-2.

the benefits.[58] As noted previously, the "detriments" that Duquesne and the other Opposing Parties see are predicated upon erroneously evaluating NEP against the customer protections Duquesne is required to provide to its customers as a regulated public utility, which NEP is clearly not. The litany of alleged short-comings are the result of failing to recognize that NEP's program is not focused on low-income customers and is not being provided by a public utility.

The disconnect between Duquesne and NEP is no better explained than by Duquesne's assertion that "… the majority of the alleged benefits ultimately derive from the fact that Duquesne Light is a regulated utility and NEP is not….As an unregulated entity, NEP can offer services that Duquesne Light is not authorized to provide."[59] What Duquesne clearly fails to understand is that the *differences* between NEP and Duquesne are what drive both the variation in the services offered and the benefits that can be provided by each of these parties. Duquesne labors at trying to directly compare what NEP provides versus what it provides to customers when it is really the differences in offerings and services that are the key. NEP believes that Property Owners, tenants and other stakeholders should have the *choice* to decide how and from whom they obtain energy, efficiency and conservation services for multi-family buildings and not just one size fits all with the local utility. It is not fatal to NEP's proposed tariff Rule 41.2 that Duquesne offers the same or even "better" services in some respects, so long as all parties understand that if master metering, as conditioned in Rule 41.2, is allowed, non-utility third parties with a more entrepreneurial status allow it to offer *different* services, savings and benefits than Duquesne might offer and that the appropriate clientele should have an opportunity to utilize.

[58] Duquesne MB at 20-21.
[59] Duquesne MB at 20.

G. Duquesne and CAUSE-PA Fundamentally Misconstrue The Application Of Proposed Tariff Rule 41.2 By Focusing On NEP Rather Than The Commercial Customers/Property Owners Who May Seek The Master Metering Option.

CAUSE-PA contends it is not clear the Commonwealth Court would uphold the all of the Commission's authority to regulate landlords or third parties, such as NEP.[60] Duquesne argues that NEP proposes to offer many services offered by utilities and that the Commission has no authority to regulate private companies such as NEP.[61] While a customer-applicant under tariff Rule 41.2 may be assisted by an agent like NEP in seeking authorization to use a master meter, it is the utility's commercial customer/Property Owner that has standing to seek this service under tariff Rule 41.2.

Under proposed tariff Rule 41.2, it is the commercial customer/Property Owner that must: 1) demonstrate the premises have at least four dwelling units, 2) commit to complying with Code Section 1313, 3) provide a revenue grade smart meter for each premise, 4) provide shared access to electric vehicle charging and at least one technology for energy efficiency, energy control or demand response, 5) provide a minimum $2 monthly bill credit to each tenant, 6) provide the same billing collection and fee rules and meter testing fees/requirements applied by Duquesne, a payment plan option, and the same number and type of notices of disconnection provided by Duquesne, 7) provide a commitment to not disconnect for reasons other than non-payment or safety concerns, 8) provide a green energy supply to tenants, and 9) provide notice to tenants before lease signing that utility low income programs such as CAP will not be available.[62]

All of these foregoing commitments and requirements can be documented at the time master metering service is requested, just as Duquesne insists other tariff requirements must be met before a service is provided. And Duquesne could have proposed that its "enforcement"

[60] CAUSE-PA MB at 20, 40.
[61] Duquesne MB at 12-14.
[62] NEP MB Appendix A, NEP Exhibit TR-22.

burden be alleviated by reporting requirements. However, none of the Opposing Parties have offered even a single proposal for modification of proposed tariff Rule 41.2 to alleviate any of their alleged concerns. Instead, they have opted for a strategy of maintaining the status quo and hoping the Administrative Law Judges and the Commission will reject the proposal wholesale due to unsubstantiated concerns of adverse consequences.

Duquesne and CAUSE-PA fundamentally misconstrue the application of proposed tariff Rule 41.2 and, therefore, their legal concerns about NEP acting as a public utility or the PUC being unable to legally enforce the Rule's requirements are misplaced. Tariff Rule 41.2 will apply to commercial customers seeking permission to use master metering. NEP, or any other company seeking to provide services similar to NEP, is merely the Property Owner's/commercial customer's agent. It is the Property Owner, a utility customer, who must meet tariff Rule 41.2's requirements. Neither Duquesne nor a tenant needs to attempt to enforce the tariff against an unregulated third party.

Duquesne has not provided for new master metering in its service territory for forty years. A significant amount of CAUSE-PA's and the OCA's anxiety over the impact of master metering may be due to this long period of lack of experience with anything like the business model NEP has presented. It may help to view the proposed master meter and smart sub-meter program as having the same context as a utility-sponsored "pilot" program, similar to the EV Charging pilot proposed by Duquesne in this proceeding. Despite the existence of master metering with sub-metering in multiple service territories, including PECO, it has been acknowledged in this case that more information could be obtained on the impact of additional master metering in Duquesne's service territory between now and the Company's next rate case. Given NEP's willingness to assess the program's cost, revenue and other impacts in Duquesne's next base rate proceeding, proposed Tariff Rule 41.2 has many of the elements of a new pilot program.

In the recent Philadelphia Gas Works ("*PGW*") gas cost recovery proceeding, the Commissioners identified the characteristics of pilot programs that fit the circumstances of NEP's master metering with smart submeters proposal in this case.[63] In *PGW*, the ALJ recommended approval of a pilot program utilizing renewable natural gas. While the Commission found issues with the statutory support for the initiative, Chairman Dutrieuille noted the pilot would allow PGW to gain "knowledge and experience" with a new source of gas. *See* Appendix B. Vice Chairman Sweet added that "[i]n general, pilots are an avenue to examine new ideas and practices to determine impacts and costs in a manner that includes guardrails to help limit the potential for negative impacts on customers. It is appropriate for PGW to utilize pilots to help it develop business practices that align with an ever-changing utility environment." *See* Appendix B.

NEP's proposal fits this criteria for a pilot-type initiative. The number of installations is limited under tariff Rule 41.2 and the financial and customer impacts of allowing this additional master metering can be reviewed in Duquesne's next base rate proceeding. NEP has proposed increased customer protections for revised tariff Rule 41.2. All these factors act as the "guardrails" Vice-Chairman Sweet noted in his discussion of pilots. In the event the Commission determines the "pilot" should not expand, customers taking service under tariff Rule 41.2 would continue as master metered buildings, not subject to future additional conditions of service established in the future proceedings. Approval of NEP's proposal in this proceeding as a pilot-type authorization is a reasonable approach to allowing the program to move forward while permitting further study of this promising alternative option for metering customers in Duquesne's service territory.

[63] *Pennsylvania Public Utility Commission v. Philadelphia Gas Works*, Docket No. R-2021-3023970 (Order Entered August 26, 2021) ("*PGW*").

H. The Potential That A Tenant Behind A Master Meter Could Become Payment Challenged Should Not Be The Basis For Rejecting NEP's Proposed Tariff Rule 41.2.

No Opposing Party has demonstrated (or cited to any cases holding) that Duquesne's ban on master metering was born of an intent to limit all residential tenants to service by the local electric utility because of a Commission preference for low income customers having access to utility rules and programs. CAUSE-PA's and the OCA's opposition to NEP's proposed master meter and smart sub-meter program are incorrectly premised on their view that master metering was limited or eliminated in tariff rules in order to protect low income residential customers.

CAUSE-PA considers tenant protections under master metering to "pale" in comparison to protections Duquesne is required to offer, or are missing, and asserts that NEP does not collect information on the income level of tenants and is "ignorant" of the "distinct likelihood" a non-low-income household may become a low-income household.[64] At the same time, CAUSE-PA is concerned that NEP will possess too much information about a tenant's usage or payment history and not maintain its confidentiality.[65] The OCA interprets Code Section 1313 to go way beyond standard utility rates and charges for residential service and reads into this portion of the Code a Property Owner obligation to match all charges set by a utility, including discounted CAP service.[66]

As explained in NEP's Main Brief, tariff Rule 41.2 is intended for non-affordable housing buildings and tenants, smart buildings and tenants looking for a green electricity supply. Further, under the tariff Rule EV charging and conservation/efficiency technologies must also be offered. In addition, a prospective tenant will be advised that utility low-income assistance programs will not be available before a lease is signed.

[64] CAUSE-PA MB at 25-26, 29, 31.
[65] CAUSE-PA MB at 52-53.
[66] OCA MB at 11-14.

Can a tenant that is not low-income become low income after they sign a lease or make some other future financial commitment? Of course. But that is true for any person's prospective financial commitment, including mortgages, car payments and insurance payments. Further, there are other assistance options available to renters beyond those employed by utilities.[67] Limiting metering options to individual utility meters for all dwelling units because of the risk a customer may encounter economic difficulties unreasonably values the limited risk of a consumer becoming payment troubled over the more likely outcome of substantial energy, conservation and efficiency benefits to both Property Owners and their tenants in multi-family buildings.

The OCA's reading of Code Section 1313 is overbroad. That statute cannot be reasonably read to require a commercial customer who is sub-metering tenants to apply every component of a utility's charges to customers, including complicated discount programs such as CAPs with varying levels of discounted service, arrearage repayment, and arrearage forgiveness, in order to not charge more than the utility would for residential service. This Code section can only reasonably be read as requiring adherence to standard utility residential electric charges; otherwise, Property Owners would have to become public utilities in order to duplicate all possible utility billings.

Master metering with smart sub-meters should not continue to be banned in Duquesne's service territory because the customer protections under NEP's proposed master mater and smart sub-meter program are different from those applicable to utility service or because a tenant could become a low-income person. These concerns, as well intentioned as they might be, have not been a problem or issue in PECO's service territory where NEP has been operating for over 12 years.

[67] NEP St. No. 2 at 4:2-3 and 5:1-3.

I. Miscellaneous Issues

1. *NEP's proposed tariff Rule 41.2 is not motivated solely to obtain profits* – CAUSE-PA and Duquesne claim that NEP's proposed master meter and smart sub-meter program is motivated solely for NEP's economic gain and, as such, it cannot support a change in Duquesne's longstanding ban on master metering.[68] There is no doubt that NEP, like Duquesne itself, is a private company and as such is in part motivated to profit and obtain reasonable returns on and of its invested capital. However, a company pursuing profit does not mean lack of value for service. It is equally clear that the motivation behind NEP's proposed master meter and smart sub-meter program is far more than profit seeking. The substantial preponderance of evidence of benefits to all key stakeholders amply demonstrates the value of NEP's master metering and smart sub-metering program beyond merely NEP's financial gain. Contrary to CAUSE-PA's suggestion, NEP has not asserted any "right" to make a profit.[69] Indeed, parts of NEP's master meter and smart sub-meter program requires the incurrence of substantial costs to provide benefits to Property Owners and their tenants, including (i) the $2.00 credit per customer per month,[70] (ii) the provision of a specific energy technology at each multi-family building, (iii) free electric charging service and (iv) the provision of "premium" green electric service to each tenant at a cost not to exceed what the customer would have otherwise paid for regular electric service from Duquesne.

NEP provides Property Owners design, hardware, software, infrastructure and enrollment and controls for participation in programs, such as PJM. These services are paid for by the difference in rates between what the Property Owner pays for electricity from its utility (like Duquesne) and resells it to its tenants. However, a resident never pays more than they would have

[68] CAUSE-PA MB at 8; Duquesne MB at 19.
[69] CAUSE-PA MB at 8.
[70] Contrary to CAUSE-PA's suggestion in its Main Brief at 16, the $2.00 credit was offered by NEP in its *direct testimony*, not later in the proceeding. *See*, NEP St. No. 1 at 10:20-23.

with the utility and receives different services than those offered by the utility. The purchase and resell differential in no way is pure profit, but rather funds the work NEP provides the Property Owner to accomplish the energy conservation and decarbonization of the multi-family building.

2. *CAUSE-PA mischaracterizes NEP's proceeding in Ohio addressing certain billing and collection issues* – CAUSE-PA claims that NEP has "fought long and hard against the ability of state regulators to oversee residential billing, collection and termination standards."[71] That is an incorrect and misleading conclusion about NEP's relationship to state regulators in Ohio. The Ohio case cited to and relied upon by CAUSE-PA involved a dispute by a tenant which found, among other things, that NEP is not a public utility under Ohio law. That proceeding demonstrates absolutely nothing about NEP's relationship to Ohio regulators and does not support CAUSE-PA's claim that NEP fought and long and hard with state regulators over anything. In the referenced litigation, the Public Utilities Commission of Ohio found that NEP's charges to the tenant were in fact *less* on an annual basis than what the tenant would have paid under the local utility's default service tariff.[72]

3. *CAUSE-PA's Alleged Concerns About Re-metering a Building Are Unfounded* – CAUSE-PA attempts to undermine NEP's master metering and smart sub-meter program by erroneously suggesting that it would be difficult and expensive to re-meter a building that has NEP metering equipment in it if the Commission were later to have been found not to have jurisdiction to allow such a proposal.[73] In making this argument, however, CAUSE-PA appears to have forgotten that they very proposal made by Duquesne and supported by CAUSE-PA in the now withdrawn tariff Rule 41.1 would have allowed Duquesne to require the customer

[71] CAUSE-PA MB at 20.
[72] *Complaint of Wingo* v. *Nationwide Energy Partners, LLC*, 163 Ohio St. 3d 208, 213 (Supreme Court of Ohio, December 9, 2020).
[73] CAUSE-PA MB at 21.

"to update the building's electrical systems, at customer expense, to allow the Company to separately meter each residential dwelling unit"[74] should the customer subsequently fall out of compliance with eligibility criteria or ongoing requirements. CAUSE-PA was willing to accept the re-metering and updating of electrical systems in connection with Duquesne's tariff Rule 41.1, but finds it unacceptable in connection with NEP's tariff Rule 41.2. In any event, it is unlikely that any Property Owner would incur the time and cost to re-meter a building before all appeals have been fully exhausted and the right to master meter along with smart sub-meters was upheld.

4. *Tenants Arranging for Payment of the Entire Building in the Event of Property Owner Default on Obligation to Duquesne Light* – CAUSE-PA argues that NEP's proposal complicates and undermines the rights given tenants under Subchapter B of Code Chapter 15 (Discontinuance of Service to Leased Premises).[75] Specifically, CAUSE-PA argues that with master metering, tenants would have to arrange for the whole building's monthly electric service payment to be made – not just their individual dwelling unit -- in the event of a Property Owner default or non-payment to Duquesne. This is in contrast to tenants just paying the last 30 days of service for their dwelling unit in an individually metered building. What CAUSE-PA ignores, however, is that this same issue already exists today in connection with master metered buildings, and CAUSE-PA has not shown that it is a serious problem in connection with the 130 master metered buildings currently in Duquesne's service territory or in the master metered buildings being served by third party companies like NEP in the PECO service territory.

5. *Verification of Tenant Charges Under NEP Master Meter and Smart Sub-Meter Proposal* – CAUSE-PA asserts that NEP has not made it clear how a tenant can verify their electric service charges to determine if Code Section 1313 has been followed.[76] However, under

[74] Duquesne St. No. 6 at 5:16-20.
[75] CAUSE-PA MB at 43-46.
[76] CAUSE-PA MB at 49-50.

NEP proposed tariff Rule 41.2 (subsection 6) tenants are required to receive an explanation of how their bills are calculated.[77]

6. *CAUSE-PA Misstates Its 2018 Testimony* – CAUSE-PA claims that the testimony it submitted in the 2018 Duquesne base rate case (leading to the now withdrawn tariff Rule 41.1) never anticipated the use of sub-metering along with a master meter.[78] However, this is incorrect since the testimony submitted in that proceeding stated: "Tenant units would be more than likely sub-metered for purposes of insuring usage controls over tenant consumption and to monitor spikes in usage attributable to specific units in the building."[79]

7. *Entities Providing Different Service Than NEP* – Duquesne claims that if NEP's proposed tariff Rule 41.2 is approved, there is the risk that entities with different terms of service could be providing service different than those services offered by NEP.[80] However, all Property Owners and their agents looking to provide master metering and sub-metering in Duquesne's service territory will be required to comply with the specific requirements of tariff Rule 41.2, irrespective of their own business model. This eliminates Duquesne's non-existent concern.

8. *OSBA's Cost and Rate Allocation Concerns* – To NEP's surprise, OSBA elected not to argue any of its positions directly in its Main Brief, preferring instead to rely solely on the testimony of its Witness Robert Knecht. Mr. Knecht's concerns about NEP's proposed master meter and smart sub-meter program focused primarily on cost and rate allocation issues among customer classes resulting from increased master metering in the Duquesne service territory.[81] Since it is clear that the impacts of master metering on Duquesne's revenues and cost

[77] NEP Exhibit TR-22.
[78] CAUSE-PA MB at 14.
[79] NEP Exhibit TR-12, CAUSE-PA St. No. 2 at 9:8-11.
[80] Duquesne MB at 24-25.
[81] OSBA St. No. 1-R at 25.

allocations are not presently known and therefore speculative (a position confirmed by OCA in OCA MB at 15), this issue should be deferred until the first Duquesne base rate case following the implementation of NEP's proposed tariff Rule 41.2, as previously proposed by NEP.

9. *Duquesne Customer Base Reduction* – Duquesne seeks to dismiss NEP's proposed master meter and smart sub-meter program based on unsupported assertions that it will lose residential customers and related revenue if tariff Rule 41.2 were implemented and approved.[82] This is another issue that should be evaluated in Duquesne's next base rate proceeding after NEP's proposed tariff Rule 41.2 has been approved and implemented. And, as noted previously, Duquesne already has 130 master metered buildings in its territory, originally proposed to add more such buildings with its now withdrawn tariff Rule 41.1 and proposed all of this without the benefit of any apparent concerns and/or studies addressing loss of its customer base and related revenues.[83]

[82] Duquesne MB at 17-18.
[83] NEP MB at 46-49.

IV. CONCLUSION

For all the reasons specified in this Reply Brief and Main Brief, Nationwide Energy Partners LLC respectfully requests that the Commission find that it has met its burden of proof and approve its proposed tariff Rule 41.2 in its entirety.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

By: _____

John F. Povilaitis (I.D. 28944)
Alan M. Seltzer (I.D. #27890)
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357
Phone: 717 237 4800
Fax: 717 233 0852
E-mail: john.povilaitis@bipc.com
E-mail: alan.seltzer@bipc.com

Counsel to Nationwide Energy Partners LLC

APPENDIX A

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held June 13, 2013

Commissioners Present:

Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
Wayne E. Gardner
James H. Cawley
Pamela A. Witmer

James E. Coggins C-2012-2312785

v.

PPL Electric Utilities Corporation

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Kandace F. Melillo, issued on April 29, 2013, in the above-captioned Formal Complaint (Complaint) proceeding. Exceptions have not been filed. However, we exercised our right to review the Initial Decision pursuant to Section 332(h) of the Public Utility Code (Code), 66 Pa. C.S. § 332(h). For the reasons stated below, we shall modify the ALJ's Initial Decision and permit the Complainant to file an Amended Complaint within thirty days of the date this Order is entered.

History of the Proceeding

On June 28, 2012, James E. Coggins (Complainant or Mr. Coggins) filed a Complaint against PPL Electric Utilities Corporation (PPL). The Complainant alleged that he is a permanent resident of the Echo Valley Campground (Campground) in Tremont, Pennsylvania, and that the Campground is overcharging him and others for electric service. He also alleged safety concerns with the Campground's electric facilities. In the request for relief, Mr. Coggins sought both a refund of the overcharges and an investigation into the alleged safety violations.

On July 27, 2012, PPL filed a Certificate of Satisfaction indicating that the Complaint was satisfactorily resolved. However, on August 3, 2012, the Complainant filed a timely Objection to the Certificate of Satisfaction seeking permission to amend the Complaint to include the Campground as a party. In the Objection, Mr. Coggins alleged that the Campground is overcharging him at the rate of $0.20 per kilowatt hour. In the Prehearing Order dated March 7, 2013, the ALJ stated that she would not add the Campground as an additional party because the Commission did not appear to have jurisdiction over the Campground.

On March 26, 2013, PPL filed an Answer and New Matter, alleging that the Complainant was not a PPL customer and he has not alleged any failure on PPL's part to provide service to him. In the New Matter, PPL averred that the Complaint should be dismissed for lack of standing. Also on March 26, 2013, PPL filed Preliminary Objections pursuant to Sections 5.101(a)(1) and (5) of our Regulations, 52 Pa. Code §§ 5.101(a)(1) and (5), seeking dismissal of the Complaint based upon lack of Commission jurisdiction and lack of capacity to sue. Rather than address the alleged jurisdictional grounds, however, PPL's Preliminary Objections argued lack of capacity to sue and equated that with lack of standing. The Complainant did not file a reply to the New Matter or an Answer to the Preliminary Objections.

In her Initial Decision, the ALJ treated PPL's Preliminary Objections as a Motion for Judgment on the Pleadings because the issue of lack of standing was raised in the New Matter. The ALJ granted the Motion for Judgment on the Pleadings on the basis of lack of standing and dismissed the Complaint. I.D. at 9.

No Exceptions to the Initial Decision have been filed.

Discussion

Legal Standards

The Commission's Rules of Practice and Procedure regarding motions for summary judgment and judgment on the pleadings are as follows:

> **§ 5.102. Motions for summary judgment and judgment on the pleadings.**
>
> (a) *Generally.* After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for judgment on the pleadings or summary judgment. A motion must contain a notice which states that an answer or other responsive pleading shall be filed within 20 days of service of the motion.
>
> (b) *Answers*. An answer to a motion for judgment on the pleadings or summary judgment, including an opposing affidavit or verification to a motion for summary judgment, may be filed within 20 days of the date of service of the motion. The answer to a motion for summary judgment may be supplemented by depositions, answers to interrogatories, or further affidavits and admissions.
>
> * * *

> (d) *Decisions on motions.*
>
> (1) *Standard for grant or denial on all counts.* The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

52 Pa. Code § 5.102.

The ALJ made seven Findings of Fact and reached ten Conclusions of Law. I.D. at 4-5, 10-11. We shall adopt and incorporate herein by reference the ALJ's Findings of Fact and Conclusions of Law, unless they are reversed or modified by this Opinion and Order, either expressly or by necessary implication.

As a preliminary matter, we note that any issue that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pa. PUC,* 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC,* 485 A.2.d 1217 (Pa. Cmwlth. 1984).

Disposition

We begin by finding that the ALJ appropriately treated PPL's Preliminary Objection on the basis of lack of standing as a Motion for Judgment on the Pleadings. ALJ Melillo correctly held that standing is not a proper basis upon which to file Preliminary Objections, as PPL did here. Rather, standing is a ground upon which to

assert an affirmative defense and is properly raised in a Motion for Judgment on the Pleadings.

A Motion for Judgment on the Pleadings is properly granted when the pleadings show that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. 52 Pa. Code § 5.102(d)(1). In this case, there is no genuine issue as to a material fact, and PPL is clearly entitled to judgment as a matter of law on its claim that the Complainant lacks standing to sue PPL. As properly noted in the Initial Decision, the Complainant failed to deny assertions in the New Matter that he was not a customer of PPL and has not alleged in his Complaint that he ever sought service from PPL or that PPL ever refused to provide service to him. Thus, we shall affirm the ALJ's decision dismissing PPL as a party to this suit.

However, the Complainant may have standing to file a Complaint against the Campground in relation to the provision of private contract electric service to Complainant, after purchasing wholesale electricity for resale from PPL. The resale of utility service by non-public utilities is addressed in Section 1313 of the Code, 66 Pa. C.S. § 1313. Under Section 1313, a non-public utility entity cannot resell electricity it purchases from a public utility to any residential consumer for an amount greater than what the utility would charge its own residential customers for the same quantity of service. [1]

Specifically, Section 1313 provides:

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[1] It appears that, to date, the Commission has not decided the issue of whether a "permanent resident" at a campground is a "residential consumer" within the meaning of Section 1313 of the Code. Furthermore, there is no factual record in this case upon which to decide whether a "permanent resident" at a campground is a "residential consumer" under Section 1313, and if so, whether or not the Campground is overcharging the Complainant.

Price upon resale of public utility services.

> Whenever any person, corporation or other entity, not a public utility, electric cooperative corporation, municipality authority or municipal corporation, purchases service from a public utility and resells it to consumers, the bill rendered by the reseller to any residential consumer shall not exceed the amount which the public utility would bill its own residential consumers for the same quantity of service under the residential rate of its tariff then currently in effect.

By its terms, Section 1313 places a price cap on the resale of utility service to residential consumers and this cap applies to non-public utilities. Therefore, in this instance, the Campground may be within the jurisdiction of the Commission for the purposes of determining whether it is in violation of Section 1313 by reselling utility service at a cost that exceeds the amount PPL would bill its own residential customers, for the same quantity of service, under the provisions of its tariff.

Section 3313, 66 Pa. C.S. § 3313, further provides a specific penalty for violations of Section 1313 involving the imposition of excessive prices on the resale of utility service. Specifically, Section 3313 provides that:

> [a]ny person, corporation, or other entity violating the provisions of section 1313 (relating to price upon resale of public utility services) shall be guilty of a summary offense[2] and shall, upon conviction, be sentenced to pay a fine of $100 multiplied by the number of residential bills exceeding the maximum prescribed in section 1313.

Given the state of the law as set forth in the Code and outlined above, we believe the Complainant has two options from which to choose, if he wishes to pursue this matter further:

---

[2] Summary offense is defined in 18 Pa. C.S. § 106.

(1) Within 30 days of the entry date of this Order, the Complainant may file an Amended Complaint, substituting the Campground as the Respondent, and proceed before the Commission seeking a refund and/or an investigation;[3] or

(2) The Complainant may file a private criminal complaint with the appropriate Magisterial District Court, pursuant to Sections 1313 and 3313 of the Code, seeking the imposition of per violation penalties for summary offenses.

If the Complainant exercises his first option, the Amended Complaint shall be remanded for such further proceedings as may be warranted. If the Complainant exercises his second option, the instant proceeding will be closed without prejudice to the Complainant's right to file a Formal Complaint in the future against the Campground.

Conclusion

Based on our review of the ALJ's Initial Decision, the pleadings, and the applicable law, we shall modify the ALJ's Initial Decision and permit the Complainant to file an Amended Complaint within thirty days, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

[3] Under Sections 501(c) and 1313 of the Code, 66 Pa. C.S. §§ 501(c) and 1313, it appears clear that the Commission has jurisdiction to award refunds if deemed appropriate for these violations. Further, a Section 1313 violation may also involve the imposition of civil fines under Section 3301(a), 66 Pa. C.S. § 3301(a). In either case, the Commission has clear jurisdiction over resale price cap complaints.

1. That the Initial Decision of Administrative Law Judge Kandace F. Melillo, issued on April 29, 2013, is modified, consistent with this Opinion and Order.

2. That the Complaint filed by James E. Coggins against PPL Electric Utilities Corporation is dismissed.

3. That, within thirty days of the date of entry of this Opinion and Order, the Complainant, James E. Coggins, may file an Amended Complaint with the Commission naming the Echo Valley Campground as the Respondent.

a. If Mr. Coggins timely files such an Amended Complaint, the Amended Complaint shall be remanded to the Office of Administrative Law Judge for such further proceedings as may be warranted.

b. If Mr. Coggins does not timely file such an Amended Complaint, the Secretary's Bureau shall mark this proceeding closed, and the Complaint at Docket No. C-2012-2312785 shall be dismissed, without prejudice to Mr. Coggins' right to file a Complaint in the future against the Echo Valley Campground.

BY THE COMMISSION,

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: June 13, 2013
ORDER ENTERED: July 18, 2013

APPENDIX B

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17120

Pennsylvania Public Utility Commission	**Public Meeting of Aug 26, 2021**
Office of Consumer Advocate	**3023970-OSA**
Office of Small Business Advocate	**Docket No. R-2021-3023970**
v.	**C-2021-3024126**
Philadelphia Gas Works	**C-2021-3024293**

STATEMENT OF CHAIRMAN GLADYS BROWN DUTRIEUILLE

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Joint Petition for Partial Settlement of Philadelphia Gas Works' 2021-2022 Gas Cost Recovery (GCR) Proceeding (Joint Petition or Partial Settlement) filed on June 4, 2021, by the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), and Philadelphia Gas Works (PGW or the Utility) regarding the Utility's annual adjustment and reconciliation of its natural gas cost recovery rates filed pursuant to Section 1307(f) of the Public Utility Code (Code), 66 Pa. C.S. § 1307, to become effective September 1, 2021.

The Partial Settlement addresses all issues except PGW's proposed Renewable Natural Gas Pilot (RNG Pilot), which the parties reserved for litigation. The proposed RNG Pilot, as stipulated between PGW and OCA, would be effective for two years permitting the Utility to purchase up to $500,000 per year worth of renewable natural gas. This dollar cap represents approximately 0.4% of the annual natural gas commodity purchases made by the Utility. Renewable natural gas is often a byproduct of operations such as dairy farming, swine farming, wastewater treatment, food waste, and landfill waste. As such, renewable natural gas represents an alternative form of supply from that of traditional natural gas. Diversification of supply has the potential to reap reliability benefits.

The proposal would require PGW to report the following information in order for the Commission and interested parties to better judge the efficacy of the pilot.

- Daily quantities of RNG purchased
- Prices paid for RNG
- Comparison of RNG prices with that of other supply sources
- The impact to the Utility's gas cost rate
- The British Thermal Unit content of the gas (i.e., heat content)
- The location and type of facility through which the gas is sourced

In her Recommended Decision, Administrative Law Judge Darlene Heep submits that the RNG Pilot is a limited program that will allow PGW to prepare for future markets by obtaining meaningful information over the course of two years. This rationale, coupled with the cost protection cap of the proposal, justifies approval of the RNG Pilot. Here, PGW is attempting to gather knowledge and experience with a potentially viable source of natural gas. The short-run costs are balanced by the potential long-run benefits, thereby complying with the overarching theme of the Public Utility Code. I highlight 1318(a)(3) which require the Commission to find…

"*[t]he utility has taken all prudent steps necessary to obtain lower cost gas supplies on both short-term and long-term bases…"*

This section, along with the requirement that "*the utility is pursuing a least cost fuel procurement policy, consistent with the utility's obligation to provide safe, adequate, and reliable service to its customers…"* can be reasonably interpreted to permit programs like PGW's RNG Pilot. In short, while the cost of gas supply is a vital variable in a utility's gas procurement, diversification of supply is also an important variable to be weighed to ensure reliability.

Noting my favorable position regarding the RNG Pilot issue, I nonetheless wish to give the utility and its customers the certainty that comes with the timely approval of the GCR. I do believe the overall proceeding, including the Partial Settlement, warrants approval.

August 26, 2021
Date

Gladys Brown Dutrieuille, Chairman

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120

Pennsylvania Public Utility Commission
Office of Consumer Advocate
Office of Small Business Advocate
v.
Philadelphia Gas Works

Public Meeting August 26, 2021
3023970-OSA
Docket No. R-2021-3023970

STATEMENT OF VICE CHAIRMAN DAVID W. SWEET

Before us are exceptions in Philadelphia Gas Works' (PGW) annual Gas Cost Rate (GCR) proceeding. PGW proposed a pilot in which it would include renewable natural gas (RNG) as part of its gas supplies. PGW and OCA agreed that PGW would purchase up to $500,000 worth of RNG per year in fiscal years 2022 and 2023, with PGW including some reporting information in future GCR proceedings.

I support PGW's proposed RNG pilot. In general, pilots are an avenue to examine new ideas and practices to determine impacts and costs in a manner that includes guardrails to help limit the potential for negative impacts on customers. It is appropriate for PGW to utilize pilots to help it develop business practices that align with an ever-changing utility environment. In this pilot, $500,000 per year is only 0.4% of PGW's annual projected cost of gas – an infinitesimal amount relative to its overall commodity dollar figure of nearly $123 million.[1] While I do not take lightly the spending of ratepayer money, I find this amount to be reasonable in determining the impacts of new gas procurement strategies.

Additionally, as OCA notes,[2] Section 1318 of the Public Utility Code[3] does *not* require the purchase of the lowest cost supply resource available at any given time. It requires that the overall *portfolio* be least cost in providing safe, adequate and reliable service over the foreseeable time horizon. Allowing this pilot would not be flouting the requirements of Section 1318, as argued by some of the other parties.

Therefore, I will be voting no on the staff recommendation before us, as I find PGW and OCA's arguments in favor of the RNG pilot persuasive.

Date: August 26, 2021

DAVID W. SWEET
VICE CHAIRMAN

[1] *See* Schedule 1 of PGW's Annual 1307(f) filing, submitted March 1, 2021.
[2] *See* OCA M.B. at 9.
[3] *See* 66 Pa. C.S. § 1318(a).

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission,	:	
Office of Consumer Advocate, Office of Small	:	Docket No. R-2021-3024750
Business Advocate	:	C-2021-3025538
	:	C-2021-3025462
v.	:	C-2021-3026057
	:	
Duquesne Light Company	:	

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the foregoing document upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code § 1.54.

Via Email:

Hon. Joel H. Cheskis
Deputy Chief Administrative Law Judge
Hon. John M. Coogan
Administrative Law Judge
Pennsylvania Public Utility Commission
400 North Street
Commonwealth Keystone Building
Harrisburg, PA 17120
jcheskis@pa.gov
jcoogan@pa.gov

Christy M. Appleby
Aron J. Beatty
David T. Evrard
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
cappleby@paoca.org
abeatty@paoca.org
devrard@paoca.org
OCADuquesne2021@paoca.org

Michael W. Gang
Anthony D. Kanagy
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
akanagy@postschell.com
mgang@postschell.com

James Davis
Tishekia E. Williams
Michael Zimmerman
Emily Farah, Esquire
Duquesne Light Company
411 Seventh Avenue, 16th Fl.
Pittsburgh, PA 15219
jdavis4@duqlight.com
twilliams@duqlight.com
mzimmerman@duqlight.com
efarah@duqlight.com

Scott B. Granger
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North Street, 2nd Floor West
P.O. Box 3265
Harrisburg, PA 17105-3265
sgranger@pa.gov

Sharon E. Webb
Office of Small Business Advocate
555 Walnut Street
Forum Place, 1st Floor
Harrisburg, PA 17101
swebb@pa.gov

Robert D. Knecht
Industrial Economics Incorporated
2067 Massachusetts Avenue
Cambridge, MA 02140
rdk@indecon.com
Consultant for OSBA

Ria Pereira
Elizabeth R. Marx
John Sweet
Lauren Berman
PA Utility Law Project
118 Locust Street
Harrisburg, PA 17101
PULP@pautilitylawproject.org
Counsel for CAUSE-PA

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

Mark C. Szybist
1152 15th Street NW, Suite 300
Washington, DC 20005
mszybist@nrdc.org
Counsel for NRDC

Joseph L. Vullo
Burke Vullo Reilly Roberts
1460 Wyoming Avenue
FortyFort, PA 18704
jlvullo@aol.com
Counsel for Pennsylvania Weatherization Providers Task Force

Andrew J Karas
Sophia Al-Rasheed
Fair Shake Environmental Legal Services
600 Superior Avenue, Suite 1300
Cleveland, OH 44114
akaras@fairshake-els.org
salrasheed@fairshake-els.org
Counsel for NRDC

James M. Van Nostrand
Keyes & Fox LLP
275 Orchard Drive
Pittsburgh, PA 15228
jvannostrand@keyesfox.com

Williams Roberts II, Esquire
Senior Counsel
Peoples Natural Gas Company LLC
375 North Shore Drive
Pittsburgh, PA 15212
William.H.RobertsII@peoples-gas.com

Michael Turzai, Esquire
General Counsel and Vice President
Peoples Natural Gas Company LLC
375 North Shore Drive
Pittsburgh, PA 15212
Michael.Turzai@peoples-gas.com

Karen O. Moury
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
kmoury@eckertseamans.com

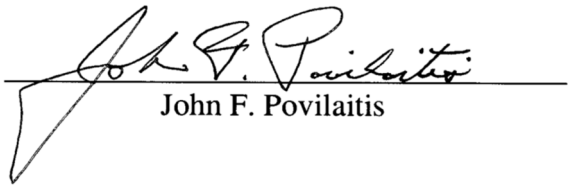
Lauren M. Barge
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
lburge@eckertseamans.com

Scott J. Rubin
4627 Chandlers Forde
Sarasota, FL 34235-7118
scott.rubin@gmail.com

Jan Vroman
623 Eastman Street
West Mifflin, PA. 15122
jan.vroman@yahoo.com

Scott Dunbar
Partner, Keyes & Fox LLP
sdunbar@keyesfox.com

Date: September 13, 2021



John F. Povilaitis