**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

Public Meeting held December 16, 2021

Commissioners Present:

Gladys Brown Dutrieuille, Chairman, Statement

John F. Coleman, Jr., Vice Chairman

Ralph V. Yanora

Pennsylvania Public Utility Commission R-2021-3024750

Office of Consumer Advocate C-2021-3025538

Office of Small Business Advocate C-2021-3025462

Nationwide Energy Partners, LLC C-2021-3026057

Sean Ferris C-2021-3026365

Jan Vroman C-2021-3026521

Diane Buzzard C-2021-3027067

v.

Duquesne Light Company

**OPINION AND ORDER**

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**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the following matters: (1) the Exceptions filed by Nationwide Energy Partners, LLC (NEP) on October 22, 2021, to the Recommended Decision (R.D.) of Chief Administrative Law Judge (ALJ) Joel H. Cheskis and ALJ John M. Coogan (collectively, the ALJs) issued on October 12, 2021, in the above-captioned general rate increase proceeding; and (2) the Joint Petition for Approval of Settlement (Joint Petition or Settlement), filed on September 3, 2021, by Duquesne Light Company (Duquesne or the Company), the Commission’s Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), the Pennsylvania Weatherization Providers Task Force, Inc. (PWPTF), ChargePoint, Inc. (ChargePoint), and the National Resources Defense Council, Inc. (NRDC) (collectively, the Joint Petitioners). On October 29, 2021, Duquesne, the OCA, and CAUSE-PA each filed Replies to Exceptions and the OSBA filed a letter response to the Exceptions.

For the reasons stated below*,* we shall grant, NEP’s Exceptions, in part, and deny them, in part; adopt the Recommended Decision, as modified; and approve the Joint Petition, without modification.

# I. History of the Proceeding

On April 16, 2021, Duquesne filed Supplement No. 25 – PA P.U.C. No. 25 to become effective June 15, 2021, seeking an increase in total annual operating revenues for electric service by approximately $115 million, which includes rolling the Distribution System Improvement Charge (DSIC) Rider charges into base rates. If the Company’s entire request were to be approved, the proposed metered usage rates would increase from $100.12 to $107.85 per month, or by 7.72% for a residential customer using 600 kWh per month.

On April 23, 2021, the OSBA filed a Formal Complaint and public statement against the tariff filing, at Docket No. C- 2021-3025462, averring, among other things, that upon review of the materials filed by Duquesne, those materials may be insufficient to justify the rate increase requested. Also, on April 23, 2021, I&E intervened in this case. On April 27, 2021, the OCA filed a Formal Complaint and Public Statement against the tariff filing, at Docket No. C-2021-3025538, averring, among other things, that a preliminary examination of Duquesne’s proposed rate increase request indicates that present and proposed rates, rules and regulations are not just and reasonable or otherwise proper under the Public Utility Code (Code) and applicable ratemaking principles.

Petitions to Intervene were filed by PWPTF, CAUSE-PA, NRDC, United States Steel Corporation (U.S. Steel), Peoples Natural Gas Company LLC (Peoples), ChargePoint, and the International Brotherhood of Electrical Workers, AFL-CIO, Local Union 29 (IBEW Local 29).[[1]](#footnote-1) On May 20, 2021, the Commission suspended the filing by operation of law until January 15, 2022, pursuant to Section 1308(d) of the Code, 66 Pa. C.S. § 1308(d), unless permitted by the Commission to become effective at an earlier date. The Commission initiated an investigation to determine the lawfulness, justness, and reasonableness of the proposed rates, rules, and regulations.

On May 25, 2021, NEP filed a Formal Complaint against the tariff filing, at Docket No. C-2021-3026057, averring, among other things, that based on the terms and interpretation of its tariff provisions relating to master metering for commercial buildings, specifically Tariff Rule 18 and Rule 41, Duquesne is depriving certain commercial customers of the opportunity to reduce their rates for service and, therefore, the Company’s current and proposed rates may be contrary to law.

Pursuant to a scheduling order dated May 28, 2021, the ALJs consolidated the OCA and the OSBA Complaints with the Commission’s investigation at Docket No. R-2021-3024750, granted the Petitions to Intervene of CAUSE-PA, U.S. Steel, PWPTF, and NRDC, and provided Duquesne until June 4, 2021, to file any answer or response to the Complaint filed by NEP and the Petition to Intervene filed by Peoples. Additionally, the Parties were provided until June 4, 2021, to file any answer or response to ChargePoint’s Petition to Intervene.

On June 2, 2021, and in response to a request from the presiding officers, NEP filed a Motion to Consolidate its Complaint with Duquesne’s general rate case, arguing that such consolidation is consistent with the Commission’s Regulations and precedent and will promote judicial economy and administrative efficiency because there are common questions of law and fact. On June 4, 2021, Duquesne filed an Answer to NEP’s Complaint. In its Answer, Duquesne specifically denied NEP’s characterization of the Company’s current and proposed master metering tariff rules, namely Rule 18 and Rule 41, and attached copies of those tariffs to its answer.

Also on June 4, 2021, Duquesne filed a Preliminary Objection to NEP’s Complaint arguing that it should be dismissed in its entirety because NEP does not have a direct, immediate or substantial interest in the proceeding and therefore lacks standing to bring its Complaint.

On June 4, 2021, Duquesne filed an Answer to Peoples’ Petition to Intervene, stating it did not object to Peoples’ intervention in this base rate proceeding. No answers or responses were filed to ChargePoint’s Petition to Intervene.

On June 9, 2021, NEP filed an Answer to Duquesne’s Preliminary Objection. In its Answer, NEP argued that, Duquesne is repeating the legal error it committed in its prior base rate increase case when it attempted to exclude the participation of Peoples. Averring that its interests are direct, immediate and substantial, NEP argued that it has a legitimate business interest in providing service in Duquesne’s service territory and it would be directly and substantially impaired by Duquesne’s tariff and the proposed changes to Rule 41 and concluded that the Preliminary Objection should be denied.

On June 8, 2021, customer Sean Ferris filed a Formal Complaint against the rate increase at Docket No. C-2021-3026365. On June 14, 2021, customer Jan Vroman filed a Formal Complaint against the rate increase at Docket No. C-2021-3026521. Duquesne filed Answers to these Complaints on June 18, 2021, and June 21, 2021, respectively. Also by letter dated June 15, 2021, Duquesne indicated it did not object to IBEW Local 29’s Petition to Intervene.

By Order dated June 21, 2021, the ALJs denied Duquesne’s Preliminary Objections and granted consolidation of NEP’s Complaint with Duquesne’s base rate proceeding.

On June 22, 2021, two public input hearings were held. The first public input hearing was held at 1 p.m. and generated transcript pages 38 through 82. During the first public input hearing, the Complaints of customers Sean Ferris and Jan Vroman were consolidated with Duquesne’s base rate proceeding. Also at the first public input hearing, Peoples’, ChargePoint’s, and IBEW Local 29’s Petitions to Intervene were granted, and Greenlots Exhibit 11 was marked and admitted into the record.[[2]](#footnote-2) The second public input hearing was held at 6 p.m. and generated transcript pages 83 through 124. No additional exhibits were introduced into the record. A total of six witnesses testified at both hearings.

On July 1, 2021, customer Diane Buzzard filed a Formal Complaint against the rate increase at Docket No. C-2021-3027067. Duquesne filed an Answer to Ms. Buzzard’s Complaint on July 16, 2021.

The Parties submitted pre-served written testimony and exhibits pursuant to the litigation schedule previously established. By e-mail dated August 12, 2021, Duquesne indicated on behalf of the Parties that settlement discussions were ongoing, and to allow more time for discussion, Duquesne requested a postponement of the scheduled evidentiary hearing.

An evidentiary hearing was held on August 17, 2021, at which counsel appeared on behalf of Duquesne, the OCA, the OSBA, I&E, CAUSE-PA, NEP, NRDC, PWPTF, and ChargePoint. The Parties waived cross examination of witnesses, and the preserved testimony and exhibits were admitted into the record via stipulation. Additionally, the ALJs consolidated the Complaint of Diane Buzzard with Duquesne’s base rate proceeding.

During the hearing, the Parties indicated all issues were settled, except for NEP’s Complaint regarding master metering. In response, the ALJs issued a briefing order dated August 17, 2021, for the Parties to address NEP’s Complaint.

On September 3, 2021, Duquesne, NEP, CAUSE-PA, the OCA, and the OSBA filed Main Briefs.

Also on September 3, 2021, Duquesne filed the Settlement which included Statements in Support by Duquesne, I&E, the OCA, the OSBA, CAUSE-PA, PWPTF, NRDC, and ChargePoint. The Joint Petitioners indicated that the Settlement resolves all issues except for those related to NEP’s Complaint and proposal regarding master metering and submetering which are reserved for litigation. The following Parties indicated their non-opposition to the Settlement: Peoples, NEP, U.S. Steel, and IBEW Local 29. Joint Petition at 2.

Also on September 3, 2021, the OCA served a cover letter along with a copy of the Settlement and accompanying appendices to the three Complainants to this proceeding, Diane E. Buzzard, Jan Vroman, and Sean D. Ferris. The OCA’s cover letter explained how the *pro se* Complainants could either join, object to, or disagree with but not actively oppose, the Settlement by no later than September 13, 2021.

On September 13, 2021, Duquesne, NEP, CAUSE-PA, the OCA, and the OSBA filed Reply Briefs. No communications were received from the *pro se* Complainants.

The record closed on September 13, 2021, the date reply briefs and comments to the Settlement were due to be submitted. The suspension period for this matter ends on January 15, 2022.

In the Recommended Decision issued on October 12, 2021, the ALJs recommended the approval of the Settlement in its entirety without modification because it is in the public interest and supported by substantial evidence. The ALJs explained that in lieu of the originally requested increase of $115 million per year in additional annual operating revenues, the Settlement provides the Company an increase of $74.2 million per year. According to the Settlement, a residential customer using 600 kWh per month will be billed an additional $4.23 (4.23%), rather than the originally proposed $7.73 (7.72%). R.D. at 1, 7.

The ALJs further recommended the denial of NEP’s Complaint pertaining to master metering and submetering, which included a proposal that Duquesne adopt new master metering tariff rules, for failure of NEP to meet its burden of proof that its proposal should be adopted. *Id*.

As previously noted, NEP filed Exceptions to the Recommended Decision on October 22, 2021, and Duquesne, the OCA, and CAUSE-PA filed Replies to Exceptions on October 29, 2021. Also, on October 29, 2021, the OSBA filed its letter response to the Exceptions.

# II. Introduction

As a preliminary matter, we note that the ALJs made 124 Findings of Fact and reached thirty-five Conclusions of Law. R.D. at 7-26, 84-89. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

Additionally, as we proceed in our review of the various positions asserted in this proceeding, we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings. *University of Pennsylvania* *v. Pa. PUC*, 485 A.2d 1217, 1222 (Pa. Cmwlth. 1984). Any exception or argument that is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

## A. Legal Standards

### 1. Justness and Reasonableness of Rates

The purpose of this investigation is to establish rates for Duquesne’s customers that are “just and reasonable” pursuant to Section 1301 of the Code, 66 Pa. C.S. § 1301.

The Commission applies certain principles in deciding any general rate increase case brought under Section 1308(d) of the Code, 66 Pa. C.S. § 1308(d). A public utility seeking a general rate increase is entitled to an opportunity to earn a fair rate of return on the value of the property dedicated to public service. *Bluefield Water Works and Improvement Co. v. Public Service Comm’n of West Virginia*, 262 U.S. 679 (1923) (*Bluefield*). In determining what constitutes a fair rate of return, the Commission is guided by the criteria set forth in *Bluefield, supra,* and *Federal Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) (*Hope Natural Gas)*. In *Bluefield*, the United States Supreme Court stated:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.

A rate of return may be too high or too low by changes affecting opportunities for investment, the money market and business conditions generally.

*Bluefield*,262 U.S. at 692-3.

### 2. Burden of Proof

Typically, in proceedings before the Commission, the public utility has the burden to establish the justness and reasonableness of every element of its rate increase in all proceedings conducted under Section 1308(d) of the Code, 66 Pa. C.S. § 1308(d). The standard of proof which a public utility must meet, as discussed above, is set forth in Section 315(a) of the Code, as follows:

1. **Reasonableness of rates. —** In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility. The commission shall give to the hearing and decision of any such proceeding preference over all other proceedings, and decide the same as speedily as possible.

66 Pa. C.S. § 315(a).

The Commonwealth Court has upheld this standard of proof and has applied it in base rate proceedings:

Section 315(a) of the Public Utility Code, 66 Pa. C.S. § 315(a), places the burden of proving the justness and reasonableness of a proposed rate hike squarely on the utility. It is well-established that the evidence adduced by a utility to meet this burden must be substantial.

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

As the Pennsylvania Supreme Court has stated, “the burden of proof is met when the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.” *Burleson v. Pa. PUC*, 461 A.2d 1234, 1236 (Pa. 1983). Furthermore, it is well-established that the “degree of proof before administrative tribunals…is satisfied by establishing a preponderance of the evidence.” *See* *Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the evidence must be substantial and legally credible, and cannot be mere “suspicion” or a “scintilla” of evidence. *See Id*. The evidence must be more convincing, by even the smallest amount, than that presented by the other party. *See* *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1950).

Indeed, the Pennsylvania Supreme Court has held that the burden of proof does not shift to the other parties to justify a proposed adjustment to a utility’s general rate filing:

[T]he appellants did not have the burden of proving that the plant additions were improper, unnecessary or too costly; on the contrary, that burden is, by statute, on the utility to demonstrate the reasonable necessity and cost of the installations, and that is the burden which the utility patently failed to carry.

*Berner v. Pa. PUC*, 116 A.2d 738, 744 (Pa. 1955).

However, as the Commonwealth Court has explained: “While it is axiomatic that a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called upon to account for every action absent prior notice that such action is to be challenged.” *See* *Allegheny Center Assocs. v. Pa. PUC*,570 A.2d 149, 153 (Pa. Cmwlth. 1990) (*citing Central Maine Power Co. v. Public Utilities Commission*, 405 A.2d 153, 185 (Me. 1979)). Therefore, while the statutory burden of proof does not shift from the public utility in a general rate proceeding, a party proposing an adjustment to a ratemaking claim bears the burden of presenting some evidence or analysis, during the reception of evidence in the proceeding, tending to demonstrate the reasonableness of the adjustment. *See Id*.; *See*, *e.g*., *Pa. PUC v. PECO*,Docket No. R‑891364 *et al.*, 1990 Pa. PUC Lexis 155 (Order entered May 16, 1990); *see also* *Pa. PUC v. Breezewood Telephone Company*, Docket No. 901666, 74 Pa. PUC 431 (Order entered February 15, 1991).

Moreover, the statutory burden of proof placed on the utility under Section 315(a) of the Code, 66 Pa. C.S. § 315(a), cannot reasonably be read to place the burden of proof on the utility with respect to an issue that the utility did not propose in its general rate case filing, and which, frequently, the utility would oppose. Inasmuch as the Legislature is not presumed to intend an absurd result in interpretation of its enactments, *see*, 1 Pa. C.S. § 1922(1), *PA Financial Responsibility Assigned Claims Plan v. English*, 541 Pa. 424, 430-431, 64 A.2d 84, 87 (1995), the statutory burden placed on a proponent of a rule or order under Section 332(a) does not shift to the utility simply because such rule or order is proposed within the context of the utility’s 1308(d) general base rate proceeding. *See* 66 Pa. C.S. 332(a) (“Except as may be otherwise provided in section 315…or other provisions of this part…the proponent of a rule or order has the burden of proof.”); *see generally* *Pa. PUC v. PPL Electric*; *Pa. PUC. et al. v. West Penn Power Company*, Docket Nos. R-2014-2428742 et al. (Order entered April 9, 2015), adopting the Recommended Decision of ALJs Dennis J. Buckley and Katrina L. Dunderdale (Issued March 9, 2015); and *Pa. PUC v. Metropolitan Edison Company, et al.,* Docket Nos. R-00061366 *et al*., 2007 Pa. PUC LEXIS 5 \*111 (Order entered January 11, 2007).

### 3. Settlements Must Serve the Public Interest

The policy of the Commission is to encourage settlements, and the Commission has stated that settlement rates are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code §§ 5.231, 69.401. A full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case.

The Settlement, in this case, is a “black box” settlement. This means that the parties were not able to agree on each and every element of the revenue requirement calculation. The Commission has recognized that “black box” settlements can serve an important purpose in reaching consensus in rate cases:

We have historically permitted the use of “black box” settlements as a means of promoting settlement among the parties in contentious base rate proceedings. Settlement of rate cases saves a significant amount of time and expense for customers, companies, and the Commission and often results in alternatives that may not have been realized during the litigation process. Determining a company’s revenue requirement is a calculation involving many complex and interrelated adjustments that affect expenses, depreciation, rate base, taxes and the company’s cost of capital. Reaching an agreement between various parties on each component of a rate increase can be difficult and impractical in many cases.[[3]](#footnote-3)

*Pa.* *PUC v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Order entered December 19, 2013), at 28 (citations omitted).

Rate increase proceedings are expensive to litigate, and the reasonable cost of such litigation is an operating expense recovered in the rates approved by the Commission. Partial or full settlements allow the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and replies to exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission’s decision, yielding significant expense savings for the company’s customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy.

Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a settlement such as those proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R‑00049165 (Order entered October 4, 2004); *Pa. PUC v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991). The focus of the inquiry for determining whether a proposed settlement should be approved by the Commission is whether the proposed terms and conditions foster, promote and serve the public interest. *Pa. PUC, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al*. (Order entered July 14, 2011), citing *Warner v. GTE North, Inc*., Docket No. C‑00902815 (Order entered April 1, 1996) and *CS Water and Sewer.* Because the Joint Petitioners request the Commission enter an order in this proceeding approving the Partial Settlement without modification, they share the burden of proof to show that the terms and conditions of the Partial Settlement are in the public interest. *See* 66 Pa. C.S. § 332(a) (“Except as may be otherwise provided in section 315…or other provisions of this part . . . the proponent of a rule or order has the burden of proof.”)

# III. Joint Petition for Settlement

## A. Terms and Conditions of the Settlement

As previously indicated, the Settlement resolves all issues and concerns in this proceeding, except those related to NEP’s Complaint and proposal regarding master metering and submetering, which are reserved for litigation. The Settlement provides for increases in rates, as set forth in the *pro forma* tariff supplement attached to the Joint Petition as Appendix A and the proof of revenues attached to the Joint Petition as Appendix B, designed to produce a net increase in annual base distribution operating revenues of $74.2 million, based upon a fully projected future test year (FPFTY) ending December 31, 2022. The effect of the proposed rates and settled rates on the current rates is included in Appendix C. Proposed Findings of Fact, Conclusions of Law, and Ordering Paragraphs are included in Appendix D. Appendices E through L represent the Statements in Support of Duquesne, I&E, the OCA, the OSBA, CAUSE-PA, PWPTF, NRDC, and ChargePoint, respectively. Appendices M through O represent the Letters of Non-Opposition to the Settlement of Peoples, NEP, and U.S. Steel, respectively.

The essential terms of the Settlement are set forth in Section II of the Joint Petition, which is shown below in full as it appears in the Joint Petition:

**A. REVENUE REQUIREMENT AND ACCOUNTING**

34. The distribution rates set in this proceeding will be designed to produce increased distribution operating revenues of $74.2 million based upon the pro forma level of operations for the twelve months ended December 31, 2022, inclusive of the $29.2 million of revenues currently recovered under surcharges, for a net increase in revenues of $45.00 million.

35. As of the effective date of rates in this proceeding, Duquesne Light will be eligible to include plant additions in the Distribution System Improvement Charge (“DSIC”) once the total distribution account balances exceed $3,367,154,000, which are the levels projected by the Company in this proceeding at December 31, 2022 per DLC Exhibit 2, Book 5, Schedule C-2, page 2. The foregoing provision is included solely for purposes of calculating the DSIC, and is not determinative for future ratemaking purposes of the projected additions to be included in rate base in a Fully Projected Future Test Year (“FPFTY”) filing.

36. For purposes of calculating its DSIC, Duquesne Light shall use the equity return rate for electric utilities contained in the Commission’s most recent Quarterly Report on the Earnings of Jurisdictional Utilities and shall update the equity return rate each quarter consistent with any changes to the equity return rate for electric utilities contained in the most recent Quarterly Earnings Report, consistent with 66 Pa. C.S. § 1357(b)(3), until such time as the DSIC is reset pursuant to the provisions of 66 Pa. C.S. § 1358(b)(1).

37. Duquesne Light will continue to use normalization accounting with respect to the benefits of the tax repairs and Internal Revenue Code (“IRC”) Section 263A deductions. Duquesne Light will reverse EDIT with regard to prior tax repairs and IRC Section 263A deductions pursuant to the Average Rate Assumption Method (“ARAM”) used to reverse excess deferred income taxes (“EDIT”) associated with accelerated depreciation deductions. The remaining unamortized EDIT balance will continue as a reduction to rate base in all future base rate proceedings until the full amount is returned to ratepayers.

38. This Settlement provides for recovery of deferred COVID-19 uncollectible accounts expense of $6.1 million incurred from March, 2020 through June 30, 2021, which is recovered through an amortization of such costs over 36 months commencing with the effective date of rates in this proceeding. No uncollectibles balance will be added to the regulatory asset after the effective date of new rates in this proceeding for deferred COVID-19 uncollectible accounts expense.

39. This Settlement resolves the Company’s claim for COVID-19 costs and lost revenues other than uncollectible accounts expenses.

40. Duquesne Light will be permitted to create a regulatory asset for the incremental extraordinary, nonrecurring uncollectible accounts expense incurred commencing from July 1, 2021 through January 14, 2022, as a result of compliance with the Commission’s March 13 Emergency Order, October 13, 2020 Order, March 18, 2021 Order, and July 15, 2021 Order at Docket Nos. M-2020-3019244 and M-2020-3019775.

41. Commencing with calendar year 2022, Duquesne Light will deposit into its pension trusts an amount equal to $10,000,000 per year; provided, however, that contribution(s) in any year in excess of the foregoing may be used on a cumulative basis to satisfy future contribution obligations under this Settlement. The Settlement provides for recovery of the expense component of $5,000,000 (50% of the average cash contributions) of projected future pension contributions. Issues concerning the effects on rate base of capitalizing the difference between pension contributions and ASC 715 costs are resolved by the revenue requirement provisions of this Settlement. The depreciation expense for book and ratemaking purposes will be based on the ASC 715 capitalized amounts. If Duquesne Light concludes that a contribution less than $10,000,000 to the pension trust is appropriate, the Company may reduce the pension contribution and will record a regulatory liability on its books of account that is equal to 50% of the reduction to the pension contribution below the level of $10,000,000. Any regulatory liability recorded will be reduced to the extent of 50% of contributions in excess of $10,000,000 in subsequent years. If a regulatory liability remains at the time of the Company’s next rate proceeding, the regulatory liability amount will be returned to ratepayers as directed in the next base rate proceeding. Duquesne Light shall provide a report and affidavit attesting to the actual contributions to pension trusts during each calendar year. The report and affidavit shall be publicly filed with the Commission, with copies provided to I&E, OCA and OSBA on or before January 31 of the following calendar year, with the first report and affidavit due on or before January 31, 2023.

42. The Company’s distribution rate allowance for Other Post-Employment Benefits (“OPEBs”) is based upon the estimated ASC 715 cost for the FPFTY of approximately $217,000 ($179,000 on a distribution basis), which reflects a two-year normalization of the Net Periodic Benefit Cost for historic and future test year distribution costs. The distribution expense component included in rates is approximately 50% of this estimated cost less the annual effect of the 3-year amortization of the regulatory liability of $2,012,000 ($1,663,000 on a distribution basis) as explained in Duquesne Light St. No. 2, p. 37, for a net distribution credit of $372,000. The remaining 50% of actual ASC 715 cost will be the amount to be capitalized on the Company’s books. The actual labor capitalization ratio will be used to determine the split between capitalized and expensed amounts. The Company accounts for and funds OPEBs through a Voluntary Employees Beneficiary Associated (“VEBA”) trust, into which it will deposit the full amount of annual costs calculated by the Company’s actuary pursuant to ASC 715. Retiree OPEBs and administrative costs of maintaining the trusts and/or accounts are paid from amounts deposited in the trust. The Company accounts for the difference between the net periodic postretirement benefit expense determined annually by the actuary in accordance with ASC 715 and the amount of ASC 715 postretirement benefit expense used to establish rates. That difference is recorded as a regulatory asset or liability and will be expensed or credited in future rate proceedings in determining OPEB expense included in rates.

43. Duquesne Light’s jurisdictional separation study of distribution and transmission costs and assets shall be approved for purposes of this case only and shall hold no precedential value in a future base rate proceeding. All parties reserve the right to challenge the jurisdictional separation study in future matters.

44. Duquesne Light will file a Total Company Pennsylvania jurisdictional report showing capital expenditures, plant additions and retirements, by month, for the Future Test Year (“FTY”) ending December 31, 2021, and the FPFTY ending December 31, 2022, by July 31 of each of the years following the test years. In Duquesne Light’s next base rate proceeding, the Company will prepare a comparison of its actual expenses and rate base additions for the twelve months ending December 31, 2022, to its projections in this case. However, it is recognized by the Parties that this is a black box settlement that is a compromise of the Parties’ positions on various issues.

45. Consistent with the settlement in the Company’s last base rate case, Docket No. R-2018-3000124, the Company shall be permitted to capitalize the development costs for cloud-based information systems. The Company has recorded the costs related to the development of cloud-based information systems as a regulatory asset at the time such costs are incurred and has begun amortization of the costs after the systems were placed in service. The Company has elected, as of January 1, 2022, pursuant to ASU 2018-15,[[4]](#footnote-4) to capitalize all future-cloud based information system development costs. Pursuant to this Settlement, the Company will be permitted to transfer any remaining unamortized cloud-based information system costs to the appropriate plant account as of December 31, 2021. Nothing in this provision shall preclude a challenge to the prudence or reasonableness of specific cloud-based expenditures in a future base rate proceeding.

46. The Company shall provide notice and explanation to the Commission when annual dividend payments in the preceding 12 months ended March 31st exceed 85% of annual net income of the prior calendar year.

**B. DUQUESNE LIGHT PROGRAMS**

1. SMALL AND MEDIUM COMMERCIAL CUSTOMER PROPOSALS

47. Duquesne Light’s proposed New Business Stimulus Rider, as described in DLC Statement No. 5 and memorialized as Rider No. 25 in Duquesne Light Exhibit No. DBO-1, is withdrawn without prejudice.

48. Duquesne Light’s proposed Crisis Recovery Program, as described in DLC Statement No. 5 and memorialized as Rider No. 26 in Duquesne Light Exhibit No. DBO-1, is withdrawn without prejudice.

1. MASTER METERING

49. Duquesne Light’s revisions to Retail Tariff Rules 41 and 41.1 regarding master metering, as initially proposed in DLC Statement No. 6 and later withdrawn in DLC Statement No. 6-SR, are withdrawn.

50. Nationwide Energy Partners’ proposal regarding master metering and submetering, as described in NEP Statement Nos. 1 and 2, is reserved for litigation.

1. COVID-19 AND UNIVERSAL SERVICE PROGRAMS

51. Duquesne Light’s proposed residential COVID-19 Relief Program, as described in DLC Statement No. 7, is withdrawn without prejudice.

52. Tariff Rule 5 will be modified to include the following:

When the Company determines a deposit is required for new service or for reconnection of service as described in Rule No. 40, such deposit shall be payable within a reasonable time period after commencing or reconnecting electric service, not to be fewer than four (4) twenty-five percent (25%) installments with the first installment billed no less than 30 days after the reconnection of service in the event of a reconnection.

53. For the period January 1, 2022 through December 31, 2023, (i) the maximum household income eligibility criterion for Duquesne Light’s Hardship Fund shall be increased from 200% to 300% of the Federal Poverty Level; and (ii) Duquesne Light shall contribute an additional $1 million per year to its Hardship Fund, which will be contributed by the Company’s shareholders. All Hardship Funds, exclusive of the additional funds identified in this paragraph, will be directed to households with income at or below 200% of the Federal Poverty Level, unless unspent in the year in which they are so reserved. At least 75% of the additional funds identified in this paragraph will be directed to households with income at or below 200% of the Federal Poverty Level. On July 1 of each year, unused Hardship Funds initially directed to households with incomes above 200% of the Federal Poverty Level shall be made available to all customers eligible for the Hardship Fund.

54. Duquesne Light will increase annual funding for its Low Income Usage Reduction Program (“LIURP”) by $400,000 annually, which will be recovered through Rider No. 5 – Universal Services Charge, beginning January 1, 2022 and ending January 1, 2025.

55. Duquesne Light will continue to use a competitive procurement process to select a vendor to administer its LIURP program. Duquesne Light will invite member agencies of the PA Weatherization Providers Task Force and other CBOs to participate in the competitive procurement process to select a LIURP vendor upon the expiration of the existing contract.

56. The Company will increase its maximum CAP credit thresholds by a percentage equal to the annual average increase in residential rates approved through this Settlement.

1. Duquesne Light will waive the high usage threshold for participation in LIURP for households that exceed the maximum CAP credit limit prior to the end of the program year.

4. TRANSPORTATION ELECTRIFICATION PROGRAM AND LOAD MANAGEMENT

57. Duquesne Light’s proposed Transportation Electrification (“TE”) Program, as described in DLC Statement No. 8, is resolved as follows:

a. The Public, Workplace, and Multi-Unit Dwelling Make-Ready Pilot (Make-Ready Pilot) is approved with the following modifications:

i. Duquesne Light will equitably apportion the Make-Ready annual budget across its service territory.

ii. Duquesne Light will track the census tract and nine-digit zip code of Make-Ready infrastructure installed through this pilot project. This information will be reported annually to stakeholders through the collaborative described in subpart (c) of this paragraph. Duquesne Light will work with stakeholders to identify ways to ensure equitable delivery of these programs to unserved and underserved areas identified through this data tracking.

1. The Fleet and Transit Charging Pilot is approved with the following modifications:
2. Duquesne Light will equitably apportion the annual budget across its service territory.
3. Duquesne Light will track the census tract and nine-digit zip code of Fleet and Transit Charging infrastructure installed through this pilot project. This information will be reported annually to stakeholders through the collaborative described in subpart (c) of this paragraph. Duquesne Light will work with stakeholders to identify ways to ensure equitable delivery of these programs to unserved and underserved areas identified through this data tracking.
4. The Company’s outreach for the Fleet and Transit Charging Pilot will include outreach specifically targeting low-income communities, providers who service low-income communities, and Title I schools as defined at 20 U.S.C. § 6301 et. Seq.
5. The Company’s Fleet and Transit Charging Pilot investments will comprise (1) make-ready infrastructure, and (2) rebates to participating customers for the costs of electric vehicle charging stations. Each rebate provided to a participating customer will not exceed more than 50 percent (for customers participating in the Fleet program) or 100 percent (for customers participating in the Transit program) of the customer’s contribution for the costs of electric vehicle charging stations.
6. For the Fleet programs of the Fleet and Transit Charging Pilot: Program participation will be capped at 10 new customers per year.
7. All cost incurred by the Company through the rebates will be recorded in a regulatory asset. The Company may seek recovery of these costs in the Company’s next base rate proceeding. All parties reserve their rights to challenge recovery of these costs in the next base rate proceeding.
8. Within 120 days of a final order in this proceeding, and at least once annually for the duration of Duquesne Light’s approved EV programs, Duquesne Light will convene a collaborative working group, including the parties to this proceeding and other interested stakeholders, to discuss aspects of the TE Programs including but not limited to: the results of the Company’s equitable apportionment; the provision of the TE Programs to low income communities and other historically disadvantaged communities; potential local impacts; and other related issues.
9. The Home Charging Pilot, including Rider No. 23 in Duquesne Light Exhibit No. DBO-1, is withdrawn without prejudice.
10. The Awareness, Education, and Engagement programs are approved. The budgets for these programs are included in the revenue requirement identified in Paragraph 34.
11. The Fleet Electrification Advisory Service is approved. The budgets for these programs are included in the revenue requirement identified in Paragraph 34.
12. The Registration Incentive is approved.
13. No later than July 1, 2022, Duquesne Light will provide a draft evaluation and assessment plan for its TE Programs for parties’ review and comment.
14. No later than the earlier of (i) one year following the deployment of the Company’s Outage Management System or (ii) the filing of its next base rates proceeding, Duquesne Light will provide a non-confidential report describing its (i) load management programs implemented to date; and (ii) plans for the development of additional load management programs. For the purposes of this subparagraph, “load management program” means offerings by the Company to support passive or active managed charging, including but not limited to Automated (or Active/Dynamic) Load Management (“ALM”), other technologies that enable automated load-side actions in response to market and/or operational signals, and rate designs and mechanisms. Approximately six months prior to the issuance of such report, the Company will convene a non-confidential collaborative meeting of stakeholders to discuss the Company’s load management initiatives.
15. Duquesne Light will provide a report on its TE Programs in its next base rates proceeding that includes, at a minimum:
    1. The total number of charging stations installed, broken down by year, type of charging station (e.g., Level 2 or DC Fast Charger), site host type (and public accessibility of station), kWh utilized, number of charging sessions, and nine-digit zip code and census tract location of the charging station.

ii. Total charging station and installation costs, broken down by year and by customer low-income status (as applicable).

iii. Revenues received from charging station hosts.

iv. A description of Awareness, Education, and Engagement efforts undertaken, including a breakdown of channels used to educate customers about EVs, charging stations, and the TE Programs, as well as the programs geared specifically toward low-income customers by year.

v. The total number of customers broken down by nine-digit zip code and census tract of the charging station and (for participants in the Transit Charging Pilot) the routes served, the customer class, and the type of entity (non-profit, government, education, or for-profit entity) that participated in the Fleet Electrification Advisory Service program per year.

vi. The number of customers that participated in the EV Registration Incentive per year, broken down by the following FPL ranges: 0­50% FPL; 51-100% FPL; 100-150% FPL; 151-200% FPL; 200­250% FPL, 251-300% FPL; over 300% FPL; and income not reported. Customers will be given the option to provide their household income during the EV Registration Incentive application process, but will not be required to provide household income as a condition of participation. Duquesne Light will also separately track the number of confirmed low-income customers and CAP customers, based on its existing customer data, who participate in the EV Registration Incentive.

vii. An evaluation, broken down by TE Program, of customer participation, feedback, and charging station usage, including an evaluation of low-income customer participation in TE Programs.

viii. Description of the procedures employed to procure products and services related to the TE Programs from third-party vendors.

ix. Aggregate EV charging load profile, including the size and timing of the peak, broken down by site type (i.e., public, workplace, multi-unit dwelling, and fleet).

58. Duquesne Light’s proposals to refund or recover, respectively, unused EV Registration Incentive funds and Level 2 Charging Evaluation rebate expenses over a three-year period, as described in DLC Statement No. 8, p. 65, is approved. Such refund/recoupment is included in the revenue requirement identified in Paragraph 34.

59. Duquesne Light’s proposal to include $854,736 in rate base associated with the DC Fast Charging Evaluation, as described in DLC Statement No. 8, pp. 66-67, is approved.

5. OTHER RIDERS AND TARIFF MODIFICATIONS.

60. Duquesne Light’s proposed Rider No. 4, Federal Tax Adjustment Charge, as discussed in DLC Statement Nos. 9 and 16 and Duquesne Light Exhibit No. DBO-1, is withdrawn without prejudice.

61. Duquesne Light’s revised Street Lighting options, as discussed in Duquesne Light Statement No. 16, are approved. See Duquesne Light Exhibit No. DBO-1.

62. Duquesne Light’s proposed changes to Rider No. 16, as described in DLC Statement No. 17, are approved. See also Duquesne Light Exhibit No. DBO-1.

63. Duquesne Light’s proposed Community Development Rider, as described in DLC Statement No. 17 and memorialized as Rider No. 19 in Duquesne Light Exhibit No. DBO-1, is approved with the following modifications:

a. The costs of this program will not be recovered from customers, and are not included in the revenue requirement identified in Paragraph 34.

b. In addition to the eligibility requirements identified in DLC Statement No. 17, customers may only be eligible for the Community Development Rider if they show either (i) that they have a competitive energy alternative to electricity delivered by the Company; or (ii) affirm that they will not be able to commence and/or sustain the business without participating in Rider No. 19.

64. Duquesne Light’s proposed Residential Subscription Rate Pilot, as described in DLC Statement Nos. 9 and 17 and memorialized as Rider No. 7 in Duquesne Light Exhibit No. DBO-1, is withdrawn without prejudice.

65. The special rate contract identified as CONFIDENTIAL Exhibit CJD-2 is approved.

66. Except where noted otherwise herein, the Company’s proposed Retail Tariff revisions, as discussed in DLC Statement No. 16, are approved. Such Retail Tariff revisions include the changes to the following Tariff rules as identified in Exhibit Nos. DBO-1 and DBO-2 and are reflected in Appendix A:

1. Rule No. 3.1 – Definitions
2. Rule No. 5 – Deposits and Advance Payments
3. Rule No. 6.1 – Service Point
4. Rule No. 7 – Supply Line Extensions
5. Rule No. 10 – One Service of a Kind
6. Rule No. 16.1 – Interconnection, Safety and Reliability Requirements
7. Rule No. 22.1 – Vegetation Management and Right-of-Way
8. Rule No. 40 – Reconnection Charge

**C. REVENUE ALLOCATION AND RATE DESIGN**

67. The revenue allocation to each class at the net settlement increase of $45 million is reflected in **Appendix B**. This revenue allocation is a “black box” agreement representing a compromise among the parties’ filed revenue allocation proposals and it does not reflect any agreement among the Settling Parties regarding the appropriate cost allocation methodology.

68. Universal service costs will continue to be recovered only from residential rate classes. The parties retain all rights to challenge, refute, or propose modifications to the allocation of universal service costs to all customer classes in future proceedings.

69. The Company’s residential RS rate, RH rate, and RA rate customer charges will be maintained at $12.50. The customer charges of the non-residential classes were reduced to reflect the lower than proposed increases to those classes and other factors as agreed to by the Parties and are shown in Appendix A.

70. The Company agrees to undertake an evaluation of the GMH and GLH rate classes as described in DLC Statement No. 16-R at page 18. The Company will provide the detailed results of its evaluation and any resulting rate design proposals with its filing in its next base rate proceeding.

71. The OSBA withdraws its recommendations as discussed in OSBA Statement No. 1-R to modify the treatment of certain government customers in Rider No. 3, without prejudice to its ability to raise the issue in future rate proceedings.

Settlement at 8-22.

In addition to the specific terms to which the Joint Petitioners have agreed, the Settlement contains other general terms and conditions typically found in settlements submitted to the Commission. Specifically, the Joint Petitioners agreed that the Settlement is conditioned upon the Commission’s approval of all the terms and conditions contained therein without modification. The Joint Petition establishes the procedure by which any of the Joint Petitioners may withdraw from the Settlement and proceed to litigate this case if the Commission should act to modify or reject the Settlement. Additionally, the Joint Petitioners submitted that the Settlement is made without any admission against, or prejudice to, any position which any of the Joint Petitioners might adopt in any subsequent litigation of this proceeding or in future proceedings. Moreover, the Joint Petitioners waived their right to file Exceptions in this case if the ALJ recommended that the Commission adopt the Settlement without modification. Settlement at 23-24.

## B. Statements in Support of the Settlement[[5]](#footnote-5)

### 1. Duquesne Light

Duquesne asserted that, given that the Settlement is supported by the Parties that represent a diversity of constituents and interests, and in light of the challenges presented by the COVID-19 Pandemic, the terms and conditions of the Settlement provide strong evidence that the Settlement is reasonable and in the public interest. Accordingly, Duquesne averred that the Settlement should be approved without modification. Duquesne Statement in Support at 4, 29.

Duquesne stated that the agreed-upon net increase in revenues of $45 million will allow the Company to: (1) recover its necessary expenses; (2) attract capital on reasonable terms; and (3) continue to provide safe and reliable customer service. Further, Duquesne noted that the revenue requirement under the Settlement was achieved using the “black box” concept, meaning that the rate base, revenue, expense and return amounts that are allowed or disallowed are not identified by the Parties. Duquesne Statement in Support at 6. Moreover, Duquesne referenced several Commission proceedings to note that the Commission encourages “black box” settlements.[[6]](#footnote-6) *Id.* at 7.

Duquesne also explained that the Settlement provides for the following revenue requirement related exceptions to the “black box” concept: (1) the benefits of the tax repairs and Internal Revenue Code (IRC) Section 263A deductions; (2) deferred COVID-19 uncollectible accounts expense; (3) the creation of a regulatory asset for the incremental, extraordinary, nonrecurring uncollectible accounts expense incurred beginning July 1, 2021 through January 14, 2022; (4) pension contributions; (5) other post-employment benefits (OPEB) funding; (6) accounting for cloud-based information technology systems; and (7) the creation of a regulatory asset for costs of rebates provided through Duquesne’s TE Programs, as modified by the Settlement. Duquesne Statement in Support at 7.

Further, Duquesne noted that the Settlement provides for the approval of the study used to separate the Company's assets, revenues, and expenses into Federal Energy Regulatory Commission (FERC) and state jurisdictions, thereby setting the rates for interstate and intrastate service and providing a basis for FERC’s setting of interstate service rates. Duquesne also noted that the Settlement provides for the filing of actual future test year (FTY) and FPFTY data after the completion of those years, thereby allowing the Commission and the Parties to review the accuracy of the Company's projections in this proceeding. Duquesne Statement in Support at 12-13.

Regarding the Company’s proposed COVID-19 assistance and existing universal service programs, Duquesne explained that the agreed-upon modifications to the Company’s Hardship Fund are reasonable because they provide: (1) additional funds to assist a broader range of customers potentially impacted by the COVID-19 Pandemic; (2) significant community and customer outreach; (3) greater affordability through the implementation of a percentage payment plan; (4) the opportunity for Customer Assistance Program (CAP) customers to earn forgiveness of their delinquent balance in January 2021; (5) waiving of late payment and reconnection fees; and (6) granting of flexible payment arrangements. Duquesne Statement in Support at 16-17 (citing Duquesne St. 7‑R at 13-14). Similarly, Duquesne noted that the Settlement provisions regarding the modifications to the Company’s Low Income Usage Reduction Program (LIURP) constitutes a reasonable compromise of the Parties’ competing litigation positions. *Id.* at 17.

Duquesne stated that its proposed implementation of TE Programs is a means to increase the utilization of, and fair access to, safe and reliable electric vehicle (EV) fuel in Duquesne’s service territory. Duquesne Statement in Support at 17 (citing Duquesne St. 8 at 3). Further, Duquesne noted that, in response to the positions taken by the Parties, the Company agreed to modify its proposed TE Programs, consistent with the terms and conditions provided in the Settlement. Moreover, Duquesne noted that under the Settlement, the refund or recoupment of unused EV Registration Incentive funds and Level 2 Charging Evaluation rebate expenses is a part of the broader Settlement of revenue requirement issues. Duquesne Statement in Support at 22.

Finally, Duquesne noted that in allocating the increases to the rate classes, the Company, the OCA, and the OSBA each submitted a rate class cost of service study. Duquesne Statement in Support at 26 (citing Duquesne Exhs. 6-2 and 6-3; OSBA Exhs. IEc-2, RDK WP2; OCA Exh. Sch. GAW-4). Duquesne noted that the Company’s proposed allocation is essentially in the middle of the Parties’ proposed allocations and the increases in rates for customers are essentially scaled back from the Company’s initial proposal, with minor adjustments to reflect the lower revenue increase. *Id.* (citing Duquesne Exh. 6; I&E St. 3 at 8; OCA St. 3; OSBA St. 1). Duquesne further noted that, consistent with Commission practice, rate reductions are not reflected in the Settlement and a rate decrease was not proposed under any cost of service study. Duquesne Statement in Support at 26-27.

### 2. I&E

I&E submitted that the Settlement balances the interests of all of the Parties in a fair and equitable manner. Further, I&E noted that the Settlement presents a resolution for the Commission’s adoption that best satisfies the public interest. Moreover, I&E stated that the Settlement provides regulatory certainty regarding the disposition of issues and final resolution of this case, which all of the Parties agree benefits their interests. Accordingly, I&E requested that the Settlement be recommended and approved without modification. I&E Statement in Support at 6, 35-36.

I&E noted that it supports the negotiated level of overall distribution rate revenue increase as a full and fair compromise that provides Duquesne, affected ratepayers, and the Commission with a level of regulatory certainty and a negotiated resolution which is in the public interest. Further, I&E stated that, although the overall revenue requirement is a “black box” compromise, the overall revenue levels are within the levels advanced on the evidentiary record and reflect a full compromise by the Parties of the revenue-related issues. I&E Statement in Support at 9‑10.

I&E provided that, although it did not agree with all of Duquesne’s claimed customer cost components, I&E concluded that the changes it would propose would not result in a material difference to customer costs. Further, I&E noted that, if the Commission grants an increase that is less than the full amount of the requested increase, then the Commission should apply a scale-back plan across all of the rate classes, including the residential class. I&E Statement in Support at12-13 (citing I&E St. 3 at 8, 14-19; I&E St. 3-SR at 6-13). Moreover, I&E submitted that it supports the Settlement terms regarding revenue allocation and rate design as a full and fair compromise that provides the Company, the Joint Petitioners, affected ratepayers, and the Commission with regulatory certainty and resolution of the revenue allocation/rate design issue, which is in the public interest. *Id.* at13.

I&E stated that it supports the following resolved issues, as stated in the Settlement, as a full and fair compromise that provides a level of regulatory certainty and resolution which is in the public interest: (1) COVID-19 uncollectible accounts expense; (2) the creation of a regulatory asset for the incremental, extraordinary, nonrecurring uncollectible accounts expense incurred beginning July 1, 2021 through January 14, 2022; (3) pension contributions; (4) FTY and FPFTY plant reporting and the jurisdictional separation study; (5) Duquesne’s proposed TE Programs; and (6) Duquesne’s proposed EV registration incentive funds Level 2 Charging Evaluation rebate expenses. Similarly, I&E noted that it does not oppose the Settlement terms with regard to the following resolved issues: (1) the IRC Section 263A deductions; (2) OPEB funding; (3) accounting for cloud-based information technology systems; and (4) modifications to Duquesne’s Hardship Fund and LIURP. I&E Statement in Support at 13-15, 17-19, 21-22, 27-30.

### 3. The OCA

The OCA submitted that, given the likely litigation outcomes before the Commission, the Settlement, taken as a whole, is a reasonable compromise by the settling Parties. Therefore, the OCA asserted that the Settlement is in the public interest and supports Commission approval without modification. OCA Statement in Support at 4.

The OCA stated that the agreed-upon net increase in Duquesne’s annual operating revenue of $45 million represents a result that would be within the range of likely outcomes in the event of full litigation in this proceeding. Further, the OCA noted that the net increase is reasonable when accompanied by several other important Settlement provisions which will protect ratepayers and prevent the inclusion of costs contested by the OCA. Moreover, the OCA submitted that the Settlement revenue increase will provide sufficient funds to maintain the Company’s distribution system and avoid the rate impact that would have been caused by the full increase amount requested by Duquesne. OCA Statement in Support at 5-6.

Regarding the Settlement provision that Duquesne will be permitted to recover the deferred COVID-19 accounts expense, the OCA noted that this Settlement proposal is consistent with the Commission’s directive to allow for the recovery of prudently incurred expenses as a result of the COVID-19 Pandemic. Further, the OCA submitted that the proposed timeframe for amortization and the recovery of the costs due to the extraordinary circumstances of the COVID-19 Pandemic are reasonable. Accordingly, the OCA asserted that this Settlement provision should be accepted without modification. OCA Statement in Support at 7.

Additionally, the OCA submitted that the Settlement provision permitting the Company to create a regulatory asset for the incremental, extraordinary, non-recurring uncollectible accounts expenses incurred beginning July 1, 2021 through January 14, 2022, is consistent with the Commission’s Secretarial Letter dated May 13, 2020, which directed public utilities to account for prudently incurred incremental, extraordinary, non-recurring expenses related to COVID‑19, and indicated that utilities were authorized to create regulatory assets for incremental expenses related to COVID‑19. OCA Statement in Support at 8 (citing OCA St. 1 at 24). Further, the OCA noted that the prudency of the expenses proposed for recovery may be evaluated during Duquesne’s next base rate proceeding. Accordingly, the OCA asserted that this Settlement proposal should be approved without modification. *Id.*

Regarding the Settlement provision that Duquesne has agreed to file a Total Company and Pennsylvania jurisdictional report showing its capital expenditures, plant additions and retirements for the FPFTY and provide a comparison of its projected and actual expenses and rate base additions for the twelve months ending December 31, 2021 and 2022, the OCA submitted that this provision is in the public interest because it is consistent with 66 Pa. C.S. § 315(e), which states that whenever a utility uses a FPFTY as the basis for its rate increase, the utility shall provide appropriate data supporting the accuracy of the estimates of its FPFTY. OCA Statement in Support at 9.

The OCA also submitted that, the Settlement language pertaining to the provision that Duquesne shall be permitted to capitalize the development costs for cloud-based information systems is consistent with Duquesne’s prior treatment of the cloud-based information systems costs. Further, the OCA noted that it agrees with Duquesne’s proposed treatment of the cloud-based information system capitalization costs on a going-forward basis after January 1, 2022, adding that this treatment is consistent with ASU 2018-15.[[7]](#footnote-7) Moreover, the OCA noted that Parties have explicitly retained their right to challenge the prudence and reasonableness of the Company’s cloud-based information systems costs. Accordingly, the OCA asserted that this represents a reasonable compromise among the Parties. OCA Statement in Support at 10.

Regarding the agreed-upon modifications to the Company’s Hardship Fund, the OCA submitted that the increased eligibility for the period January 1, 2022 through December 1, 2023, from 200% to 300% of the Federal Poverty Level (FPL) will allow residential customers who have been financially impacted by COVID-19 to receive financial assistance. The OCA further stated that the additional $1 million funded by Duquesne’s shareholders will ensure that other consumers are not burdened with the costs of that assistance and most of the dollars will go towards customers that have the greatest need for such assistance and may not have access to other assistance resources. Accordingly, the OCA asserted that the Settlement provisions regarding the Hardship Fund are in the public interest and should be approved. OCA Statement in Support at 12.

Similarly, the OCA noted that the proposed Settlement provision regarding Duquesne’s agreement to increase its LIURP budget annually by $400,000 from January 1, 2022 through January 1, 2025, is in the public interest and should be approved. The OCA explained that the additional LIURP funds will allow Duquesne to assist more low-income customers with reducing their energy use, which will ultimately benefit all residential ratepayers by reducing the amount of the CAP Shortfall paid by all other residential customers. OCA Statement in Support at 13-14.

Regarding the Company’s TE Programs, the OCA submitted that it is in the public interest that efforts be directed towards the Make-Ready Pilot and Fleet and Transit Charging Pilot. OCA Statement in Support at 14-15. Further, the OCA noted that the Settlement addresses the OCA’s concerns regarding: (1) rebate structure for the Fleet and Transit Charging Pilot Program; (2) education and outreach programs; (3) Fleet Electrification Advisory Services; and (4) additional load management initiatives.  *Id.*at 17-18. Moreover, the OCA noted that the agreed-upon information in the Settlement will allow the Commission and interested parties to assess the impact of the TE Programs and ensure that there are detailed evaluations and reports. Accordingly, the OCA submitted that the provisions represent a reasonable compromise and should be approved as in the public interest and adopted without modification. *Id.* at 18-19.

Finally, the OCA acknowledged that, based upon the OCA’s review of the cost of service studies presented in this proceeding and the varying revenue allocation proposals presented by the other Parties, the OCA finds that the Settlement is within the range of reasonable outcomes that would result from the full litigation of this case. Therefore, the OCA submitted that the revenue allocation is reasonable, in the public interest, and should be approved. OCA Statement in Support at 21.

### 4. The OSBA

The OSBA submitted that the proposed Settlement is in the best interests of Duquesne’s small business customers and, therefore, should be approved in its entirety and without modification. OSBA Statement in Support at 3, 13.

The OSBA asserted that it does not believe that EVs are the answer to the Commonwealth’s environmental problems; however, the OSBA noted that, in the interest of collecting data for EV infrastructure in Duquesne’s service territory, the OSBA is willing to support the proposed TE pilot programs. The OSBA further noted that, by allowing the OSBA to find out how EV adoption is progressing with Duquesne’s small businesses, the detailed reporting requirements set forth in the Settlement will be of great interest to the OSBA. OSBA Statement in Support at 8.

The OSBA also stated that, although the Settlement resolves the issue of revenue allocation through a compromise among the Parties, the Settlement does not reflect an agreement of the Parties on a specific cost allocation methodology. OSBA Statement in Support at 9-10. Further, the OSBA noted that the Parties agreed on a revenue allocation proposal for small to medium business customers that is moderately different than Duquesne’s litigated position. Moreover, the OSBA provided that the risks of a highly unfavorable result for small businesses in a fully-litigated proceeding were substantial. Therefore, the OSBA submitted that, given the current regulatory climate for small businesses in Pennsylvania, the Settlement revenue allocation is reasonable and provides meaningful benefits to Duquesne’s small business customers. *Id.* at 10-11.

### 5. CAUSE-PA

CAUSE-PA asserted that the proposed Settlement reflects a reasonably-balanced resolution to the settled issues raised in the proceeding. Accordingly, CAUSE‑PA submitted that the proposed Settlement is in the public interest and, therefore, should be approved in its entirety and without modification. CAUSE-PA Statement in Support at 4, 21.

CAUSE-PA submitted that it is not opposed to the revenue requirement and accounting provisions. CAUSE-PA noted that, in accordance with the Settlement, the Company’s universal service programs and customer protections include several improvements that: (1) help to mitigate the increases in costs of basic electric service for low-income customers; (2) agree with CAUSE-PA’s emphasis on the need to appropriately remedy increases in Duquesne’s residential distribution rates through equitable rate design; (3) agree with CAUSE-PA’s emphasis on the adoption of improvements to universal service programming; and (4) help to reasonably balance the varied interests of the Parties in this proceeding while taking into account the overall impact of Duquesne’s proposed rates and terms and conditions of service on the Company’s customers. Accordingly, CAUSE-PA stated that the revenue requirement and accounting provisions are in the public interest. CAUSE‑PA Statement in Support at 5-6.

Regarding the agreed-upon modifications to the Company’s Hardship Fund, CAUSE-PA noted that by increasing the maximum household eligibility, the program will expand its reach to customers experiencing financial hardship who have previously been unable to receive assistance, while providing additional hardship funding to ensure that the Company’s most financially vulnerable customers are able to access grant assistance. Further, CAUSE-PA stated that directing the bulk of the hardship funds to households at or below 200% of the FPL will help ensure that households who are the most in-need, but usually have less time and fewer resources to actively pursue assistance, are able to secure necessary grant assistance. Moreover, CAUSE-PA noted that opening the program to all customers between 200% and 300% FPL after July 1 will ensure that Duquesne is fully utilizing its funds so that a larger number of at-need customers are able to access hardship funding. Accordingly, CAUSE-PA submitted that the agreed-upon improvements to Duquesne’s Hardship Fund reflect a reasonable compromise and are in the public interest. CAUSE‑PA Statement in Support at 9-10.

Regarding the Settlement provision that increases Duquesne’s LIURP funding by $400,000 annually, CAUSE-PA submitted that it supports the increase and believes that it represents a balanced compromise of the Parties’ varied and competing interests and will help to mitigate the impact of the rate increase on low-income customers. CAUSE-PA also noted that, by requiring Duquesne to continue to use a competitive procurement process for vendor selection, the proposed Settlement will help to ensure that LIURP services are fairly-circulated and equally available to low-income houses in the Company’s service territory. CAUSE‑PA Statement in Support at 11.

Similarly, CAUSE-PA submitted that it supports increasing the maximum CAP credit threshold in-line with the average increase in residential rates, thereby helping low-income CAP participants continue to receive CAP bill savings throughout the program year and decreasing the chance that low-income customers will be forced to pay the full tariff rates at some point during the program year. Further, CAUSE-PA asserted that the proposed Settlement will help to mitigate the effects of Duquesne’s proposed rate increase on low-income customers’ ability to retain their CAP payment amounts and remain connected to necessary basic electric services. Moreover, CAUSE-PA provided that, without the high usage threshold, more low-income customers will be able to take advantage of LIURP, thereby improving their energy efficiency and bill affordability. Therefore, CAUSE-PA submitted that the LIURP and CAP proposals are in the public interest and should be approved without modification. CAUSE‑PA Statement in Support at 13.

Regarding the Company’s TE Programs, CAUSE-PA submitted that, given the varied and competing interests of the Parties, the Make-Ready Pilot represents a reasonable compromise. CAUSE-PA noted that this provision of the Settlement requires the Company to: (1) fairly allocate the Make-Ready annual budget across the Duquesne service territory, which will help to ensure that appropriate communities in the Company’s service territory are able to have fair access to EV infrastructure; (2) track installed Make-Ready by census tract and nine-digit zip code, which will allow Duquesne, the Parties, and interested stakeholders to have a more accurate assessment of communities that access the benefits of the Make-Ready Pilot and avoid the most harmful results for historically underserved areas; and (3) convene collaborative working group meetings, which allow the Parties and interested stakeholders to assess collected Make-Ready data and address local impacts and barriers to EV ownership in historically underserved communities. Accordingly, CAUSE-PA asserted that the Make-Ready Pilot proposal is in the public interest and should be approved. CAUSE‑PA Statement in Support at 14-16.

Similarly, CAUSE-PA submitted that it is supportive of the Settlement terms regarding the Fleet and Transit Charging Pilot, noting that the terms help to: (1) fairly apportion the Pilot across the Company’s service territory; (2) engage stakeholders and the Parties through a collaborative working group process; and (3) report the critical results to determine if the Pilot is fairly serving the communities. Accordingly, CAUSE-PA asserted that the proposed Fleet and Transit Charging Pilot is in the public interest and should be approved. CAUSE‑PA Statement in Support at 17‑18.

Additionally, CAUSE-PA stated that the proposed revenue allocation and rate design provisions represent a balanced compromise of the competing interests of the Joint Petitioners in this proceeding. Therefore, CAUSE-PA submitted that these provisions are in the public interest and should be approved without modification. CAUSE‑PA Statement in Support at 21.

### 6. PWPTF

PWPTF submitted that it supports approval of the Settlement, noting that it serves the public interest based upon, *inter alia*, the Settlement provisions with regard to: (1) the increased funding for Duquesne’s LIURP, which will aid low-income customers in dealing with the effect of the settled rate increase; (2) Duquesne’s agreement to increase shareholders’ contributions to its Hardship Fund by $1 million annually; and (3) given the increase in rates, the adequate funding of Duquesne’s universal service programs, consistent with the Commission’s obligation under the Electricity Generation Customer Choice and Competition Act. Accordingly, PWPTF stated that it requests that the Settlement be approved. PWPTF Statement in Support at 2.

### 7. NRDC

NRDC submitted that the Settlement is in the public interest and should be approved based upon, *inter alia*, the Settlement provisions with regard to: (1) the recovery of COVID-19 related expenses, which reflects a carefully considered compromise of litigated positions; (2) balancing Duquesne’s need to recover costs and provide safe and reliable electric service to its customers against need to ensure that the economic impacts of the Pandemic be carried equally by the ratepayers; (3) allowing the modified CAPs to serve those customers affected by the Pandemic, while also limiting Duquesne’s need to incur new expenses that will be recovered from ratepayers; (4) providing that some of Duquesne’s TE proposals will advance, ensuring that Duquesne’s customers gain the benefits of increasing EV adoption, while also balancing the need to control the program costs in order to reduce any burden on the ratepayers; and (5) avoiding the need for additional litigation of these issues by the Parties. Accordingly, NRDC asserted that the Settlement should be approved without modification. NRDC Statement in Support at 1, 3-5, 7.

### 8. ChargePoint

ChargePoint submitted that the agreed-upon modifications to the TE Program by the Settlement: (1) represent reasonable compromises among the Parties; (2) encourage EV adoption; (3) support the competitive market for EV charging infrastructure and services; and (4) provide benefits to the Company’s customers. ChargePoint noted that, although its interests in this proceeding were focused on the TE Program, ChargePoint supports and recommends the approval of the Settlement in its entirety. ChargePoint Statement in Support at 1.

### 9. Peoples/NEP/U.S. Steel

Peoples, NEP, and U.S. Steel each submitted that they do not object to the Settlement in this proceeding. Peoples Statement of Non-Opposition at 1; NEP Statement of Non-Opposition at 1; U.S. Steel Statement of Non-Opposition at 1.

## C. ALJs’ Recommendation

In their Recommended Decision, the ALJs recommended that the Settlement be approved in its entirety without modification because it is in the public interest and supported by substantial evidence. The ALJs reasoned that the Settlement is in the public interest because the reduced revenue requirement of $45 million represents: (1) a more moderate increase for end-users than originally proposed by Duquesne, while still allowing the Company the opportunity to provide safe and reliable utility service; (2) less burden to end-users, particularly low-income end-users, while still allowing the Company the opportunity to earn a fair and appealing return on its investment; and (3) a reasonable compromise among the Parties’ competing interests. R.D. at 53-54.

The ALJs noted that, although the Settlement is a “black box” settlement, the $45 million net revenue increase is within the range of the Parties’ litigation positions. The ALJs pointed out that I&E’s original position was an increase of $34.8 million and the OCA’s original position was a decrease of $2.754 million. The ALJs further noted that, if this case had been fully litigated, then the revenue requirement likely would have been set within the range of the agreed-upon net revenue increase. R.D. at 54.

The ALJs also noted that the agreed-upon revenue requirement is in the public interest largely due to the universal service provisions contained in the Settlement, which will help offset the burden created by the rate increase for many low-income customers. The ALJs explained that, given that the Settlement provides that the maximum household income eligibility criterion for the Hardship Fund will be increased from 200% of the FPL to 300% of the FPL, more low-income consumers will be allowed to take advantage of the Hardship Fund program. Further, the ALJs observed that an additional annual $1 million will be funded to the Hardship Fund from Duquesne’s shareholders and at least 75% of the additional funds will be directed to households at or below 200% of the FPL. Furthermore, the ALJs noted that the Company has agreed to increase funding for LIURP by $400,000 per year from January 1, 2022 to January 1, 2025. Moreover, the ALJs cited 66 Pa. C.S. §§ 2802(10) and (17), to note that these modifications to the Company’s universal service programs are consistent with the declarations of the General Assembly in the Code to promote universal service and support finding that the Settlement is in the public interest.[[8]](#footnote-8) R.D. at 54-55.

Additionally, the ALJs noted that the Settlement is in the public interest and, therefore, should be approved without modification because of the adoption of the Company’s TE Program. The ALJs stated that the Parties are commended for their efforts to address the significant details in the Settlement regarding the TE Program, particularly for providing a framework upon which can be built greater usage of environmentally friendly technologies. Further, the ALJs were persuaded by the Company’s agreement to work with stakeholders to identify and ensure equal distribution of the TE Program throughout the Company’s territory, to unserved and underserved areas and customers identified through data tracking. Moreover, the ALJs acknowledged that the Parties agreed to several reporting requirements for the Company to present in its next base rate proceeding, which will help in the rapid increase of these new technologies. R.D. at 55-56. Furthermore, the ALJs agreed with ChargePoint, who intervened into this proceeding with a focus on the Company’s TE Program and are now in support of the Settlement because it will “encourage EV adoption, support the competitive market for EV charging infrastructure and services, and provide benefits to Duquesne Light’s customers.” R.D. at 55 (citing ChargePoint Statement in Supportat 1).

The ALJs also stated that, generally, the agreements in the Settlement pertaining to the Company’s TE Program are in the public interest because of the larger public policy and environmental goals associated with the use of EV. The ALJs referenced *In re: Policy Statement on Third Party Electric Vehicle Charging – Resale/Redistribution of Utility Service Tariff Provisions*, Docket No. M-2017­2604382 (Final Policy Statement Order entered November 8, 2018), to note that the Commission’s mission statement, in part, is to encourage new technologies and competitive markets in an environmentally sound manner, and the Commission has previously indicated its interest in supporting increased investment in EV charging infrastructure. R.D. at 55-56.

Furthermore, the ALJs stated that the Settlement is in the public interest and should be approved without modification because, the rate design provisions in the Settlement provide that the Company will deposit an amount equal to $10 million per year into its pension trusts, commencing with the calendar year 2022. The ALJs noted that the funding of the pension trust is an important public benefit. The ALJs further noted that maintaining the residential rate customer charge at $12.50 will help ensure that low-volume users, especially those who are low-income, will not be asked to pay more of their share of the customer charge expenses. R.D. at 56.

Additionally, the ALJs acknowledged that the Settlement will save the Parties from expending the substantial time and expense involved with further litigation. The ALJs noted that, although the Parties exchanged discovery and extensive pre-served testimony, additional costs associated with lengthy legal proceedings could have been included. Further, the ALJs noted that avoiding such expenditures will: (1) minimize the costs that might ultimately be passed on to the ratepayers; (2) conserve the resources of the other parties involved in such proceedings; and (3) conserve Commission resources. Moreover, the ALJs stated that the Settlement addresses many of the issues raised by the witnesses who testified at the public input hearings, including: (1) energy efficiency; (2) COVID-19; (3) EV; and (4) the burden on consumers. R.D. at 56.

The ALJs further stated that, finding that the Settlement is in the public interest is supported by the fact that the Parties have engaged in extensive discovery and other litigation-related efforts in order to properly investigate and resolve the issues. The ALJs noted that these efforts demonstrate that the initial filings and the responses to the filings have been thoroughly evaluated and considered by all of the concerned Parties. The ALJs further noted that, given that the Parties in this matter have diverse and competing interests, they were still able to agree upon most of the issues after extensive and productive negotiations and, as a result, the Settlement represents what each Party believes to be a fair and reasonable compromise. R.D. at 56.

Additionally, the ALJs stated that the Settlement is supported by substantial record evidence, referring to the pre-served testimony with accompanying exhibits and verification. The ALJs referenced 2 Pa. C.S. § 704, to note that, on appeal, decisions of the Commission will be examined to determine if they are supported by substantial evidence. R.D. at 57.

The ALJs concluded that the Settlement will be recommended for approval without modification because the Settlement: (1) is in the public interest; (2) is consistent with the Code; and (3) is supported by substantial record evidence. The ALJs also repeated their praise of the Parties for obtaining a complete resolution of many of the issues during the COVID-19 Pandemic. R.D. at 57.

## D. Disposition of Settlement

Based on our review, we agree with the ALJs’ analysis and find that the terms and conditions of the Settlement are fair, reasonable, and in the public interest. Therefore, we find that the Settlement should be approved in its entirety without modification. As indicated by Duquesne and I&E in their Statements in Support, the Settlement in this case was achieved after an extensive and thorough investigation of the Duquesne’s 2021 Base Rate Case by the Joint Petitioners through: (1) extensive discovery; (2) several rounds of testimony; and (3) negotiations between the Parties that resulted in a reasonable compromise. Duquesne Statement in Support at 3, 29; I&E Statement in Support at 7-9.

In their Recommended Decision, the ALJs highlighted the revenue requirement, noting that although the Settlement is a “black box” settlement, the $45 million net revenue increase is within a range where, based on the Parties’ litigation positions, the revenue requirement likely would have been set had the case been fully litigated. R.D. at 54. We agree with the ALJs’ reasoning that the Settlement is in the public interest and reflects a reasonable compromise between the Parties’ competing interests because the reduced revenue requirement reflects a more moderate and less burdensome increase to end-users, specifically low-income end-users, while still allowing Duquesne the opportunity to earn a fair and appealing return on investment. R.D. at 53‑54.

We also agree with the ALJs’ observation that the agreed-upon revenue requirement is in the public interest based on the modifications to the Company’s Hardship Fund and LIURP, which will help low-income customers mitigate the impact of the rate increase. R.D. at 54-55. Similarly, we agree with the ALJs that low-income residential customers with low usage will be prevented from paying more than their equal share of expenses for the residential rate customer charge, which will remain at $12.50. R.D. at 56. We find the resolution of these matters encouraging, as the efforts of the Parties to reach a compromise on such issues reflects the value placed on the best interests of customers, as well as the varying interests of the Parties and the Commission.

Further, we agree with the ALJs that the Settlement reflects a strong effort by the Parties to settle upon a detailed framework for Duquesne’s proposed TE Program. R.D. at 55. We find it significant that, in addition to the comprehensive resolution achieved between the Parties regarding several intricacies of the TE Program, ChargePoint largely supports the Company’s TE Program, as modified by the Settlement. In its Statement in Support, ChargePoint provided that the modified TE Program encourages EV adoption and supports the competitive market for EV charging infrastructure. ChargePoint Statement in Support at 1. Moreover, as noted by the ALJs, the Commission has previously indicated that it supports increased investment in EV charging infrastructure. R.D. at 55.

Additionally, we agree with the ALJs’ finding that, as a result of the Settlement, additional costs and time associated with further litigation was avoided, thereby reducing the costs that may have been incurred and subsequently passed to the ratepayers. We also agree that the substantial record evidence, specifically the pre-served testimony and accompanying exhibits and verifications in the record, supports adopting the Settlement as being in the public interest. R.D. at 56-57.

We conclude that these many beneficial aspects all support a finding that the Settlement is in the public interest. Although this proceeding produced a “black box” settlement, we agree with the ALJs’ analysis and find that the terms and conditions reached by the Joint Petitioners achieve a fair and reasonable compromise between the interests of customers, the Company, and the Parties, thereby resulting in rates which are just, reasonable, and supported by substantial record evidence. The Settlement is supported by the efforts of the Parties to achieve a complete resolution of most of the issues presented in this case. The benefits of the Settlement include, *inter alia*: (1) the savings of time and expenses for all of the Parties’ involved by avoiding the necessity of further administrative proceedings; (2) additional funding of universal service programs that will aid customers, particularly low-income customers, impacted by the COVID-19 Pandemic and offset the agreed-upon net increase in rates; and (3) the implementation of TE Programs, as a means to increase EV usage and access in Duquesne’s service territory. For the reasons stated herein, and in the Joint Petitioners’ Statements in Support, we agree with the ALJs’ conclusion that the Joint Petition for Settlement is in the public interest. Accordingly, we shall adopt the ALJs’ recommendation to grant the Joint Petition for Settlement and approve the Settlement in its entirety without modification.

# IV. Contested Issue – Master Metering

## A. Positions of the Parties[[9]](#footnote-9)

The remaining issue for litigation pertains to NEP’s Complaint against Duquesne concerning the Company’s Tariff Rules 18 and 41.

NEP is a Columbus, Ohio-based provider of installation, submetering, billing, collections, electrification and energy services to the owners and developers of multifamily properties. It serves over 32,000 residents at over 150 properties, including over 1,600 tenant residents in PECO’s service territory. Specifically, it offers demand management and frequency response technology, ChargePoint electric vehicle charging stations, designed infrastructure, plus usage data and analytics for property managers and maintenance personnel, along with an online resident portal to provide tenants with visibility into and control over their personal utility usage. NEP’s customers are typically multifamily development owners, developers, or condominium associations. NEP M.B. at 1.

NEP acknowledged that, to the extent NEP has proposed Tariff Rule 41.2, the burden of proof on the reasonableness of the rule falls on NEP in accordance with 66 Pa. C.S. § 332(a). NEP M.B. at 7-8. NEP claimed it met its evidentiary burden that Duquesne’s current tariff rules are unreasonable because they preclude a reasonable option that benefits commercial customer multifamily dwelling property owners, tenants, Duquesne and the public interest. NEP M.B. at 28. Through its Complaint, NEP has sought to remedy Duquesne’s existing tariff provisions on redistributing electric energy and master metering. NEP M.B. at 2.

Additionally, NEP argued in part that its proposed Tariff Rule 41.2 provides a fair and measured ability to allow a limited amount of master metering in existing and new multi-family buildings in Duquesne’s service territory, with carefully designed restrictions, guardrails and consumer protections that balance the interest of all stakeholders, including building tenants, property owners, Duquesne, and the public generally. NEP also noted that its master metering is available in PECO’s service territory and claims such service has been made available without measurable harm to tenants in eastern Pennsylvania. NEP M.B. at 2, 15.[[10]](#footnote-10)

In summary, NEP requested that the Commission approve its proposed Tariff Rule 41.2 in its entirety. NEP M.B. at 55.

In opposition, Duquesne argued, in part, that NEP’s master metering and electricity redistribution proposal should be denied because it will allow entities such as NEP to provide unregulated electric service to residential tenants in the Company’s service territory to the detriment of those tenants and to the detriment of the Company’s customers. According to Duquesne, such service would be outside of the jurisdiction of the Commission and without all the protections afforded by regulated service. Duquesne also averred that NEP’s proposal would require Duquesne to unwillingly act as a regulator to oversee NEP’s proposed tariff conditions, which could subject Duquesne to potential complaints and/or penalties for violations. Duquesne M.B. at 1, 4‑7, 10.

In summary, Duquesne requested that NEP’s proposal related to master metering and electricity redistribution be denied. *Id*. at 26.

CAUSE-PA also objected to NEP’s tariff proposal contending it is not in the public interest. Specifically, CAUSE-PA asserted that NEP’s proposal will foreclose tenants from accessing critical forms of assistance and eviscerate existing residential tenant protections. According to CAUSE-PA, NEP’s plan to address such concerns are inadequate. CAUSE-PA M.B. at 1, 8-10, 14, 21.

CAUSE-PA contended that NEP failed to meet its burden of proof to show that its proposed Tariff Rule 41.2 is just, reasonable, or in the public interest. Thus, CAUSE-PA asserted that NEP’s tariff proposal should be rejected in its entirety and Duquesne’s current Tariff Rules 18 and 41 should be upheld. CAUSE-PA M.B. at 60.

Likewise, the OCA asserted that NEP’s proposed Tariff Rider 41.2 should be denied. The OCA argued that NEP’s proposal would potentially eliminate basic consumer protections, and low-income customers would be disadvantaged by not having access to universal service programs. If Tariff Rule 41.2 were to be adopted, however, the OCA stated costs should only be allocated to commercial customers, not residential customers, as the OSBA contends. OCA M.B. at 7-8.

The OSBA argued that NEP’s proposal must be rejected because of the failure of NEP, as the sponsor of the proposed Tariff Rule 41.2, to meet its burden of proof. Rather, the OSBA contended that Duquesne has met its burden of proof in this case as modified by the Settlement. The OSBA added that small and medium businesses would be affected by NEP’s proposal because master-metered residential properties with multiple dwelling units take service under a non-residential general service tariff. Specifically, the OSBA claimed that, since residential loads tend to have load shapes that are relatively costly to serve, increasing residential loads in master-metered buildings will tend to increase unit costs assigned to non-residential rate classes. OSBA M.B. at 3.

In its Reply Brief, NEP argued in part that although it has acknowledged its burden of proof in this proceeding, it has been set inappropriately high out of an unsupported fear of material loss of protections to primarily low-income customers. NEP asserted that it has provided overwhelming evidence in support of its proposal, and the opposing parties have failed to produce evidence supporting their concerns. NEP R.B. at 1, 3.

Duquesne retorted that NEP’s Main Brief asked the ALJs and the Commission to subordinate the duty to protect the public and ratepayers to NEP’s desire to profit. According to Duquesne, NEP’s arguments in its Main Brief are insufficient to overcome the infirmities with NEP’s proposal, and the relief requested by NEP should be denied. Duquesne R.B. at 1-2.

In its Reply Brief, CAUSE-PA reiterated that NEP has failed to meet its burden of proof in this proceeding. CAUSE-PA argued in part that NEP’s Main Brief attempted to shift focus from the flaws in its proposal to the needs of property owners and NEP’s business. Additionally, CAUSE-PA warned that NEP’s proposal opens the door to a broad range of possible entities operating in Duquesne’s territory that could undermine critical policy goals. CAUSE-PA R.B. at 1-4, 10.

In its Reply Brief, the OCA stated that NEP’s proposal is fundamentally flawed because it does not ensure ratepayers receive consumer protections they are entitled to under the Code and the Commission’s Regulations. Further, the OCA stated that the OSBA’s arguments regarding cost allocation are flawed and the OSBA’s proposal regarding cost allocation of master-metered building costs to residential customers should be rejected. OCA R.B. at 1-6.

The OSBA submitted its reply brief for the limited purpose of responding to the OCA’s arguments regarding allocation of costs to residential customers. The OSBA reiterated its opposition to NEP’s proposal and argued that it should be rejected. However, the OSBA noted that, as part of the settlement of Duquesne’s last base rate case, Duquesne was to provide a revenue allocation impact analysis as part of any proposed changes to master metering of multifamily housing. The OSBA submitted that its recommendation regarding revenue allocation of costs related to master-metered multifamily customers is an effort to protect small business customers from the negative impacts of NEP’s proposal absent the necessary revenue impact study. OSBA R.B. 3-4.

## B. ALJs’ Recommendation

The ALJs found that NEP failed to carry its burden of proof that either Duquesne’s current prohibition on master metering is unjust or unreasonable, or that NEP’s proposed Tariff Rule 41.2 is just and reasonable. In support, the ALJs divided their analysis into two parts: first, whether Duquesne’s current prohibition on master metering is unjust or unreasonable, and second, whether NEP has established that its proposed Tariff Rule 41.2 is just and reasonable. R.D. at 78.

Under the first part of the analysis, the ALJs determined that NEP has failed to establish by a preponderance of the evidence that the claimed benefits for property owners, tenants, and the public generally, prove that Duquesne’s current prohibition on master metering is unjust or unreasonable. The ALJs noted that the economic benefit to a property owner choosing NEP’s services is clear: NEP’s business model buys electricity at a commercial customer rate and resells it to tenants at a residential rate, resulting in a net monetary gain to a property owner using NEP’s services. R.D. at 79 (citing NEP St. 1 at 17). Additionally, the ALJs acknowledged NEP’s citation to other benefits of an economic nature unrelated to a price differential, such as purported economic advantages of installing infrastructure with NEP compared to the utility. R.D. at 79 (citing NEP St. 1 at 13-14). However, the ALJs explained that economic benefit to a property owner does not demonstrate Duquesne’s current prohibition on master metering is unreasonable or that NEP’s proposal should be adopted. Citing Commonwealth Court and Commission decisions, the ALJs explained that economic interest does not suffice to challenge a master metering prohibition. R.D. at 79 (citing *Crown American Corp., v. Pa. PUC*, 463 A.2d 1257, 1260 (Pa. Cmwlth. 1983) (*Crown American*) and *Motheral, Inc. v. Duquesne Light Company*, Docket No. C-00003926, 2001 Pa. PUC LEXIS 4, \*11-12 (Order entered March 23, 2001) (*Motheral*)).

The ALJs also found NEP’s claim that a property owner would use its net monetary gain for efficiency and conservation efforts to be speculative. Highlighting NEP’s statement that master metering provides the property owner with control over the energy decisions for its property, the ALJs noted that NEP does not purport to control what a property owner does with its property, and there is no clear evidence that property owners would tend to use any net monetary gain for energy efficiency and conservation purposes. R.D. at 79 (citing NEP St. 1 at 12). In contrast, the ALJs determined that CAUSE-PA convincingly argued that NEP was unable to substantiate its claims that its proposal would lead to energy efficiency and carbon reduction. R.D. at 79 (citing CAUSE-PA St. 1-R at 56, fn. 140).

Regarding tenants, the ALJs referenced NEP’s acknowledgment that the tenant would voluntarily forgo the opportunity to shop for an electricity supplier. However, NEP highlighted what the ALJs termed other purported benefits for tenants, including: using a carbon free and climate focused electricity supply without an additional cost; more tenant load participating in the competitive market than would otherwise occur; creating a fully carbon neutral or green property; allowing a capped bill, insights into lowering bills, and customized customer-specific approaches; and potential economic benefits to sub-metered tenants, especially if the property owner passes along a bill credit based on the lower cost of a commercial load versus a residential load. R.D. at 79 (citing NEP St. 1 at 21-23).

The ALJs disagreed with the contention that tenants are being denied a choice that makes Duquesne’s prohibition on master metering unjust and unreasonable. Instead, the ALJs found the claim that a property owner may pass along a bill credit based on the lower cost of commercial load versus a residential load to be speculative. For tenants interested in using a carbon free or climate focused electricity supply, the ALJs reasoned that it is unclear from the evidence presented how those tenants may receive such a supply without an additional cost when NEP only states that its model prohibits charging tenants an energy cost more than what they would have paid to the utility for a premium, carbon free supply. R.D. at 80 (citing NEP St. 1 at 11).

Even if such a showing could be made, the ALJs continued, the Commonwealth Court and the Commission have found economic interest does not suffice to challenge a master metering prohibition. Additionally, the ALJs asserted that benefits from carbon free or climate focused shopping are also speculative. In support, the ALJs stated there is nothing in the record to accept as true that this is a benefit that tenants universally seek. Moreover, NEP stated that it only shops for carbon free or renewable energy supply as the authorized representative for a property owner. R.D. at 80 (citing NEP St. 1 at 11). However, the ALJs explained, NEP’s testimony indicates shopping can be done by the property owner rather than NEP. R.D. at 80 (citing NEP St. 1 at 11). The ALJs reasoned that there is no guarantee that a property owner will choose a carbon free or renewable energy supply. R.D. at 80.

The ALJs considered that a capped bill, insights into lowering bills, and other customer specific approaches could provide benefits to a tenant. However, the ALJs determined that NEP’s proposal to create an alternative scheme for customer protections and programs is not comparable to those already in effect and does not serve to demonstrate that Duquesne’s current tariff prohibiting master metering is unjust and unreasonable. The ALJs added that NEP’s other contention that the “public generally” is being denied a choice was similarly unconvincing, in part because NEP did not make clear the identity of the public generally and their interest in this choice. *Id*.

In summary of the first part of their analysis, the ALJs concluded that NEP has not carried its burden to show that whatever benefits its proposal may provide to a property owner, tenants, or the public generally, sufficient to show that circumstances have changed so drastically as to render Duquesne’s current tariff prohibiting master metering unjust and unreasonable. *Id*.

Under the second part of the analysis, the ALJs found that NEP has failed to prove that its proposed Tariff Rule 41.2 is just and reasonable. Here, the ALJs referenced the arguments of Duquesne, CAUSE-PA, and the OCA that NEP’s customers will no longer be eligible for protections and benefits in the Code, the Commission Regulations, and Duquesne’s tariffs should they no longer be the Company’s customers, whether low income or otherwise. R.D. at 81 (citing Duquesne M.B. at 14-17; CAUSE‑PA M.B. at 23-56; and OCA M.B. 10-14).

The ALJs considered NEP’s attempts to address these concerns through the modifications to its proposal that it offered in surrebuttal testimony. R.D. at 81 (citing NEP M.B. at 44-45). However, the ALJs agreed with Duquesne, CAUSE-PA, and the OCA that the modifications were not an adequate substitute for the array of important customer benefits and protections currently provided to Duquesne’s customers. R.D. at 81.

Additionally, the ALJs expressed doubt that NEP’s proposal would comply with 66 Pa. C.S. § 1313.[[11]](#footnote-11) Here, the ALJs noted NEP’s claim of resolving any question about its ability to comply with 66 Pa. C.S. § 1313 by making it a requirement in proposed Tariff Rule 41.2 that master metered tenants receive a minimum of a $2 discount each month from the otherwise applicable utility charge for residential service. NEP M.B. at52. However, the ALJs considered compelling Duquesne’s evidence that many of NEP’s tenant customers would pay more taking service from NEP instead of Duquesne, through fees, charges, or ineligibility for the Company’s Standard Offer Program. R.D. at 81 (citing Duquesne M.B. at 14-15 (internal citations omitted)). Additionally, the ALJs determined that Duquesne credibly argued that NEP’s $2 bill credit does not come close to the bill reductions and other benefits Duquesne already provides to low-income customers. R.D. at 81-82 (citing Duquesne M.B. at 16 (internal citations omitted); and OCA M.B. at 11).

Regarding NEP’s contention that its proposal will be limited to non-low-income new and existing multifamily properties, the ALJs found NEP’s proposal to be lacking in important detail. The ALJs agreed with Duquesne’s and CAUSE-PA’s criticisms that what NEP may consider “non-low-income” housing may still include low-income residents, and NEP’s proposal fails to require that a property owner verify or confirm the income status of tenants. R.D. at 82 (citing Duquesne M.B. at 16- 17; CAUSE-PA M.B. at 15).

Next, the ALJs noted NEP’s argument that it should not be held to the standards of a public utility. According to the ALJs, this contention does not negate consideration of whether NEP’s proposal may disadvantage certain residential tenants. Even if NEP’s customer protections could be considered comparable, the ALJs expressed agreement with Duquesne and CAUSE-PA about the valid and complex concerns regarding the ability to enforce these protections before the Commission if any violations are identified in the future. The ALJs also considered NEP’s response to these concerns and its citation to a Commission decision – *Coggins v. PPL Elec. Utils. Corp.*, Docket No. C-2012-2312785 (Order entered July 18, 2013) (*Coggins*) – finding that a complainant could file a complaint with the Commission against a non-public utility that allegedly was violating 66 Pa. C.S. § 1313. However, the ALJs determined that *Coggins* does not squarely speak to a residential tenant’s ability to pursue a complaint regarding NEP’s Tariff Rules 41.2 before the Commission for issues unrelated to 66 Pa. C.S. § 1313. The ALJs reasoned that such concerns may not be conclusively resolved until a future complaint is raised, at which point it will be difficult to reverse course should NEP’s proposal be endorsed through Commission approved tariff language. R.D. at 82.

Although the ALJs acknowledged that the use of submetering may mitigate concerns regarding price signals, the ALJs disagreed with NEP that the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §§ 2601, *et seq*. (PURPA), *Crown America*, or *Pa. PUC v. West Penn Power Co*., Docket Nos. R-78100685, *et al*., 1979 Pa. PUC LEXIS 37 (Order entered August 27, 1979) (*West Penn Power*), support NEP’s proposal. The ALJs explained that PURPA and the cited cases concern energy efficiency/conservation and customers receiving price signals, and Duquesne’s service already addresses these goals. According to the ALJs, Duquesne provides conservation and energy efficiency programs through its Commission-approved Energy Efficiency and Conservation (EE&C) Program, and Duquesne’s residential customers receive price signals for their accounts by being individually metered. Additionally, the ALJs reasoned that just because PURPA and the cited cases focus on EE&C, they do not negate concerns with NEP’s proposal regarding customer protections. R.D. at 82-83.

Next, the ALJs considered NEP’s criticism that Duquesne has not provided any empirical or other hard data suggesting actual consumer or customer harm. Here, the ALJs emphasized, NEP carries the burden of proof in this proceeding to produce evidence to show that Duquesne’s current prohibition on master metering is unjust and unreasonable, and that NEP’s proposal is just and reasonable. Rather than provide hard data from territories it operates in to confirm the purported affirmative benefits of its proposal, the ALJs continued, NEP averred that no demonstrated adverse consequences have occurred with master metering and sub-metering service in PECO’s service territory, or in Duquesne’s territory. The ALJs rejected NEP’s contention that the purported lack of adverse consequences will demonstrate that the touted affirmative benefits of NEP’s proposal will materialize so as to render Duquesne’s prohibition on master metering unjust or unreasonable or will prove NEP’s proposal is just and reasonable. R.D. at 83.

As a final matter, the ALJs recommended that, because NEP has failed to satisfy its burden of proof regarding its proposal, there should be no cost allocation design regarding NEP’s proposal, or a process regarding Commission mediation for requests under NEP’s proposed Tariff Rule 41.2. Additionally, the ALJs noted Duquesne’s argument that it cannot be compelled to adopt NEP’s proposal because it is a discretionary program. R.D. at 83 (citing Duquesne M.B. at 7). Because NEP has failed to meet its burden to have its proposal implemented, the ALJs declined to consider Duquesne’s argument regarding being compelled to adopt a discretionary program. R.D. at 83.

## C. Exceptions, Replies, and Disposition

### 1. Legal Standard Arguments

#### a. The R.D. Incorrectly Placed on NEP the Burden to Show that Duquesne’s Existing Tariff Rule 41 Prohibiting Master Metering in its Service Territory was Unreasonable

##### i. NEP Exception No. 2

In its Exception No. 2, NEP contends that the ALJs erred in concluding that the burden was on NEP to demonstrate that Duquesne’s Tariff Rule 41 was unreasonable.

NEP cites the statement in the Recommended Decision that “NEP has failed to carry its burden of proof that either *Duquesne Light’s current prohibition on master metering* is unjust or unreasonable, or that NEP’s proposed Tariff Rule 41.2 is just and reasonable.” NEP Exc. at 11 (citing R.D. at 78) (emphasis in original). Acknowledging its acceptance of the burden of proving the justness and reasonableness of its proposed tariff rule, NEP contends that its interests in master metering is meaningless to it unless “coupled with the ability of Property Owners to redistribute the energy to tenants within their own multifamily buildings.” *Id.* Asserting that Duquesne does not outright ban master metering and redistribution of energy, it claims Duquesne “makes them essentially impossible to do, thereby creating an effective ‘ban’ on master metering.” *Id.* NEP asserts that Duquesne’s Tariff Rule 41 coupled with its Tariff Rule 18, which allows redistribution of energy “under the vague standard of ‘special circumstances[,]’” has the “net effect” of severely restricting master metering and energy redistribution.[[12]](#footnote-12) *Id.*

Arguing that Duquesne has failed to find “special circumstances” under Tariff Rule 18 over the last five years, NEP concludes that “[i]t is clear that Duquesne considers its tariff to *prohibit master metering*[.]” *Id.* at 12 (emphasis in original). Duquesne’s “prior conduct and implementation of Tariff Rules 18 and 41,” NEP argues, “evidence a settled intent and predisposition against master metering and the redistribution of energy,” both of which are necessary to NEP’s master metering proposal. *Id.* NEP contends that Duquesne’s position fails to avail itself of smart meter capabilities and creates a regulatory dissonance with PECO’s service territory where master metering is allowed. *Id.* at 12-13.

With this “backdrop,” NEP contends it demonstrated the reasonableness of its proposed Rule 41.2 because, *inter alia*, its “rule works *with* – not against” Duquesne’s existing tariff rules. *Id.* at 13 (emphasis in original). It does this, contends NEP, by providing “the factual predicate” for Duquesne to “apply the ‘special circumstances’ in Duquesne’s Tariff Rule 18 in a “reasonable manner under well-defined circumstances with significant and specific benefits to all the key stakeholders, starting with tenants and including Property Owners, and Duquesne itself.” *Id.* As such, Duquesne’s Tariff Rule 18 “must be explicitly amended” to allow electricity redistribution if NEP’s circumstances set forth in its tariff proposal are met. *Id.*

On the basis of circumstances set out in its proposed rule, and without further legal argument or elaboration, NEP concludes its Exception No. 2 stating that “[t]he RD erred in assigning an inappropriate burden of proof on NEP, leading to the RD’s failure to analyze NEP’s proposed master meter and smart sub-meter program and Tariff Rule 41.2 correctly.” *Id.*

##### ii. Reply Exceptions

In response to NEP, Duquesne argues that NEP admits it has the burden of proving its proposal is reasonable. With respect to NEP’s argument that it did not have the burden of proving Duquesne’s existing tariff rule unreasonable, Duquesne challenges what it calls the basis of NEP’s argument, that Duquesne’s existing tariff does not expressly outright ban master metering and resale, and, therefore, NEP’s proposed Rule 41.2 can be adopted alongside Duquesne’s existing rule.

Duquesne asserts that the error in this argument is demonstrated by NEP itself through NEP’s affirmation that Duquesne’s “Tariff Rule 18 must be explicitly amended to permit energy redistribution when it couples with” NEP’s proposed Tariff Rule 41.2. Duquesne R. Exc. at 6. Duquesne argues that in admitting Duquesne’s existing tariff must be revised to accommodate NEP’s proposal, NEP bears the burden of proving Duquesne’s existing tariff is unjust and unreasonable. In support, Duquesne cites to *Kossman v. Pa. PUC*, 694 A.2d 1147, 1151 (Pa. Cmwlth. 1997) (*Kossman*), *Shenango Twp. Bd. Of Supervisors v. Pa. PUC*, 686 A.2d 910, 914 (Pa. Cmwlth. 1996) (*Shenango Twp.*), and *Zucker v. Pa. PUC*, 401 A.2d 1377, 1380 (Pa. Cmwlth. 1979) (*Zucker*) for the proposition that Commission-approved tariffs are just and reasonable until proven otherwise. Duquesne also refers to *Motheral, supra,* in which the Commission upheld Duquesne’s prohibition against residential master metering. Finally, Duquesne relies on *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981) (*Brockway*) to place the burden of proof on NEP. Duquesne R. Exc. at 6-7.[[13]](#footnote-13)

The OCA did not file a reply to NEP Exception No. 2. In general, however, as to the burden of proof, in its introduction to its Replies the OCA contends that the ALJs “determined that NEP had failed to meet its burden to demonstrate that the propos[ed Rule 41.2] should be adopted.” OCA R. Exc. at 1.

The OSBA filed a letter in lieu of Replies to Exceptions in which it summarily asserted that the ALJs correctly denied NEP’s proposed master metering Rule 41.2 and that the Recommended Decision should be adopted.

In the summary of its Replies, CAUSE-PA asserts that “[t]he ALJs correctly concluded that NEP failed to meet its burden of showing that its tariff proposal is just, reasonable, and in the public interest. CAUSE-PA R. Exc. at 1. In addressing the ALJs’ evidentiary evaluation, CAUSE-PA further states that “the ALJs correctly concluded[ ] it was NEP’s burden to produce substantial evidence showing that its proposal would serve the public interest.” CAUSE-PA R. Exc. at 3.

Specifically in reply to NEP’s Exception No. 2, CAUSE-PA contends that NEP attempts to “shoehorn” its proposed tariff rule into Duquesne’s existing tariff rules in order to reduce its otherwise heavy burden of proof by contending that its proposal works in coordination with Duquesne’s existing provision. CAUSE-PA R. Exc. at 7-8. CAUSE-PA contends that the ALJs correctly assigned to NEP “the burden of proof to show that its proposed tariff rule is just, reasonable, and in the public interest – and that [Duquesne’s] existing tariff rules are not.” CAUSE-PA R. Exc. at 8. Like Duquesne, CAUSE-PA also cites, *inter* *alia*, to *Brockway* for placement of the burden of proof in this base rate proceeding. CAUSE-PA concludes by asserting that NEP has never sought to define what might constitute “special circumstances” under Duquesne’s existing rule. Rather, CAUSE-PA asserts, it is only now at the late stages of the proceeding that NEP is asserting that its tariff proposal “will simply help clarify” Duquesne’s existing tariff rules, an argument CAUSE-PA contends is “at best, disingenuous, and does not in any way change the fact that NEP has failed to meet its burden of proof in this proceeding.” *Id*.

CAUSE-PA argues that NEP cannot avoid its “dual burdens” in this proceeding “to prove its proposal is just, reasonable, and in the public interest *and* to demonstrate that circumstances have changed so drastically as to invalidate” Duquesne’s existing Tariff Rules 41 and 18 because the “overwhelming evidence” demonstrates otherwise. *Id.*at 9 (emphasis in original).

##### iii. Disposition

As stated above in our discussion of the legal standards applicable to our review, under the Code, in any proceeding upon the motionof the Commission involving existing or proposed rates, or in any proceeding involving any proposed increase in rates, the burden is on the public utility to show that the rate involved is just and reasonable. 66 Pa. C.S. § 315(a). In a general base rate case, the burden of establishing the justness and reasonableness of proposed and existing rates is an affirmative one that is and remains on the utility. Generally, an existing rate previously approved by the Commission is considered a “‘legal rate’ (the reasonableness of which has already been determined by the Commission).” *Cup v. Lake Latonka Water Co.*, Docket No. R‑842577C001 (Order entered December 6, 1985) at 2, 60 Pa. P.U.C. 662, 0085 WL 1095149. And Commission-approved tariff provisions have the full force and effect of law and are prima facie reasonable. *Shenango Twp.*, *supra* (citing *Zucker* (heavy burden to prove the facts and circumstances have changed so drastically as to render a Commission-approved tariff provision unreasonable)). However, care must be exercised within the context of a general base rate case, where, as stated, on the matter of both existing and proposed rates the burden of proof is on the utility under Section 315(a) of the Code.[[14]](#footnote-14)

That said, “while the statutory burden of proof does not shift from the public utility in a general rate proceeding, a party proposing an adjustment to a ratemaking claim bears the burden of presenting some evidence or analysis . . . tending to demonstrate the reasonableness of the adjustment.” *Pa. PUC v. Philadelphia Gas Works*, Docket No. R-2017-2586783, 2017 WL 5635976 (Order entered November 8, 2017) (*PGW 2017*) at \*7, *citing Allegheny Center Assocs. v. Pa. PUC*, 570 A.2d 149, 153 (Pa. Cmwlth. 1990) (*Allegheny Center Assocs.*). Further, “while a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called upon to account for every action absent prior notice” of a challenge. *Id.* “[T]he statutory burden of proof placed on the utility under Section 315(a) of the Code, 66 Pa. C.S. § 315(a), cannot reasonably be read to place the burden of proof on the utility with respect to an issue that the utility did not propose in its general rate case filing, and which, frequently, the utility would oppose.” *Pa. PUC v. PECO Energy Company – Electric Division*, Docket No. R-2018-3000164 (Order entered December 20, 2018)at 13, *aff’d NRG Energy, Inc. v Pa. PUC*, 233 A.3d 936, 951 (Pa. Cmwlth. 2020) (*NRG*) (considering determinations regarding credibility and evidentiary weight, Commission did not improperly shift the burden of proof to party opposing utility), *petition for allowance of appeal den’d NRG Energy, Inc. v. Pa. PUC*,244 A.3d 346 (Pa. 2021). “[T]he statutory burden placed on a proponent of a rule or order under Section 332(a) does not shift to the utility simply because such rule or order is proposed within the context of the utility’s 1308(d) general base rate proceeding.” *PGW 2017* at \*8.

Thus, although in a base rate case the burden of proof always remains on the utility, a “party challenging a previously-approved tariff provision [bears] the burden to demonstrate the Commission’s prior approval is no longer justified.” *Pa. PUC v. Duquesne Light Company*, Docket No. R-2013-2372129, 2014 WL 1744781 (Order entered April 23, 2014) (*Duquesne 2014*) at \*12. Care must be taken to ensure that the proceeding is one encompassed under Section 315(a), such as this, and not a customer complaint proceeding, such as *Brockway* and *Kossman*, where Section 315(a) is not implicated*.*[[15]](#footnote-15) With respect to challenges to existing tariff provisions, the interplay between Sections 315(a) and 332(a) must be addressed carefully, and ultimately, the final decision on the merits of a proposal will be dependent on an evaluation of the evidentiary record.

Because we must resolve NEP’s Exception No. 2 within the context of a base rate case, we rely on our analyses and conclusions in *Duquesne 2014*, and a case we relied on in *Duquesne 2014*, *Pa. PUC v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2010-2215623 (Order entered March 15, 2012) (*Columbia 2012*), two base rate proceedings in which we addressed challenges to the utilities’ existing tariff provisions. Both prove instructive to our present legal analysis. We conclude our analysis with review of *NRG*, a recent Commonwealth Court decision affirming our rejection of a complainant-party’s challenge to a utility’s existing tariff rule in which the Court recognized and addressed, as we do here, the interplay between Sections 315(a) and 332(a).

NEP does not challenge, and we find no error in, the ALJs’ statement that NEP has the burden of proving its proposed Rule 41.2 is just and reasonable. NEP does challenge, and we agree in finding error in, the ALJs’ statement that NEP *also* has the burden of proving that Duquesne’s existing Rule 41 is unjust and unreasonable. The ALJs’ assignment of the burden with regard to Duquesne’s existing tariff rules is a misstatement of NEP’s burden under Section 315(a). However, within our overall review of all NEP’s Exceptions, we find the error to be harmless to our disposition of NEP’s proposal. That is the case because although the burden with respect to an existing proposal is and remains on the utility, as discussed in our resolution of NEP’s Exception Nos. 1, 3 and 6, we agree with the ALJs that NEP’s argument that its proposal is just and reasonable fails on the evidence.

In *Duquesne 2014*, the NRG group of companies (NRG) filed a complaint in a Duquesne general rate case in which NRG challenged Duquesne’s existing Tariff Rider No. 18, requesting the existing rate be modified or the rider itself be eliminated. The base rate case ultimately came before us on settlement of all issues except NRG’s challenge to existing Rider 18, which the ALJ had recommended be severed and addressed separately on the established record. Upon our review and approval of the settlement terms as in the public interest, we turned to the ALJ’s proposal. Before resolving NRG’s exceptions on that matter, we separately addressed the burden of proof regarding NRG’s challenge to the existing tariff rider.

Relying on both *Allegheny Center Assocs.* and *Columbia 2012*, we affirmed the legal standard that under Section 315(a) in a base rate case, the burden of proof rests firmly with the utility. However, we also acknowledged that while that Section 315(a) premise is axiomatic, a party proposing an adjustment to a ratemaking claim must present evidence or analysis demonstrating its reasonableness. Finding that the challenge to Duquesne’s existing Tariff Rider No. 18 was at issue due to NRG’s complaint, we addressed the legal standard regarding the burden of proof specifically as to NRG’s challenge to an existing tariff provision as follows:

However, a party that raises an issue that is not included in a public utility’s general rate case filing bears the burden of proof. As the proponent of a Commission order with respect to its proposals, the NRG Companies bear the burden of proof as to proposals that Duquesne did not include in its filing. Duquesne’s Rider No. 18 provisions are deemed just and reasonable because those tariff provisions previously were approved by the Commission. Therefore, the NRG Companies, as the party challenging a previously-approved tariff provision, bear the burden to demonstrate the Commission’s prior approval is no longer justified.

*Duquesne 2014* at \*12 (citing *Columbia 2012*).

In exceptions, NRG argued that in the severed complaint proceeding, the burden of proof must remain on the utility under Section 315(a) because the complaint had been raised in the base rate case. On disposition of this legal issue, and noting that issues regarding Rider No. 18 were raised by NRG and had no impact on the settlement, we affirmed the ALJ’s recommendation and concluded as follows:

Therefore, we shall adopt the ALJ’s recommendation that the base rate investigation be closed; that the issues held in abeyance be resolved based upon the existing record; and that the NRG Companies have the burden of proof with regard to the deferred issues.10 Accordingly, we shall deny the Exception filed by the NRG Companies on this particular issue.

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10 We note that the severance of the Rider No. 18 issues does not impact the burden of proof with respect to these issues. Consistent with our prior decisions, if the Rider No. 18 issues had been decided on the merits in this base rate proceeding, the NRG Companies would have had the burden of proof with respect to those issues. *See Pa. PUC v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R‑2010‑2215623 (Order entered March 15, 2012), at 16 (stating that a party that raises an issue not included in a public utility’s general rate case filing bears the burden of proof with respect to that particular issue); *Pa. PUC v. Metropolitan Edison Company*, Docket No. R‑00061366 (Order entered January 11, 2007), at 67 (stating that “the provisions of 66 Pa. C.S. § 315(a) cannot reasonably be read to place the burden of proof on the utility with respect to an issue the utility did not include in its general rate case filing and which, frequently, the utility would oppose.”)

*Duquesne 2014* at \*18. Tariff Rule 41.2 was not proposed by Duquesne and was opposed by it. In accordance with our legal analysis and holding in *Duquesne 2014*, the burden of proof as to NEP’s tariff proposal remains on NEP.

Review of our analysis of a party’s challenge to a utility’s existing tariff provision in *Columbia 2012*, on which we relied in *Duquesne 2014*,is also instructive. In *Columbia 2012*, PCOC[[16]](#footnote-16) proposed revisions to Columbia’s tariffed CAP-Plus program based on its contentions that the program violated various state and federal laws and requirements regarding the application of LIHEAP grants. According to the ALJ’s Recommended Decision, PCOC had the burden to produce evidence that an existing program already approved by the Commission “must be ‘dis-approved’” for reasons averred by the challenger. *Columbia 2012* at 29. The ALJ determined that placing that burden on the PCOC to produce evidence did not shift the burden of proof entirely away from the utility because in a general rate case every provision of a utility’s tariff is subject to revision if valid reasons are produced. Once the challenge to the existing tariffed provision was raised, Columbia was on notice to show why that provision should not be changed. Based on her review of the evidence and parties’ arguments, the ALJ found that the existing tariff provision remained reasonable, in the public interest, and not violative of any laws.[[17]](#footnote-17) In reviewing the parties’ exceptions and replies, we agreed with the continuation of Columbia’s existing tariffed program, having noted that “PCOC, as the party challenging a previously-approved tariff provision, [bore] the burden to demonstrate the Commission’s prior approval [was] no longer justified.” *Id.* at 16.

Commonwealth Court’s recent affirmation of our review and rejection of a party opponent’s proposal within the context of a base rate case in *NRG* further confirms the legal standard to be applied to a challenge to an existing tariff provision. In a PECO base rate proceeding, NRG challenged PECO’s cost allocations in its proposed Tariff No. 6’s Price to Compare (PTC), which allocations were the same as those previously approved by the Commission in prior cases. NRG proposed an alternative cost allocation methodology, which the ALJs rejected, and we affirmed. NRG appealed, contesting, *inter* *alia*, the Commission’s application of the burden of proof.

In finding that PECO was properly allocating costs for default service, the ALJs rejected NRG’s proposal because they gave more credit to PECO’s evidence and were not persuaded by NRG’s legal arguments. We affirmed the ALJs. On appeal, in reciting the background of the case, the Court stated that the Commission held that the general burden of proving a proposed rate is just and reasonable is on the utility under Section 315(a) of the Code. However, further acknowledging our legal analysis, the Court repeated our standard as follows:

However, the Commission held that “NRG, as the proponent of its proposed reallocation methodology, bore the burden under Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), to support that proposal, a burden that did “not shift to the utility simply because such rule or order [was] proposed within the context of the utility’s [Section] 1308(d) general base rate proceeding.” The Commission explained that this statutory burden of proof “cannot reasonably be read to place the burden of proof on the utility with respect to an issue that the utility did not propose in its general rate case filing, and which, frequently, the utility would oppose.” Thus, the Commission would not require PECO to prove something it did not propose because doing so would create “an absurd result in interpretation of [the Legislature’s] enactments.” The burden placed on NRG, the Commission concluded, required NRG to “present[ ] some evidence or analysis, during the reception of evidence in the proceeding, tending to demonstrate the reasonableness of the adjustment.” The Commission further noted that the parties had concurred with the allocation of the burdens in this fashion.”

*NRG*, 233 A.3d at 946-47 (internal citations to Commission order omitted).

The Court noted NRG’s argument on exception, that the ALJs erred in concluding that PECO satisfied its burden of proof, and NRG’s corollary, that its own proposal “should be adopted because ... it presented evidence and analysis that tends to demonstrate that its proposal is reasonable.” *Id.* at 947 (quoting the Commission’s order). The Court further described that the Commission had found that PECO had submitted sufficient evidence to support its proposed rate, and NRG had failed to justify its alternative. Ultimately the Court noted that the Commission had found PECO’s evidence more credible, and the Commission had also concluded that “*NRG did not present evidence that its reallocation methodology would create a more equitable result or that PECO’s rate was unfair*. Because of this, NRG’s proposal and the ‘magnitude of this reallocation appear[ed] to be unreasonable.’” *Id.* at 948 (emphasis added; internal citations to Commission order omitted).

Thus, in reviewing and affirming the Commission’s analysis, the Court specifically noted that NRG failed to prove by sufficient credible evidence that its proposal was in the public interest, *i.e*., NRG failed to prove on comparison that its proposal was more equitable than PECO’s existing provision was alleged to be unfair, or stated differently, no longer justified.

On appeal, NRG argued that in invoking Section 332(a) of the Code, the Commission improperly shifted the burden of proof, which under Section 315(a) in a base rate case should have stayed with PECO. Because of this, NRG contended, the Commission did not require PECO to prove by substantial evidence that PECO’s own proposal was just and reasonable. The Court was not persuaded.

On the issue of the interplay between Sections 315(a) and 332(a), the Court presented the following analysis:

Section 315(a) of the Public Utility Code imposes a burden on the public utility proposing a new rate to prove that the rate is just and reasonable. This burden does not shift from a utility whose burden has been statutorily imposed. However, although “a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called upon to account for every action absent prior notice that such action is to be challenged.” Furthermore, Section 332(a) establishes a separate burden of proof than that in Section 315 for those entities that propose a rule or order.

*Id.* at 950, *quoting Allegheny Center Assocs.* (internal citations omitted).

The Court continued, noting that while PECO had proposed a rate change, PECO had based its allocation of indirect PTC costs on the methodology the Commission had previously approved, whereas NRG proposed an alternative never before used. With this predicate, the Court continued its analysis of the Section 315(a) and 332(a) burdens as follows:

Both parties presented evidence to support their respective positions. The Commission interpreted Sections 315(a) and 332(a) and precedent to conclude that PECO “has the burden of proving entitlement to its own cost allocation proposal while the burden of proving that changes should be made to PECO’s current cost allocation methodology rests on NRG.” It explained that as the “party proposing an adjustment to a ratemaking claim[, NRG,] bears the burden of presenting **some evidence** or analysis tending to demonstrate the reasonableness of the adjustment.” We discern no clear error in this interpretation. . . . . [B]ecause NRG sought the Commission’s approval of **its** alternative to PECO’s proposed rate, NRG had to present “some evidence or analysis,” to prove that its alternative methodology was reasonable per Section 332(a). If NRG did not bear a burden to present something to support its methodology, it would be difficult, if not impossible, for PECO to respond with evidence explaining why the alternative should not be accepted. In effect, PECO would be “called upon to account for [NRG’s] action” without ever having been given notice of the basis of NRG’s claims, a result inconsistent with *Allegheny Center Associates*, 570 A.2d at 153.

*NRG*, 233 A.3d*.* at 950 (emphasis in original; internal citations to Commission order omitted).

Next addressing the Commission’s role as factfinder and arbiter of the evidence, the Court concluded:

[T]he Commission weighed all the evidence presented, as is required, and concluded that PECO met its burden under Section 315(a). Upon determining that PECO met its burden to prove that its proposed rate was just and reasonable, the Commission separately considered whether NRG presented “some evidence” to support its own position, a standard that NRG acknowledges is correct.

\* \* \*

Based on its credibility and evidentiary weight determinations, the Commission made its final determination in favor of PECO. That the Commission’s determinations were in PECO’s favor, rather than in NRG’s favor, does not mean the Commission improperly shifted the burden of proof to NRG. As such, we discern no error in the Commission’s application of the relevant burdens of proof in this matter.

*Id.* at 950-51.

Accordingly, in this general base rate proceeding before us, the burden of proof as to the reasonableness and justness of Duquesne’s existing Tariff Rule Nos. 41 and 18 is and remains on Duquesne. However, as the proponent of a change to Duquesne’s existing tariff rule, the burden of presenting some evidence of the justness and reasonableness of NEP’s Tariff Rule 41.2 is on NEP, as NEP acknowledged. Whether the respective burdens are satisfied is properly determined through an evidentiary analysis.

To adopt the ALJs’ recommendation rejecting NEP’s proposed tariff rule, we must find that Duquesne has satisfied its burden of proving that its existing tariff rules remain just and reasonable “by a preponderance of the evidence, which ‘means only that one party has presented evidence that is more convincing by even the smallest amount, than the evidence presented by the other party[.]’” *NRG,* 233 A.3d*.* at 850, *quoting Energy Conservation Council of Pa. v. Pa. PUC*, 995 A.2d 465, 478 (Pa. Cmwlth. 2010) and that NEP has failed to present such evidence in support of its proposed Rule 41.2.

As to the proper legal standard of review on exception by NRG, we affirm that the burden of proving the justness and reasonableness of NEP’s proposal was on NEP. However, in response to NEP’s Exception No. 2 that the ALJs erred in assigning that the burden of demonstrating that Duquesne’s existing tariff rules are unjust and unreasonable is on NEP, we agree with NEP. Therefore, we clarify that in a general rate proceeding, the burden of proving an existing tariff provision is unreasonable is not on an opposing party, but rather the burden of proof with respect to an existing tariff provision lies squarely on the utility.

Accordingly, we grant this aspect of NEP’s Exception No. 2 to the extent we modify the statements in the Recommended Decision and Conclusion of Law 19 that NEP carries the burden to show the Duquesne’s existing tariff rules are unjust or unreasonable. However, as addressed in our evidentiary analysis in our discussion and disposition of NEP Exception Nos. 1, 3 and 6 below, and because the ALJs’ otherwise correctly assigned to NEP the burden of proving its proposed tariff rule is just and reasonable and found that NEP did not satisfy that burden, we conclude that the ALJs assignment of the burden to NEP to prove the unjustness and unreasonableness of existing Tariff Rule Nos. 18 and 41 was harmless error.[[18]](#footnote-18)

In sum, even though the burden of proof for existing and proposed rates is and remains on the utility under Section 315(a), as the proponent of a new proposal not included in Duquesne’s base rate case and which Duquesne opposed, NEP must present a preponderance of credible evidence convincing us that this prior approval is no longer justified and that its proposed Tariff No. 42.1 is just and reasonable. *See* *Duquesne 2014* at \*12. In other words, even after correcting the assignment of the burdens of proof, NEP still must carry the burden to demonstrate to us that its proposal is just and reasonable and should be adopted. On this point, and as discussed further below, the ALJs concluded NEP failed. R.D. at 81.

#### b. The R.D. Erroneously Held and Evaluated NEP and its Proposed Master Meter and Smart Submeter Program to the Requirements Applicable to Duquesne as an EDC

##### i. NEP Exception No. 4

In Exception No. 4, NEP asserts that in their decision the ALJs erroneously held NEP to the standards of an EDC.

NEP describes its proposal as a “choice to Property Owners and their tenants that is a reasonable alternative to individually metered tenant units in multifamily buildings, which is Duquesne’s preferred choice.” NEP Exc. at 22. NEP asserts that the ALJs failed to discern the differences in the offerings and, as a consequence, held their evaluation of NEP’s proposal to the protections offered by an EDC, which was unreasonable. NEP describes its proposal an offering to commercial customers who “should not be deprived of an opportunity to offer infrastructure installations on private property, billing or supply services that are unrelated to Duquesne’s public utility services.” *Id.* at 22-23.

NEP asserts that it provides consumer protections, however nothing justifies “*identical* consumer protections from both a public utility like Duquesne and a private company like NEP[,]” because NEP’s commercial customers “are *not* utility customers[.]” *Id.* at 23 (emphasis in original). Further, NEP contends, it is unaware that protections offered in PECO’s service territory “have been found inadequate by the Commission or the General Assembly.” *Id.* at 23-24. In light of reseller protections in Section 1313, and the Discontinuance of Service to Leased Premises Act (DSLPA) protections in Sections 1521-1533, of the Code, NEP contends that other protections available to residential customers such as Chapter 14 or Chapter 56 of the Commission’s Regulations are unnecessary. *Id.*

NEP also contends that it offered modifications to its proposal including the alignment of the period of time allowed under its bill due dates, past due fees, and disconnection notices with Duquesne’s and the offering of modified payment plans for payment-troubled customers. Additionally, NEP notes that tenants will be informed prior to leasing of the impacts on the master submetering on their electric service. This, NEP argues, renders its proposal just and reasonable. It also renders incorrect the ALJs’ conclusions that NEP’s proposed tariff modifications are inadequate, because they held NEP to an EDC standard. *Id.* at 25-26.

##### ii. Reply Exceptions

Duquesne challenges NEP’s premise that NEP’s proposal should not be compared to regulated public utility service. “To the contrary,” replies Duquesne, “NEP should not be permitted to deprive residential tenants of their right to receive regulated utility service and all the benefits and protections resulting from such service.” Duquesne R. Exc. at 10. Duquesne contends that Section 1313 of the Code provides pricing protection, which is inadequate compared to other protections offered under utility service and is “in no way . . . comparable” to protections residential customers otherwise enjoy. *Id.* at 10-11. Further, Duquesne asserts that the non-price protections NEP offers put Duquesne in the position of being the arbiter of disputes between the landlord and tenant, requiring Duquesne to “monitor and enforce these protections and be subject to complaints before the Commission in order to implement NEP’s program for NEP’s benefit[,]” a role Duquesne disagrees with and that the Commission should not mandate for Duquesne. *Id.* at 10.

Duquesne further asserts that it is not clear that the Commission can assert jurisdiction over a landlord’s services to its tenants by inserting a landlord’s standards of protection in a utility’s tariff. Relying on *Delmarva Power & Light Co. v. Commonwealth*, 582 Pa. 338, 870 A.2d 901 (2005) for the general premise that the Commission’s jurisdiction is over public utilities only unless otherwise specified, Duquesne argues that NEP’s proposal “invites the Commission to take the risk of attempting to [ ] expand its jurisdiction to protect master-metered tenants so that NEP may finance its business by shifting costs to the Company and its remaining customers.” *Id.* at 11.

The OCA responds that NEP’s arguments over the standards to be applied to review its proposal are without merit. As to the ALJs’ determination that the customer protections NEP proposed are inadequate compared to the customer benefits and protections those same customers currently receive from Duquesne, the OCA contends the ALJs “applied the correct legal standard when rejecting the NEP proposal” because the ALJs properly determined that NEP failed to prove that its proposed Tariff Rule 41.2 is just and reasonable. OCA R. Exc. at 2.

The OCA agrees with NEP that Section 1313 of the Code brings resellers under the Commission’s jurisdiction. However, the OCA also emphasizes NEP’s admission that NEP tenants would *not* be utility customers. Accordingly, the OCA retorts, as did Duquesne, that the protections offered under Section 1313 are not nearly as broad as the residential consumer protections under which Duquesne’s customers would otherwise receive service. Quoting the ALJs’ statement that even if NEP’s consumer protections were comparable, the process to enforce these protections remained a concern. This lack of procedural clarity, asserts the OCA, coupled with the loss of broad consumer protections including some that are statutorily mandated protections for residential consumers that may not be extended to a commercially billed rate, present too great a risk for what is and remains an essential utility service. *Id.* at 2-3.

In response to NEP’s assertions that its proposal is not intended for affordable housing but nonetheless it would offer payment arrangements of the lesser of twelve months or the remainder of the tenant’s term, the OCA contends that NEP has no standards by which to measure low-income. Further, even if not income challenged at the time of the lease, any tenant could experience income loss at any time, and NEP’s proposed payment terms offer far less than currently provided statutory protections. The OCA concludes that NEP “fail[s] to recognize that the provision of electric utility service is not merely a product or service; it is a life-sustaining essential need.” OCA R. Exc. at 5. Because NEP cannot overcome the harm of removing the breadth of consumer protections tenants are currently afforded, the ALJs reached the correct decision.

Like the OCA, CAUSE-PA also responds that the ALJs correctly found against approving NEP’s proposal. Generally stated, CAUSE-PA disputes NEP’s contention that the ALJs held NEP to the same consumer protection standards as public utilities. Rather, CAUSE-PA contends that the ALJs correctly evaluated the harms to tenant consumers arising from NEP’s master-metering proposal. CAUSE-PA R. Exc. at 16.

Specifically, and quoting from the Recommended Decision, CAUSE-PA asserts that NEP’s contention that it should not be held to the same standards as public utilities “does not negate consideration of whether NEP’s proposal may disadvantage certain residential tenants.” *Id*. (quoting R.D. at 82). CAUSE-PA states that the record is “replete with examples” how tenant protections developed by the General Assembly and the Commission over decades would be clouded or eviscerated under NEP’s proposal. *Id.* Among them, CAUSE-PA refers to “protections for medically vulnerable consumers, winter protections from termination, protections for victims of domestic violence, and dozens of other provisions which help ensure tenants stay connected to life-sustaining utility services.” *Id.*

Addressing NEP’s reliance on Section 1313 of the Code applicable to resellers, and the DSLPA at Sections 1521-1533 of the Code, as adequate statutory consumer protections that will remain in place, CAUSE-PA asserts why neither remains sufficient or effective under NEP’s proposal. For example, because under its proposal NEP provides landlords full control over services to a building, protections against evictions and questionable voluntary disconnections under the DSLPA can be evaded because contrary to requirements of the DSLPA, Duquesne will not be involved in the process. Protections against terminations by a tenant’s assumption of responsibility for service payments if the landlord stops making payments through insolvency or some other reason would be ineffective because as a master-metered property, payment would be required for the entire building. The safeguard against excess billing available under Section 1313 would be ineffectual if tenants were not aware of or could not contest it, yet no such information will be required under NEP’s proposal. CAUSE-PA R. Exc. at 16‑17. CAUSE-PA concludes that, “[i]n short, the [Recommended Decision] correctly evaluated NEP’s proposal based on serious concerns regarding the impact to tenants. As such, this Exception must fail.” *Id.* at 17.

##### iii. Disposition

On review of NEP’s argument, we agree that as a non-utility, NEP should not be held to the same standards as are EDCs. We disagree, however, that the effect of the ALJs’ review was to hold NEP to the standards of a public utility. Instead, we believe that in so characterizing the ALJs’ recommendation, NEP has missed the import of the ALJs’ analysis.

Finding that the potential for lost consumer protections outweighed NEP’s evidence of potential consumer benefits is not equivalent to holding NEP to an EDC standard. Rather, it is, in essence, an acknowledgement of a fundamental aspect of service necessary for daily living, such as water or electricity, which is so essential to human life that it is subject to protection and regulation in the overall public interest.[[19]](#footnote-19) That is not to say that all aspects of electric service are subject to regulation. We know that not to be the case. However, the fact that NEP’s proposed tariff rule impacts utility service justifies the ALJs’ determination to review NEP’s proposal by comparing the protections afforded if the service were provided through NEP rather than Duquesne and weighing the Parties’ evidence of both proposed harms as well as benefits as they impact the ultimate consumers affected – residential tenants.

In this instance, as asserted by Duquesne, CAUSE-PA, and the OCA, only by comparing the consumer protections, benefits, and harms available to current Duquesne customers who would become customers of NEP can we properly determine whether NEP has satisfied its burden of proving its Tariff Rule 41.2 is just and reasonable and approval would be appropriate as in the public interest. NEP must convince us by a preponderance of the evidence that mandatory imposition of its Tariff Rule 41.2 on Duquesne would not more negatively impact consumers than it would benefit them and other stakeholders, particularly NEP. In concluding that NEP has failed to prove that its tariff proposal is just and reasonable, and as part of that conclusion weighing the impact on the former customers of Duquesne who would now be provided electric service as tenants of NEP’s commercial customers, the ALJs employed a proper standard of review.

As noted by the OCA, the ALJs evaluated the arguments both in favor and against NEP’s proposal on this issue all while dispelling the notion that they were holding NEP to an EDC standard:

Although NEP argues it should not be held to the standards of a public utility, this contention does not negate consideration of whether NEP’s proposal may disadvantage certain residential tenants. Even were NEP’s customer protections comparable, we agree Duquesne Light and CAUSE-PA also raise valid and complex concerns regarding the ability to enforce these protections before the Commission if any violations are identified in the future. In its Reply Brief, NEP responded to these concerns by citing *Coggins*, . . . where the Commission found a complainant could file a complaint with the Commission against a nonpublic utility that allegedly was violating 66 Pa. C.S. § 1313. However, *Coggins* does not squarely speak to a residential tenant’s ability to pursue a complaint regarding NEP’s Tariff Rules [sic] 41.2 before the Commission for issues unrelated to 66 Pa. C.S. § 1313. Such concerns may not be conclusively resolved until a future complaint is raised, at which point it will be difficult to reverse course should NEP’s proposal be endorsed through Commission approved tariff language.

OCA R. Exc. at 2-3 (quoting R.D. at 82). We agree.[[20]](#footnote-20)

NEP’s arguments regarding the impacts of Section 1313 and the DSLPA do not adequately dispel the ambiguities raised by the OCA and CAUSE-PA over how many of those protections will remain readily available to tenants who receive their service from NEP rather than Duquesne and the procedures for their enforcement. For example, as CAUSE-PA contends, NEP’s proposal does not ensure that its master-metered customers will be informed of their rights or how to exert them under either of these provisions of the Code. And even if aware of these rights, there remain unresolved issues over the proper means for enforcement.

The ALJs did not hold NEP to an improper legal standard when reviewing the benefits and detriments of its proposed Tariff Rule 41.2. Addressing NEP’s contention that it should not be held to the standards of a public utility, the ALJs determined that such a consideration “does not negate consideration of whether NEP’s proposal may disadvantage certain residential tenants.” R.D. at 82. Finding the risks associated with mandating this program on Duquesne outweighed its proposed benefits, and that the offered modifications were not an *adequate*, not identical, substitution, the ALJs concluded that NEP failed to satisfy its burden to demonstrate that its proposal was just and reasonable and should be adopted. R.D. at 81, 83. We agree, and for that reason, we deny NEP’s Exception No. 4.

#### c. The R.D. Erred in Implicitly or Explicitly Concluding that it was Necessary to Find that Duquesne’s “Prohibition” on Master Metering and NEP’s Proposed Master Meter and Smart Submeter Tariff Rule 41.2 Cannot Both be Reasonable; Nor Did the R.D. Recognize NEP’s Suggestion that its Proposed Master Meter Program be Limited in Duquesne’s Service Territory Similar to a Trial-Type Pilot Program

##### i. NEP Exception No. 5

In its Exception No. 5, NEP again asserts that the ALJs incorrectly placed on it the burden of proving Duquesne’s existing Tariff Rules 41 and 18 are “completely unreasonable” and that its proposed Rule 41.2 would merely “legitimize the ‘special circumstances’ exception in Tariff Rule 18 and provide a reasonable alternative to the utility residential meters for tenants provide for in Tariff Rule 41.” NEP Exc. at 26, 27. NEP claims that its proposed rule “can co-exist with Duquesne’s “amended” Rule 18 and would “not displace” Rule 41.” *Id.* at 27. NEP replies that in response to some Parties’ requests for more information on additional master metering in Duquesne’s territory, coupled with NEP’s willingness to limit its proposal to 130 new buildings or conversion installations to assess the program, its proposed Tariff Rule has many attributes of a new pilot program, citing *Pa. PUC v. Philadelphia Gas Works*, Docket No. R-2021-3023970 (Order entered August 26, 2021) (*PGW 2021*).

NEP asserts that should its suggestion that its master-meter rule be approved as a pilot but then not meet future expansion approval, “customers taking service under Tariff Rule 41.2 would continue as master metered buildings, not subject to future additional conditions of service established in future proceedings.” NEP Exc. at 28. NEP concludes that the Commission should approve its proposed rule and “make it clear Tariff Rules 18, 41, and 41.2 can lawfully be harmonized and co-exist[.]” *Id.*

##### ii. Reply Exceptions

Duquesne responds, as it did to NEP Exception No. 2, that NEP’s proposed rule cannot co-exist with Duquesne’s existing rules because Tariff Rule 18 clearly would have to be amended to accommodate NEP’s proposal. Duquesne further responds that while NEP cites to *PGW 2021* for support, in that case the Commission rejected PGW’s own proposed pilot, rendering this case “like the cases cited by NEP in support of its proposal [because] they all denied requests by third parties to allow master metering with resale to residential customers, yet NEP cites these cases as supporting its proposal.” Duquesne R. Exc. at 12.

Duquesne also rejects NEP’s allusion to its proposal being a suitable pilot as undermined by NEP’s own request that if approval does not continue, its pilot customers be grandfathered. As Duquesne contends,

NEP invites a “pilot” that will last forever. Once master meters with resale to residential tenants is allowed, the revisions to remove the Company’s meters and install landlord-owned meters will be in place. Landlords will argue that their meters must stay in place to allow them to recover their investments over 20 years or more. … It is simply not reasonable to create a pilot under such circumstances, particularly with the demonstrated flaws of the NEP proposal.

Duquesne R. Exc. at 12. Duquesne concludes that with the harm demonstrated to customers, the Commission should not approve NEP’s proposal in any form.

CAUSE-PA responds that NEP’s Exception No. 5 reiterates arguments in its Exception No. 2, namely that the ALJs erred in placing the burden on NEP to prove Duquesne’s Tariff Rules 18 and 41 unreasonable and that NEP’s proposal merely amends Duquesne’s existing tariff. In response, CAUSE-PA asserts that the burden was appropriately placed on NEP to prove Duquesne’s current tariff rules unjust and unreasonable.

CAUSE-PA also responds that NEP’s attempt to style its proposal as a limited pilot is overstated at best. NEP’s proposed limits to 130 metering conversions of existing buildings contains no restrictions on new construction; there is no definitive end to the pilot; there is no commitment to data, reporting, or evaluation process critical to a pilot review; and the substantial cost that would be associated with remetering would make it difficult and expensive to reverse NEP’s proposal. Given the harms and uncertainties associated with NEP’s proposal, it should be rejected. CAUSE-PA R. Exc. at 17-18.

##### iii. Disposition

As to which party holds the burden of proof with respect to Duquesne’s existing tariff rules, as we concluded above in our disposition of NEP’s Exception No. 2, Duquesne has and retains the burden of proof with respect to both its proposed and existing rates and rules to demonstrate they are and remain just and reasonable. Therefore, to the extent the ALJs placed upon NEP the burden to demonstrate that Duquesne’s existing Tariff Rules 18 and 41 are unjust and unreasonable, we grant NEP’s exception on that point as we did above and affirm that the burden with respect to Duquesne’s existing tariff provisions remained on Duquesne.

However, as also discussed above and acknowledged by NEP, the burden of proving the justness and reasonableness of its proposal was properly placed on NEP. NEP’s contention that the ALJs erred by explicitly or implicitly concluding that both Duquesne’s Tariff 41 and NEP’s Tariff 41.2 could not both be reasonable fails because NEP has acknowledged that in order to adopt proposed NEP Rule 41.2 existing Rule 18 would have to be amended. If both could contemporaneously co-exist as reasonable alternatives, no change to Duquesne’s existing tariff would be necessary. Further, for reasons stated in our discussion and disposition of NEP’s Exception Nos. 1 and 3, *infra,* we agree with the ALJs and Duquesne, the OCA, the OSBA, and CAUSE-PA in this proceeding, that the ALJs’ evaluation of the evidence properly supports their rejection of NEP’s proposal and should be adopted.

We also note that NEP’s proposal to approve its tariff rule as a pilot is substantially different and distinguishable from the utility proposal on which NEP relies in *PGW 2021*. PGW’s proposal, which we rejected, was a purchased gas cost element proposed by the utility that enjoyed at least one party’s support and, if after the pilot the proposal were subsequently found to be unreasonable, it involved a financial issue that was easily reversed. NEP’s proposal, for which it bears the burden of proof, was opposed by the utility, and faced united opposition from those parties advocating customer interests and the public interest generally. Further, NEP’s request to approve the proposal as a pilot comes with the obstacle that unlike PGW’s proposed purchased gas cost pilot, the expenses of which were readily reversible, NEP’s requested grandfathering renders its “pilot” not reversible at all for completed installations.

For these reasons, with the limited grant of NEP’s Exception to the ALJs’ assignment of the burden of proof with respect to Duquesne’s existing tariff rules in accord with our disposition of NEP Exception No. 2, we deny NEP’s Exception No. 5.

### 2. Program Benefits

#### a. The R.D. Erred in Suggesting that the Only Benefits of NEP’s Proposed Master Meter and Smart Submeter Program are those for the Property Owner

##### i. NEP Exception No. 3

In its Exception No. 3, NEP argues that the ALJs erred by reducing the economic benefits of NEP’s master metering proposal to only the commercial Property Owner and to merely the monetary gain of the difference between buying electricity at a commercial rate and selling it to tenants at the utility residential rate. NEP Exc. at 14 (citing R.D. at 79). NEP contends that this not only ignores the full scope of master metering benefits provided to commercial customers, but erroneously dismisses the multiple benefits to tenants explained by NEP’s testimony by calling them “speculative.” NEP Exc. at 14 (citing R.D. at 79-80). NEP contends that the ALJs ignore the host of benefits to all stakeholders NEP described in testimony and briefing. NEP Exc. at 14 (citing NEP M.B. at 16-27). NEP avers that the ALJs ignore essentially all of NEP’s testimony about benefits, instead addressing only a couple of benefits/issues. NEP Exc. at 14. NEP avers that the Recommended Decision fails to appreciate the acceptance of and market for NEP’s master meter and submeter program. NEP contends that the existence of NEP customers in PECO’s territory provides the “best real world/market evidence of value to Property Owners, among other stakeholders” of NEP’s tariff proposal. *Id.*

**Benefits to Property Owners/Commercial Customers**

NEP provides that with a master meter, the commercial customer can engineer the energy infrastructure behind the meter to: (1) work with the utility to keep property owner facilities separate from the utility distributions systems, (2) provide for safety concerns, such as distance from playgrounds or pools, (3) customize metering to fit the dwelling unit by using utility/revenue grade mini meters, transformers and conduit, (4) obtaining financing for the infrastructure by using a company such as NEP and purchasing their services, and (5) equip them to participate in aggregated demand response programs. NEP Exc. at 15 (citing NEP M.B. at 17-18). NEP alleges that the ALJs disregarded these benefits by referring to them as “purported” economic advantages compared to the utility. NEP Exc. at 15 (citing R.D. at 79). Further, NEP notes that these are not the only benefits ignored and disregarded by the ALJs. NEP Exc. at 15, n. 41.

Additionally, NEP explains that a plain reading of proposed Tariff Rule 41.2 shows that a commercial customer eligible for master metering under this Rule must make expenditures including: (1) developing the expertise to ensure the price on resale (Code Section 1313) is not violated, (2) provide smart submeters, (3) provide tenant access to electric vehicle charging, (4) provide at least one energy technology for energy efficiency, energy control or demand response, (5) provide a minimum $2 monthly credit on electric usage to each tenant, and (6) provide a premium green electricity supply to each tenant while not charging the tenant any more than the cost of utility default service. NEP Exc. at 16 (citing NEP M.B. App. A; NEP Exh. TR-22). NEP avers that these expenditures refute any suggestion that the commercial/residential rate differential is being “pocketed” by the eligible Property Owner. NEP Exc. at 16.

**Benefits to Tenants**

NEP states that the smart submeter 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. NEP Exc. at 16 (citing NEP St. 1 at 21). NEP explains that the sample bill it provided demonstrates the benefits of smart submeters to tenants including, *inter alia*: (1) the ability to pay weekly, bi-monthly or on a date they set, (2) daily usage information, (3) usage trends in their building relative to neighbors, (4) notifications when their bill exceeds a particular amount, and (5) a minimum credit of $2.00 per month below what the utility would charge. NEP Exc. at 17 (citing NEP St. 1 at 21-22; NEP Exh. TR-10).

NEP provides that its proposal includes the conservation/efficiency benefits that were lacking in Duquesne’s withdrawn affordable housing master meter tariff Rule 41.1. According to NEP, Duquesne’s program included master metering but did not include submeters that would provide tenants with information on their electricity consumption. NEP Exc. at 17.

**Benefits to Duquesne**

NEP avers that the ALJs ignored the record evidence showing that the proposed Tariff Rule 41.2 would benefit Duquesne. NEP explains that providing service to a commercial property through a single meter with a single customer contact avoids the cost to the utility of responding to and managing potentially hundreds of accounts. Further, NEP notes that the time, costs and effort to install and replace metering within a multifamily development is reduced with a master meter. A master meter also allows a utility’s service load to be more stable, because as tenants move in and out, their load is not shifted on and off default service. Collection risk is shifted away from the utility as commercial accounts are less likely to become uncollectible than residential accounts. NEP Exc. at 18 (citing NEP St. 1 at 20-21). According to NEP, master metering by a third party like NEP also allows Duquesne and the property owner to avoid the expenditure of the behind the curb infrastructure and smart meters. NEP Exc. at 18-19 (citing NEP St. 2 at 11).

**Benefits to the Public Interest**

NEP maintains that the ALJs’ rejection of NEP’s master meter and smart submeter program jeopardizes two of the most important benefits to the public interest as well as property owners: (1) the ability to establish an environmentally preferred electricity supply for an entire building’s load or community load and (2) obtaining loans and investments targeted at climate sensitive apartment buildings. NEP Exc. at 19.

##### ii. Reply Exceptions

In its Replies to NEP Exception No. 3, Duquesne argues that NEP overstates the potential benefits of its proposal and does not consider the harms to customers that will result from the proposal. Duquesne contends that the harms significantly outweigh any alleged benefits and demonstrate that NEP’s proposal is not just and reasonable. Duquesne R. Exc. at 8-9. Duquesne provides that the harms include:

* Paying more for overall utility service
* Losing access to Commission regulation of rates
* Losing important customer protections such as long-term payment arrangements, customer assistance programs, and budget billing
* Losing statutory and regulatory limitations on service termination
* Losing the right to file a complaint with the Commission regarding unreasonable service
* Losing the right to select an electric generation supplier (EGS) for competitive supply

Duquesne R. Exc. at 7-8 (citing Duquesne St. 6-R at 13-25).

Additionally, Duquesne provides that NEP’s list of alleged benefits is severely flawed. According to Duquesne, it is notable that no property owner or commercial customer has intervened in this proceeding to support NEP’s proposal. Duquesne notes that NEP does not represent property owners in this proceeding. Rather, NEP represents its own private business interests. Furthermore, property owners can receive many of the alleged benefits cited by NEP without master metering and resale to residential customers.

Duquesne notes that NEP presented no evidence of any actual benefits to tenants in PECO’s service territory. For example, NEP provided no evidence demonstrating that those customers pay lower utility bills or realize more energy savings though NEP’s programs than they would if individually metered by PECO. Duquesne provides that no tenant has intervened in this proceeding and NEP does not represent tenants’ interests. Duquesne avers that NEP is arguing that unregulated electric service is more beneficial for residential tenants than regulated service. Duquesne R. Exc. at 9-10.

Duquesne disagrees with NEP’s assertion that master metering and resale to residential customers will benefit Duquesne by decreasing its residential customer base. Duquesne states that NEP’s proposal would deprive it of revenues from residential customers yet still require Duquesne to incur costs of implementing NEP’s tariff provisions and defending complaints by tenants when property owners or third-party providers such as NEP fail to follow the tariff conditions. Duquesne R. Exc. at 9 (citing NEP Exc. at 5).

Duquesne offers that NEP claims that its proposal benefits the “public interest” by allowing property owners to establish green buildings and obtain loans. According to Duquesne, NEP provided no actual evidence to support these claims. Duquesne notes that property owners can still combat climate change without participating in NEP’s proposal and the record demonstrates that the Company’s EE&C program has provided significant assistance to buildings with residential tenants. Duquesne R. Exc. at 9 (citing Duquesne St. 6-R at 7-9; Duquesne M.B. at 20-21).

In its Replies to NEP Exception No. 3, CAUSE-PA argues that NEP’s purported benefits to property owners, tenants, and the public rest on speculation and obfuscation of essential facts and legal precedent – and minimizes concerns about the impact of NEP’s tariff on tenants in favor of creating a new profit stream for utility resellers like NEP. CAUSE-PA R. Exc. at 9 (citing CAUSE-PA M.B. at 8-9; CAUSE‑PA R.B. at 4-5). CAUSE-PA explains that NEP’s own practices in other service territories seeks to bypass an entire canon of law, and rebalance the scales set by the General Assembly and the Commission to protect a tenant’s ability to access service to leased premises without interference by landlords or property owners. According to CAUSE-PA, this is unjust, unreasonable, and against the public interest. CAUSE-PA R. Exc. at 9.

CAUSE-PA avers 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. CAUSE-PA R. Exc. at 10 (citing CAUSE-PA M.B. at 56; CAUSE-PA R.B. at 7). CAUSE-PA notes that NEP could not answer basic questions about the extent to which the properties it serves in other jurisdictions have adopted energy efficiency measures, apart from a vague reference to participation in basic demand response programming without any quantification of savings achieved. CAUSE-PA R. Exc. at 10 (citing CAUSE-PA R.B. at 7-8). According to CAUSE-PA, NEP’s business model cuts residential consumers off from numerous free and low-cost energy efficiency programs including the LIURP and Act 129 programs that provide tenants and property owners with millions of dollars of energy efficiency and conservation benefits every year. CAUSE-PA R. Exc. at 10.

Further, CAUSE-PA notes that NEP represents only one example of the numerous master/submetering schemes that would be permissible if NEP’s tariff proposal were approved. Under the terms of NEP’s proposal, there is no requirement that multifamily building owners invest in energy efficiency or provide the other benefits NEP touts, such as the availability of electric vehicle charging. CAUSE-PA contends that the ALJs correctly concluded, based on the evidence before them, that any benefits beyond economic gain for the owner were merely speculative and uncertain to materialize. CAUSE-PA R. Exc. at 10-11.

CAUSE-PA explains that as discussed in its Main Brief, the Commission and the Commonwealth Court have previously upheld master/submetering prohibitions, including Duquesne’s Tariff Rule 41, finding that protecting the economic interests of a property owner related to metering configuration are insufficient to overturn an existing tariff and are not an objective under the Pennsylvania Utility Code. CAUSE-PA R. Exc. at 11.

CAUSE-PA avers that NEP’s purported benefits to tenants under its proposal are largely illusory, and do not outweigh the harm to tenants’ existing rights. CAUSE-PA R. Exc. at 12 (citing CAUSE-PA R.B. at 13). Duquesne’s residential customers already have access to smart meter data and Duquesne’s existing Act 129 programs including home energy reports with comparative analysis of the customers usage relative to their neighbors. *Id.* CAUSE-PA notes that NEP’s claim that a property owner may pass along a bill credit based on the lower cost of commercial load versus a residential load is speculative, as the terms of NEP’s proposal do not require any clean energy or energy efficiency adoption. CAUSE-PA R. Exc. at 12 (citing CAUSE-PA R.B. at 13; R.D. at 80).

While NEP cites its proposed $2 monthly credit as a benefit to tenants, CAUSE-PA contends that NEP’s tariff proposal is designed so that tenants cannot access the CAP or other universal service programs and this $2 credit is a meager substitute for universal service assistance. CAUSE-PA R.Exc. at 12-13. CAUSE-PA argues that severing tenants from universal service programs exacerbates existing rate unaffordability for low and moderate income tenants and places them at increased risk of termination and potentially eviction. CAUSE-PA submits that there is substantial question whether excluding tenants from access to universal service programs violates provisions of the Electric Choice and Competition Act which require that universal service programming be “available” to ensure low income consumers can maintain affordable service to their home and dictates that the availability of universal service programming shall not be diminished. CAUSE-PA R. Exc. at 13 (citing 66 Pa. C.S. § 2803; 66 Pa. C.S. § 2804(9); 66 Pa. C.S. § 2802(10)).

CAUSE-PA explains that Duquesne’s initial proposal to permit limited master metering for affordable multifamily housing was not comparable to NEP’s program and was withdrawn. According to CAUSE-PA, Duquesne’s program would have been restricted to low income transitional housing providers that already subsidize the tenants’ utility costs and that are subject to long term use restrictions. CAUSE-PA R. Exc. at 13 (citing CAUSE-PA M.B. at 12-14). Tenants in supportive housing do not pay utility costs and the housing provider would have been required to re-meter the building if the building was ever sold or used for some other purpose. CAUSE-PA avers that this proposal was withdrawn and has no bearing on whether to approve NEP’s proposal in this case. CAUSE-PA R. Exc. at 13.

Although NEP alleges that its proposal will save Duquesne operational, maintenance and collections costs associated with managing hundreds of residential accounts, CAUSE-PA maintains that it would harm Duquesne and reduce its customer base and revenues. CAUSE-PA R. Exc. at 14 (citing NEP Exc. at 18-19; Duquesne M.B. at 17-19; CAUSE-PA R.B. at 12). Further, CAUSE-PA contends NEP’s proposal would increase the administrative burden on Duquesne and the Commission to implement and enforce NEP’s tariff proposal without any funds to support such enforcement efforts. CAUSE-PA R. Exc. at 14 (citing CAUSE-PA M.B. at 57-58; CAUSE-PA R.B. at 12).

CAUSE-PA provides that while NEP attempts to paint its proposal as requiring “green” energy usage, the plain language of NEP’s proposal does not set forth any such requirement. CAUSE-PA notes that it is unreasonable to assume that property owners will voluntarily choose to invest in energy efficiency and conservation, especially given the fact that tenants subject to submetering are responsible for paying the bill and incentivized to adopt efficiency measures yet would not have access to energy efficiency and conservation programs. CAUSE-PA R. Exc. at 15 (citing CAUSE-PA R.B. at 7).

While NEP suggests its proposal will help property owners obtain green financing and loan products, CAUSE-PA notes that none of the green lending products listed by NEP require third party submetering. Further, Duquesne already provides data aggregation to building owners to support efficiency loans and appropriate energy benchmarking without also stripping tenants of their right to privacy and confidentiality. CAUSE-PA R. Exc. at 15 (citing NEP Exc. at 20; CAUSE-PA R.B. at 8; CAUSE-PA M.B. at 51-53).

##### iii. Disposition

We agree with the ALJs on this issue and shall deny NEP’s Exception No. 3, consistent with the following discussion. The ALJs stated that “[t]he economic benefit to a property owner choosing NEP’s services is clear: NEP’s business model buys electricity at a commercial customer rate and resells it to tenants at a residential rate, resulting in a net monetary gain to a property owner using NEP’s services.” R.D. at 79 (citing NEP St. 1 at 17). The ALJs noted that “NEP also cites other benefits of an economic nature unrelated to a price differential, e.g., purported economic advantages of installing infrastructure with NEP compared to the utility. R.D. at 79 (citing NEP St. 1 at 13-14). The ALJs also provided a list of other benefits NEP purported for tenants: “using a carbon free and climate focused electricity supply without an additional cost; more tenant load participating in the competitive market than would otherwise occur; creating a fully carbon neutral or green property; allowing a capped bill, insights into lowering bills, and customized customer-specific approaches; and potential economic benefits to submetered tenants, especially if the property owner passes along a bill credit based on the lower cost of a commercial load versus a residential load.” R.D. at 79 (citing NEP St. 1 at 21-23). Based on the above, we disagree with NEP’s assertion that the “R.D. erroneously reduces the economic benefits of master metering to only the commercial Property Owner and to just the monetary gain of the difference between buying electricity at a commercial rate and selling it to tenants at the utility residential rate.” NEP Exc. at 14. The ALJs considered other benefits NEP asserted would result from its tariff proposal. Nonetheless, the ALJs found that the only “clear” benefit to property owners would be the difference between buying electricity at a commercial rate and selling it to tenants at the residential rate. We find that the other benefits that NEP claims will occur are either speculative or not comparable to what the utility offers through existing programs.

Regarding benefits to property owners and commercial customers, NEP describes infrastructure design choices that its proposal might offer to property owners. We note that NEP does not control what the property owner does with his property or the property owner’s energy decisions. R.D. at 79. NEP has not provided any record evidence demonstrating that any of these measures have been put in place in the PECO service territory where NEP has existing clients. CAUSE-PA St. 1-R at 56-57 (citing CAUSE-PA to NEP, I-25, I-65, I-70, I-71, I-75). There is no record evidence that third party metering is required for the green loan or financing programs NEP claims property owners would benefit from if they selected master metering.

While NEP contends its submetering and billing can provide useful information to tenants, we note that energy usage and comparable usage with the tenant’s neighbor is already available to tenants from Duquesne. NEP avers that its proposal would allow tenants the opportunity to have a green EGS but there is no guarantee the property owner would select an EGS the tenant prefers. R.D. at 80. With NEP’s tariff proposal, the tenant loses the ability to choose an EGS or the ability to participate in Duquesne’s Act 129 programs for residential customers. When tenants under NEP’s tariff pay the same rate as charged by the utility, they will be paying for Act 129 programs, but not able to realize any Act 129 benefits. CAUSE-PA St. 1-R at 57. We agree with CAUSE-PA, the actual results of NEP’s tariff would exclude tenants, the direct energy users, from programs that would reduce usage and result in bill savings. CAUSE-PA R. Exc. at 15.

We are concerned about the potential harm to tenants under NEP’s tariff proposal. We agree with the ALJs that “NEP’s proposal to create an alternative scheme for customer protections and programs is not comparable to those already in effect.” R.D. at 80. While NEP contends that its tariff proposal is not intended for low income customers, there is no certainty that tenants are not moderate income or may become low income after suffering an adversity. NEP Exc. at 20. We agree with CAUSE-PA that NEP’s proposed $2 monthly credit does not outweigh the potential harm to tenants that cannot access budget billing, CAP or other universal service programs. CAUSE-PA R. Exc. at 13. As just one example, NEP’s payment arrangements for past due accounts facing termination require a 40-50% upfront payment of the balance due to enroll. As CAUSE-PA states, this may be an unsurmountable requirement not faced by tenants who are not subject to NEP’s tariff proposal. CAUSE-PA St. 1-R at 24-25. When a tenant under NEP’s tariff proposal cannot pay or the balance exceeds $500, the tenant can face eviction. CAUSE-PA St. 1-R at 29-30. Tenants under the master meter tariff proposal are also not protected from winter terminations. CAUSE-PA R.B. at 24. Additionally, NEP’s tariff proposal fails to address whether tenants who have a protection from abuse (PFA) order in place will have access to any additional protections or will be able to access any of the exiting protections afforded to qualifying tenants with PFAs under the Commission regulations. CAUSE-PA R.B. at 29 (citing CAUSE-PA M.B. at 41).

Duquesne provides that many of NEP’s tenant customers would pay more for service from NEP than they would if they were Duquesne customers. We find Duquesne’s list of potential harms also compelling including: paying more for overall utility service, losing access to Commission regulation of rates, losing access to long-term payment arrangements and limitations on service terminations, and losing the right to file a complaint with the Commission regarding unreasonable service. Duquesne R. Exc. at 7-8.

NEP contends that Duquesne would benefit from fewer customers and less call center access by those customers. We agree with Duquesne; it is in the business of providing electricity service to customers and having fewer customers would cause Duquesne to receive less revenue and increases to average costs for other customers. Duquesne M.B. at 18. Duquesne contends that it would lose revenue that NEP and its landlord clients will receive from reselling commercial service to tenants at residential rates. Duquesne R.B. at 6. With fewer residential customers, the remaining customers would be responsible for a larger percentage of the universal service costs. *Id.* Additionally, Duquesne and the Commission would incur costs enforcing NEP’s tariff proposal. CAUSE-PA R.B. at 12.

NEP states that two of the most important benefits to the public interest as well as property owners are: (1) the ability to establish an environmentally preferred electricity supply for an entire building’s load or community load and (2) obtaining loans and investments targeted at climate sensitive apartment buildings. NEP Exc. at 19.

Both of these benefits are not certain results of the approval of NEP’s tariff proposal. A property owner with a master meter may not choose an environmentally preferred electricity supply and master metering is not required for loans and investments targeted at climate sensitive apartment buildings. Other master metering scenarios might also be allowed by NEP’s tariff proposal, which have not yet been analyzed to determine potential impacts to tenants or the public interest. CAUSE-PA St. 1-R at 2.

NEP provided no evidence from its existing customers with master metering and submetering to demonstrate the benefits of its proposal. Rather, NEP provided only that no demonstrated adverse consequences have occurred with master metering and submetering in PECO’s territory. R.D. at 83.

For these reasons, we shall deny NEP’s Exception No. 3 on this issue and adopt the ALJs’ recommendation without modification.

#### b. The R.D. Erroneously Claimed Not to Comprehend the “Public” when Evaluating NEP’s Proposed Master Meter and Smart Submeter Program

##### i. NEP Exception No. 6

In its Exception No. 6, NEP argues the ALJs erroneously assert that “NEP’s other contention that the “public generally” is being denied a choice is similarly unconvincing, not least because NEP does not make clear exactly who constitutes the public generally and what is their interest in this choice.” NEP Exc. at 29 (citing R.D. at 80). NEP notes that it explained in Exceptions Nos. 1, 3 and 5 and again in Exception No. 6 that commercial property owners owning or contemplating developing multifamily communities, tenants seeking green climate conscious buildings, commercial building investors and banks are all members of the “public generally” who would receive benefits from having proposed Tariff Rule 41.2 as an option, in addition to having tenants individually metered by the utility as an option under Tariff Rule 41. NEP Exc. at 29. NEP contends that it could not have been clearer in both testimony and briefing who the key public stakeholders are with respect to this proposal, casting serious doubt on the Recommended Decision’s claim that NEP failed to define the “public.” NEP states that the Commission should clarify the broad elements of the public that will benefit from proposed Tariff Rule 41.2 in its Final Order approving NEP’s approval. *Id.*

##### ii. Reply Exceptions

In its Replies, Duquesne contends that the ALJs addressed NEP’s alleged benefits and determined that NEP failed to meet its burden of proof that its proposal was reasonable and in the public interest. Duquesne contends that NEP’s “quibbling” over the ALJs’ statement that NEP failed to make clear what constitutes the “public generally” and what interest of the public NEP’s proposal serves should be disregarded. Duquesne R. Exc. at 12 (citing NEP Exc. at 20). Duquesne notes that NEP did not attempt to quantify these alleged benefits, no property owner is in the case advocating for these alleged benefits, and all of NEP’s alleged benefits are outweighed by the significant harms to residential customers from depriving them of regulated utility services and inability to receive the benefits of the Company’s EE&C plan. Duquesne R. Exc. at 12‑13 (citing R.D. at 81-82).

In its Replies, CAUSE-PA argues that the ALJs properly found that NEP failed to define who in the “public” would benefit from its master/submetering proposal. CAUSE-PA maintains that NEP has failed to meet its burden of providing evidence to show benefits to property owners/investors, landlords, tenants, and Duquesne. CAUSE‑PA R. Exc. at 19 (citing CAUSE-PA M.B. at 21-43; CAUSE-PA R.B. at 5-31). CAUSE-PA explains that NEP’s broad claims that its tariff proposal will result in greater conservation, energy efficiency and climate improvement is also unsubstantiated by the record. Rather, NEP’s proposal would strip tenants and property owners of the ability to access tens of millions of dollars in residential efficiency and conservation incentives available only to individually metered tenants. CAUSE-PA R. Exc. at 19 (citing CAUSE-PA R.B. at 6-7). According to CAUSE-PA, this fact directly contradicts NEP’s claims that its proposal would promote energy efficiency and conservation goals. CAUSE-PA R. Exc. at 19.

##### iii. Disposition

The ALJs found that NEP’s argument that if its tariff proposal was not approved, the “public generally” would be denied a choice unconvincing because “NEP does not make clear who exactly constitutes the public generally and what is their interest in this choice.” R.D. at 80. In its Exception No. 6, NEP explains that the “public generally” includes commercial property owners owning or contemplating developing multifamily communities, tenants seeking green climate conscious buildings, and commercial building investors and banks. NEP states that it defined “public generally” in Exceptions 1, 3, 5 and 6. NEP also requested that the Commission “clarify the broad elements of the public” in its final order approving NEP’s proposal. NEP Exc. at 29.

We find no issue with the ALJs’ statement on this matter. NEP did not provide record evidence of actual savings for property owners or tenants. The investment programs NEP provided as examples do not require third party master metering and NEP cannot provide evidence that tenants would choose to give up privacy and access to customer protections in exchange for master/sub metering. The benefits to the “public generally” and what their interest in NEP’s tariff proposal might be is unclear. No tenant or property owner intervened in this case. We conclude that NEP did not fully demonstrate who the “public generally” is and how it might benefit by NEP’s tariff proposal if, as is the case, it was necessary for NEP to explain the definition throughout its Exceptions and also request that the Commission further clarify the definition. NEP Exc. at 29. Accordingly, we shall deny NEP’s Exception No. 6.

#### c. The R.D. Fails to Give Proper Weight to the Fact that NEP’s Proposed Master Meter and Smart Submeter Program has been Successfully Deployed for Over 10 Years in PECO’s Service Territory Without Material Complaints by any Stakeholders, while Bestowing Benefits to the Key Stakeholders

##### i. NEP Exception No. 1

NEP provides that it has more than twenty years of experience serving over 32,000 residents at over 150 properties, including more than 1,600 tenant residents in PECO’s service territory. NEP Exc. at 7-8 (citing NEP M.B. at 1; NEP St. 1 at 2). NEP avers that it has been successfully providing master meter and smart submeter service in PECO’s service territory since 2008 without being challenged as abusive to tenants or any of the other concerns speculated by Duquesne, CAUSE-PA and other critics of NEP in this proceeding. NEP Exc. at 8 (citing NEP St. 2 at 10, 12). NEP maintains that no demonstrated adverse consequences have occurred with master metering and submeter services in PECO’s service territory, a territory with a large number of low income residents, and where nine companies in addition to NEP provide master meter and submeter services. NEP Exc. at 8 (citing NEP St. 2 at 18, 19; NEP Exh. TR-21). NEP alleges that the Recommended Decision incorrectly describes this issue as “a purported lack of adverse consequences.” NEP Exc. at 8 (citing R.D. at 83). NEP reasons that it is “illogical and not good policy” for the Commission to have different approaches to master metering in the service territories of two jurisdictional electric utilities. NEP Exc. at 9.

##### ii. Reply Exceptions

In its Replies to NEP Exception No. 1, Duquesne asserts that NEP’s lead argument is that Duquesne should be required to adopt NEP’s proposal because PECO allows it. According to Duquesne, this is not a valid or even reasonable basis to require Duquesne to adopt NEP’s proposal. Duquesne notes that there is no basis in law to support NEP’s position. Duquesne explains that each utility in Pennsylvania is managed separately, and the Commission does not require all utilities to offer the same programs and services, especially when the program is not required by statute or regulation. Duquesne R. Exc. at 3. Duquesne provides that the Commission is not a super board of directors for utilities and does not require uniform programs across the Commonwealth. Duquesne R. Exc. at 4 (citing *Met. Ed. Co. v. Pa. PUC*, 437 A.2d 76, 80 (Pa. Cmwlth. 1981)).

Duquesne argues that all of the cases cited by NEP in support of its proposal rule against parties that request master metering with resale to residential tenants. Duquesne R. Exc. at 4 (citing *Crown American, West Penn Power,* *Motheral*, and *Tiffany Associates v. Duquesne Light Company*, Docket No. C-00981142, 1998 Pa. PUC LEXIS 206 (Order entered November 20, 1998) (*Tiffany Associates*)). Duquesne submits that in *Motheral* and *Tiffany Associates*, the Commission specifically upheld Duquesne’s tariff prohibiting master metering with resale to residential customers. Duquesne R. Exc. at 4.

While NEP cites to a lack of complaints in PECO’s service territory regarding NEP’s master metering program, Duquesne contends that a lack of complaints is not synonymous with a receipt of benefits. Duquesne R. Exc. at 4. Duquesne explains that NEP presented no analysis of how tenant customers have been affected by lack of customer assistance programs in PECO’s territory or how lack of Commission Regulation has affected service terminations. Duquesne explains further that it is unclear to what extent these tenants are aware of their rights, if any, and many tenants may not file complaints or civil lawsuits against landowners or third-party providers. Duquesne R. Exc. at 4. Duquesne reasons that the fact that PECO allows NEP’s voluntary program in its service territory provides no legal requirement or other basis for requiring Duquesne to offer similar voluntary programs in its service territory. Duquesne R. Exc. at 5.

In its Replies to NEP Exception No. 1, CAUSE-PA argues that a lack of formal complaints against NEP in PECO’s service territory cannot be equated with the reasonableness, justness, or properness of authorizing the resale of utility service in Duquesne’s service territory. CAUSE-PA R. Exc. at 4 (citing CAUSE-PA R.B. at 27). CAUSE-PA puts forward that the lack of complaints against NEP is more likely a result of the lack of clear and accessible dispute rights for aggrieved tenants against third-party utility resellers like NEP. CAUSE-PA R. Exc. at 4.

CAUSE-PA asserts that 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 owner, or master/submetering companies can represent insurmountable barriers. The plain language of NEP’s tariff proposal does not require that submetering companies provide tenants any notice of their rights or ability to raise disputes, further complicating a tenant’s ability to raise and redress concerns under NEP’s tariff proposal and operations. CAUSE-PA R. Exc. at 4 (citing CAUSE-PA R.B. at 28).

CAUSE-PA contends that NEP’s practices in PECO’s territory are not “successful” for anyone other than NEP and the property owner and serve to deprive residential tenants access to assistance through universal service and dozens of statutory and regulatory provisions regarding fair billing, collections, and termination practices. CAUSE-PA R. Exc. at 5 (citing CAUSE-PA R.B. at 13-32). CAUSE-PA provides that the record shows that in PECO’s service territory, hundreds of residential customers served by NEP through a submetering arrangement are terminated each year – at a rate substantially higher than PECO’s residential termination rate. CAUSE-PA R. Exc. at 5 (citing CAUSE-PA R.B. at 31; CAUSE-PA St. 1-R at 52-53). Additionally, the record shows that in PECO’s service territory, tenants who are unable to keep up with all of their utilities – which are bundled onto a single bill – face both imminent termination and eviction. CAUSE-PA R. Exc. at 5 (citing CAUSE-PA R.B. at 16). According to CAUSE-PA, NEP can force a landlord to evict a tenant upon request pursuant to the terms of a private contract between NEP and various property owners within PECO’s service territory. *Id.* NEP does not apply any protections for medically vulnerable tenants and will stop winter terminations only on days where the temperature drops below freezing. CAUSE-PA R. Exc. at 5 (citing CAUSE-PA R.B. at 24-25).

CAUSE-PA argues that the Commission should strive to have consistent master-metering rules across the state. Rather than approving NEP’s tariff proposal, CAUSE-PA maintains that the Commission should affirm the ALJs’ decision rejecting NEP’s proposal and it should also initiate an investigation into NEP’s practices in PECO’s service territory. CAUSE-PA R. Exc. at 7.

##### iii. Disposition

NEP contends that its tariff proposal provides “Property Owners and tenants in multifamily buildings a choice in how they are metered, while obtaining the benefits of a different form of service.” NEP Exc. at 7. We are concerned that once a tenant signs a lease, they have lost access to, *inter alia*, customer protections, budget billing, CAP and universal service. If a tenant does not carefully read the lease, they may be unaware of the consequences of their “choice.”

Instead of calling their performance in PECO territory a “success” because of a lack of complaints, one might consider it a matter of concern. Tenants may not have the knowledge or resources how to protect their interests let alone how to file a formal complaint and before whom. Tenants in PECO’s territory subject to NEP’s master metering and submetering program have higher termination rates than those served by PECO. CAUSE-PA R. Exc. at 5 (citing CAUSE-PA R.B. at 31; CAUSE-PA St. 1-R at 52-53). They may be subject to winter terminations and there are no protections from termination for medically vulnerable tenants or tenants with PFA orders. CAUSE-PA R. Exc. at 5 (citing CAUSE-PA R.B. at 24-25; CAUSE-PA R.B. at 29).

The ALJs stated that NEP did not provide hard data from territories where it operates to confirm the benefits it claims. The ALJs did not find the lack of demonstrated adverse consequences sufficient to demonstrate the benefits NEP claims for its master metering and submetering programs. R.D. at 83. We disagree with NEP that the ALJs did not give proper weight to NEP’s operating history in PECO’s territory. We find that the lack of complaints does not demonstrate that NEP’s master metering and submetering programs are a success for the tenant customers thereby satisfying NEP’s burden of proving that its proposal was just and reasonable and in the public interest. Accordingly, we shall deny NEP’s Exception No. 1.

### 3. Jurisdiction and Legal Authority

#### a. The R.D.’s Concerns about Tenant Enforceability of Violations of Proposed NEP Tariff Rule 41. 2 are Unfounded

##### i. NEP Exception No. 7

NEP objects to Conclusion of Law No. 33 which provides:

The Commission has the clear jurisdiction and authority to oversee and enforce tariff provisions against Duquesne Light, a public utility within the clear purview of the Commission; however, its authority to oversee and enforce tariff provisions against a third party absent explicit or implied statutory authority to do so is uncertain. *Blue Pilot Energy, LLC. v. Pa. Pub. Util. Comm’n*, 241 A.3d 1254 (Pa. Cmwlth. 2020); *ARIPPA v. Pa. Pub. Util. Comm’n*, 966 A.2d 1204 (Pa. Cmwlth. 2009).

Exc. at 29 (citing R.D. at 89). NEP further criticizes the ALJs’ concerns about the enforcement of tenant protections in proposed Tariff Rule 41.2 as well as a residential tenant’s ability to bring issues unrelated to Code Section 1313’s rate protections to the Commission for resolution. NEP Exc. at 29-30.

In support of its Exceptions, NEP argues that 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.[[21]](#footnote-21) NEP contends that 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. According to NEP, Duquesne is presumably able to monitor and enforce this requirement applicable to hundreds of thousands of residential customers, and thus could properly enforce the requirements of proposed Tariff Rule 41.2, which would be applicable to no more than 130 potential commercial customer master meter applications. NEP Exc. at 31.[[22]](#footnote-22)

Further, NEP asserts that concerns about the Commission being unable to take action on non-Code Section 1313 violations of proposed Tariff Rule 41.2 are not well-founded because any tenant suspecting a departure from the Rule could bring that to the attention of Duquesne. NEP reasons that, upon good faith information that commercial property owners are acting inconsistent with proposed Tariff Rule 41.2, Duquesne can withdraw its master metering approval and impose an individual residential metering requirement under Tariff Rule 41. NEP Exc. at 31.

Next, NEP references the ALJs’ citation to the Commission’s decision in *Coggins* and asserts that the ALJs appear to accept that *Coggins* adequately supports Commission jurisdiction over excess price on resale claims brought by non-utility customers under Code Section 1313. NEP argues that *Coggins* makes clear that the Commission has jurisdiction over property owners 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 enforce the requirements of Tariff Rule 41.2, NEP asserts that 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. NEP adds that Duquesne’s obligation is to provide reasonable, not perfect, service. NEP Exc. at 32.

Furthermore, NEP contends that applicants seeking to qualify for master metering with smart submeters will be submitting directly to Commission jurisdiction over all aspects of Duquesne’s tariff, including proposed Rule 41.2. *Id*.

##### ii. Reply Exceptions

In its Replies to Exception No. 7, Duquesne argues that it cannot be required to implement and enforce NEP’s voluntary tariff conditions for the benefit of unregulated third parties. Duquesne R. Exc. at 13 (citing, in part, *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)).

In addition, the Company asserts that NEP’s proposal to have Duquesne monitor and enforce tariff provisions for residential tenants that are not Duquesne customers is egregious because these tenants will not be paying the Company for service. The Company contends that under NEP’s proposal, Duquesne would be required to provide services for residential tenants that are not customers but would not receive the revenue differential to offset costs. Moreover, the Company notes that under current tariff provisions, master metered tenant buildings are not charged the universal service charge. According to Duquesne, adopting NEP’s proposal would shift recovery of those costs to the Company’s remaining residential customers while generating increased profits for NEP and, thereby, creating an unreasonable result. Duquesne R. Exc. at 13‑14.

Duquesne also objects to NEP’s argument that if a property owner does not comply with the tariff, the Company can simply withdraw its master metering approval. Such action, Duquesne contends, would result in costly litigation. The Company argues that NEP’s proposal to keep the revenue differential and burden Duquesne with the compliance obligation and associated costs is unlawful, unreasonable and cannot be accepted. *Id*. at 14.

Further, Duquesne argues that NEP’s arguments regarding *Coggins* conveying jurisdiction over property owners that violate Section 1313 of the Code should be disregarded for three reasons. First, the Company submits that Section 1313 does not substitute the statutory protections provided to residential customers in Chapter 14 of the Code or the regulatory protections provided to residential customers in Chapter 56 of the Commission’s Regulations. Second, Duquesne proffers that the Company would still be liable for ensuring compliance and enforcement of all of NEP’s tariff conditions and could be subject to complaints for violations of those conditions by landlords. Regarding the second argument, the Company contends that the Commission’s jurisdiction over landlords as to services is uncertain and potentially subject to challenge. Third, Duquesne asserts that the NEP proposal creates increased burdens on both the Commission and the Company without NEP bearing the costs of those burdens. Duquesne R. Exc. at 14-15.

Duquesne concludes by arguing that NEP’s attempt to require the Company to monitor and enforce its proposed tariff conditions so that NEP can expand its business should be rejected. *Id*. at 15.

In its Replies to Exception No. 7, CAUSE-PA argues that the ALJs correctly found NEP’s proposal would result in numerous enforcement concerns. Agreeing with the findings pertaining to questions about enforcement against landlords and third-party billing agents, CAUSE-PA cites to Duquesne’s witness testimony which explained that NEP’s tariff proposal would significantly expand the scope of landlord requirements that the Company would need to police. CAUSE-PA R. Exc. at 20 (citing Duquesne St. 6-RJ at 2:12-18).

CAUSE-PA argues there is a lack of clarity whether the Commission has jurisdiction to regulate third-party master/sub-metering companies and landlords or property owners under this proposal and how to redress complaints of tenants who reside in these properties if a third party does not comply with tariff provisions. Although acknowledging the retention of some limited rights under the DSLPA and Section 1313 of the Code, CAUSE-PA submits that NEP’s tariff proposal engenders confusion about whether tenants who reside in a master/sub-metered building may seek relief through the Commission, must avail themselves of Pennsylvania Courts, or are solely reliant on whatever voluntary relief, if any, is offered by landlords and master/sub-metering companies. CAUSE-PA R. Exc. at 21 (citing CAUSE-PA M.B. at 46-48).

Additionally, CAUSE-PA acknowledges the Commission’s authority to impose penalties for violations of Section 1313 of the Code, pursuant to Section 3313 of the Code, 66 Pa. C.S. § 3313, but proffers it is unclear whether a tenant could seek a refund or other individualized redress through the Commission for violations of Section 1313 that may result in financial harm to a tenant. Furthermore, CAUSE-PA contends, the extent to which the Commission may exert authority over landlords who may be in violation of applicable tariff provisions, statutes, or regulations is unclear. Addressing the contention of NEP that Duquesne can simply strip the buildings of their master/sub-metering abilities, CAUSE-PA argues NEP has failed to present evidence related to the costs and the process of reversing these buildings to individually metered status or whether Duquesne can reasonably monitor landlord and third-party compliance with the tariff proposal under the plain terms of the tariff proposal. CAUSE-PA R. Exc. at 23-24.

##### iii. Disposition

Upon review, we shall deny NEP Exception No. 7. We find NEP’s proposed Tariff Rule 41.2 to be unreasonable for two main reasons. First, it raises significant concerns regarding Commission regulation of property owners and the redress of complaints of tenants residing in such properties. Second, it imposes unreasonable burdens on Duquesne to monitor and enforce tariff provisions for residential tenants who are not Company customers.

As to the first rationale, we shall initially address the ALJs’ determination that the Commission’s authority to oversee and enforce tariff provisions against a third party absent explicit or implied statutory authority to do so is uncertain. The Commonwealth Court has acknowledged that the “legislature imbues the Commission with authority in enabling statutes. The statutory grant of power must be clear. If a statute’s text does not provide the Commission with specific authority, a strong and necessary implication from such text may, nonetheless, provide such authority.” [ARIPPA v. Pa. PUC, 966 A.2d 1204, 1211 (Pa. Cmwlth. 2009)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2018253744&pubNum=0000162&originatingDoc=Ib8980cd0186811ebaf4a97db80ef4b04&refType=RP&fi=co_pp_sp_162_1211&originationContext=document&transitionType=DocumentItem&ppcid=f686a724c4a4411a87321d337732abd2&contextData=(sc.DocLink)#co_pp_sp_162_1211) (*ARIPPA*) (en banc) (citations omitted).

In support of Conclusion of Law No. 33, the ALJs cited to *ARIPPA* and the Commonwealth Court’s more recent decision in *Blue Pilot Energy, LLC v. Pa. PUC*, 241A.3d 1254 (Pa. Cmwlth. 2020) (*Blue Pilot*). We find no error in the ALJs’ citation of the relevant caselaw but shall briefly address *Blue Pilot* and our prior decision in *Coggins*.

In *Blue Pilot*, the Commonwealth Court found that the Commission has jurisdiction to enforce our Regulations against a third-party electric generation supplier (EGS), but is without jurisdiction to require an EGS to issue customer refunds under Section 1312 of the Code, 66 Pa. C.S. § 1312 (pertaining to the refund of unreasonable or unlawful rates received by a public utility), as a penalty for violating our Regulations. Instead, the Court noted that the Commission was limited to issuing a civil penalty for regulatory violations and that the avenue of compensatory relief for individual consumers aggrieved by an EGS would be through the civil courts. *Blue Pilot*, 241 A.3d at 1267-68. However, *Blue Pilot* did not directly address the question of whether the Commission has the authority to issue refunds in cases involving Section 1313 of the Code pertaining to the resale of public utility services to residential consumers.

In *Coggins*, we stated in a footnote 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.

*Coggins* at 7, n.3.[[23]](#footnote-23) Additionally, we noted that 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. 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 [defined in 18 Pa. C.S. § 106] 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.

*Coggins* at 6.

Here, no property owners, commercial customers, third party entities or tenants potentially impacted by proposed Tariff Rule 41.2 have joined or become parties to the proceeding and the issue of refunds under Section 1313 is not properly before us. Nonetheless, we recognize that, in light of the Commonwealth Court’s more recent decision in *Blue Pilot*, the question of the Commission’s authority to issue a refund in a Section 1313 proceeding and the interplay of the more specific penalty under Section 3313 may be subject to future litigation, particularly if we were to approve the proposed Tariff Rule 41.2. Moreover, under the provisions of NEP’s tariff language, Duquesne would have significant oversight and enforcement obligations and would likely be drawn into such litigation that might result from the application of the proposed tariff language, with its resulting litigation costs.

Beyond the question of remedies for potential Section 1313 violations, however, the proposed Tariff Rule 42.1 creates confusion about whether tenants who reside in a master/sub-metered building may seek relief through the Commission, must avail themselves of Pennsylvania Courts, or be solely reliant on the voluntary relief offered by property owners and master/sub-metering companies. Specifically, we agree with the concerns of CAUSE-PA that NEP’s tariff proposal raises numerous uncertainties about how a tenant might verify their charges and seek redress for DSLPA violations. *See* CAUSE-PA M.B. at 46-48.[[24]](#footnote-24) Furthermore, although NEP cites *Coggins* for the proposition that the Commission has jurisdiction over excess price on resale claims brought by non-utility consumers pursuant to Section 1313, the ALJs reasoned that *Coggins* does not squarely address the ability of residential tenants to pursue complaints under NEP’s proposed tariff before the Commission for issues unrelated to Section 1313. Rather, the ALJs recognized that such “concerns may not be conclusively resolved until a future complaint is raised, at which point it will be difficult to reverse course should NEP’s proposal be endorsed through Commission approved tariff language.” R.D. at 82. We agree.

Additionally, we find that Section 1313 is not an adequate substitute for the statutory protections provided to residential customers in Chapter 14 of the Code or the regulatory protections provided to residential customers in Chapter 56 of our Regulations. *See* 66 Pa. C.S. §§ 1401, *et seq*., and 52 Pa. Code §§ 56.1, *et seq*. Under the proposal, NEP and potentially other master/sub-metering companies would stand in the place of the public utility by reselling electric distribution service to property owners and their tenants, and as such, the residential tenants would lose the umbrella of consumer protections under the law that they would normally have as utility customers. Some of the consumer protections provided under the Code and our Regulations that will be lost include: (1) billing and payment standards; (2) credit and deposit standards; (3) number and length of payment arrangements; (4) termination of service protections; (5) winter moratorium protections; (6) medical certification protections; (7) access to Commission dispute resolution and informal and formal complaint protections; and (8) protections for victims of domestic violence. *See* CAUSE-PA M.B. at 23-43.

Due to the proposal’s uncertainty pertaining to the Commission regulation of property owners and the ability of tenants to adequately redress complaints pertaining to their service – coupled with the removal of the breadth of tenant consumer protections under Chapter 14 of the Code and Chapter 56 of our Regulations – we find that NEP has failed to satisfy its burden of proving that its proposed Tariff Rule 41.2 is just and reasonable or that Duquesne’s existing Tariff Rules 18 or 41 should be modified.

Regarding the second rationale, we find that the proposed tariff imposes unreasonable burdens and cost obligations on Duquesne to monitor and enforce tariff provisions for residential tenants who are not Company customers.

In reply to concerns that the Commission’s actions on non-Code Section 1313 violations are limited, NEP states that any tenant suspecting a violation of proposed Tariff Rule 41.2 can bring it to the attention of Duquesne. If Duquesne determines that a property owner’s action is inconsistent with the proposed tariff, NEP continues, Duquesne can simply withdraw its master metering approval and impose an individual metering requirement under Tariff Rule 41. NEP Exc. at 31. We could locate no record evidence related to the costs and the process of reversing master-metered buildings to individually metered status. Presumably, NEP expects Duquesne and its ratepayers to absorb such costs including any related litigation costs challenging the reversal.

Additionally, NEP’s proposal would have Duquesne monitor and enforce property owner and third-party compliance with the proposed tariff. Ultimately, the Company would be responsible for ensuring that proposed Tariff Rule 41.2 is applied properly for the benefit of residential tenants. Requiring the Company to incur the costs to implement and enforce NEP’s tariff conditions for residential tenants who are not utility customers would be unreasonable because those tenants would not be paying Duquesne for service and Duquesne’s ability to reach into NEP’s contractual relationship with its own customers is unclear.

The Company explained that NEP’s proposal would result in increases in rates to other customers by reducing the number of customers in its residential class which offset customer costs in base rate proceedings. *See* Duquesne St. 15 at 10. Additionally, Duquesne explained that the proposal would result in lost revenues resulting from the loss of the recovery of universal service costs. The Company noted that its universal service costs are recovered by the Company under the universal service rider solely from residential customers, including individually metered residential tenants in multi-family buildings currently served by the Company. The Company has established that this reduction in the number of residential customers paying the surcharge will result in a larger charge to the Company’s remaining residential customers. *See* Duquesne R.B. at 6-7 (citing Duquesne Rider No. 5 – Universal Service Charge; see Duquesne Tariff Electric-Pa. P.U.C. No. 25, Revised Page No. 94).

NEP contends that its tariff provisions do not burden Duquesne with any type of enforcement obligation that is fundamentally different from the many tariff rules the Company already applies and enforces. In its Exceptions, NEP cites to tariff provisions which all appear to apply to existing service paying customers of Duquesne. Likewise, NEP contends that its proposal is in the public interest because it will avoid the Company costs of responding to and managing hundreds of accounts. We find both of these contentions to be unpersuasive. Duquesne has a customer service team and structure in place to service approximately 600,000 customers and the purported customer service cost saving of reducing the lost customer base is unclear. However, it is clear that decreasing the customer base as proposed by NEP will increase average costs for Duquesne’s customers. Moreover, as discussed above, the proposal presents additional cost burdens for the Company to monitor and enforce property owner and third-party compliance with the proposed tariff despite the proposed reduction in the number of residential customers.

Accordingly, we find that NEP has failed to establish the justness and reasonableness of its proposed Tariff Rule 41.2. NEP’s Exception No. 7 is hereby denied.

### 4. Jurisdiction and Legal Authority

#### a. The R.D. Erred in Finding that Duquesne’s EE&C Programs Render Null any Possible Basis for Allowing Master Metering with Smart Submeters and that PURPA and Pennsylvania Case Law do not Support NEP’s Proposal

##### i. NEP Exception No. 8

In its Exception No. 8, NEP argues that the ALJs improperly found that because Duquesne’s service to residential tenants through residential utility meters provides price signals to those tenants, no other alternative means of providing those price signals such as NEP’s proposal can be permitted. NEP also objects to the purported conclusion that concerns over customer service protections trump PURPA and Commission and Commonwealth Court decisions suggesting that master metering with a conservation element could lawfully support master metering. NEP Exc. at 33.

NEP asserts that Section 113(b)(1) of PURPA established the following federal standard for master metering: “[t]o the extent determined appropriate under [S]ection 115(d), master metering of electric service in the case of new buildings shall be prohibited or restricted to the extent necessary to carry out the purposes of this title.” NEP Exc. at 33 (quoting 16 U.S.C. § 2623(b)(1)). According to NEP, PURPA did not impose a complete ban on master metering of new buildings given the terms of PURPA Section 115(d), which created a standard for when separate metering would be appropriate for a new building, implying that under certain circumstances individual meters might not be an appropriate alternative to master metering:

(d) MASTER METERING. – Separate metering shall be determined appropriate for any new building for purposes of section 113(b)(1) if –

(1) there is more than one unit in such building,

(2) the occupant of such unit has control over a portion of the electric energy used in such unit, and

(3) with respect to such portion of electric energy used in such unit, the long-run benefits to the electric consumers in such building exceed the costs of purchasing and installing separate meters in such building.

NEP Exc. at 34 (quoting 16 U.S.C. § 2625(d)).

NEP argues that its witness Ms. Teresa Ringenbach, consistent with the PURPA Section 115(d), properly opined that she never understood PURPA to mandate individual utility meters for each tenant in multifamily buildings. NEP Exc. at 34 (citing NEP St. 2 at 9). Arguing that the policy behind PURPA was to incentivize residential customers such as tenants in multifamily buildings to conserve energy by metering and paying based on actual use, NEP asserts that PURPA created a standard under which the costs and benefits of individual meters could be evaluated in a multi-tenant building. NEP Exc. at 35 (citing NEP St. 1 at 4 and NEP St. 2 at 5-6).

Further, NEP contends that PURPA is rooted in favor of conservation and energy efficiency policies and not customer protection. Although consumer protections such as security deposits, customer assistance programs, electric supply shopping programs, service termination for the building, and protection from abuse are important, NEP submits these concerns were not the drivers behind PURPA’s treatment of master metering and energy conservation. NEP Exc. at 35 (citing NEP St. 2 at 5-6, 10).

Continuing with its policy arguments, NEP proffers that PURPA’s emphasis on energy conservation and efficiency predated the availability of smart submeters and programs like that administered by NEP, all of which provide substantial opportunities for energy conservation and energy efficiency in buildings that are master metered. NEP contends that PURPA’s discouragement of master-metered buildings was based on the assumption that individual residential units in such multifamily buildings would not have separate individual meters, thereby foreclosing tenants from direct control of and knowledge about their energy consumption. NEP Exc. at 35.

In contrast, NEP contends its master meter regime expressly provides for the use of individual dwelling unit submeters not owned by the local utility, thereby providing residential tenants the energy information and customer control over usage PURPA was attempting to address. Thus, NEP argues that its master meter and submeter program and proposed Tariff Rule 41.2 are consistent with PURPA and its conservation and energy efficiency policies. NEP asserts that Duquesne’s practical prohibition of master metering in Tariff Rule 41 was an over-reaction to PURPA’s policy of limiting/restricting master metering if certain specific conditions were met. *Id*.

Citing to the decisions in *West Penn Power*, *Motheral*, *Tiffany Associates*, and *Crown American*, NEP argues that the Commission and the Pennsylvania courts addressing issues of master metering, PURPA, and utility treatment of master metered buildings fully support NEP’s master meter and smart submeter program and the proposed Tariff Rule 41.2. NEP contends that the ALJs failed to fully analyze and properly apply these cases. NEP Exc. at 36-39.

In *West Penn Power*, a Commission decision addressing master metering in the context of a pending base rate proceeding, NEP notes that the Commission restricted West Penn’s tariff rule by limiting master metering to present customer locations. NEP asserts that the Commission accepted the limitation on master metering in *West Penn Power* by reasoning: “[w]e believe that such policy [limiting master metering to present customer locations] will aid in the conservation of energy in that it will give a cost signal to the user, and reward those users practicing conservation. Such provision provides proper incentives for individual conservation.” Exc. at 36 (quoting 1979 Pa. PUC LEXIS 37 at \*156-57). NEP submits that its business model is consistent with the Commission views in *West Penn Power* because it incorporates master metering and smart submeters, which collectively allow tenants in multifamily buildings to get the appropriate price and usage signals necessary to conserve energy. According to NEP, there is no need to limit master metering for its proposed model which incentivizes property owners to invest in conservation and energy efficient equipment and reduces submetered usage when utilized by tenants. NEP Exc. at 36-37.

NEP asserts that in *Motheral*, the Commission considered Duquesne’s denial of a request to master meter an apartment building. NEP summarizes that Motheral, Inc., had leased a 28-unit apartment building to a university for use as a dormitory and was responsible for paying the electric bills in a building with twenty-nine separate meters. According to NEP, Motheral, Inc., sought Commission relief from the administrative burden and cost associated with paying twenty-nine separate bills each month, effectively seeking a waiver of Duquesne’s Tariff Rule 41. Relying on *Crown American*, the Commission rejected Motheral Inc.’s claim of economic disadvantage because protection of a property owner’s economic interest is not an objective of the Code. The Commission concluded that Motheral Inc.’s claim of economic hardship from the application of Tariff Rule 41 and the use of individual meters in the apartment building was outweighed by the inequities that would befall Duquesne’s other customers, effectively resulting in an unreasonable and discriminatory rate preference. NEP Exc. at 37 (citing 2001 Pa. PUC LEXIS 4 at \*12-13).

NEP argues that *Motheral* is distinguishable from NEP’s request and the ALJs erred by failing to acknowledge this distinction. Unlike the complainant in *Motheral*, NEP proffers that it is not solely seeking personal economic advantage or relief from paying bills from pre-existing individual meters in a multifamily building. Rather, NEP submits that it is seeking to bring a host of economic, conservation and energy efficiency benefits to property owners, their tenants, Duquesne and the public interest. NEP Exc. at 37.

Next, NEP addresses the Commission’s decision in *Tiffany Associates*, which involved a complaint against Duquesne for its refusal to grant the request of Tiffany Associates to master meter its senior citizen apartment building. According to NEP, Duquesne argued that PURPA “is more than just equitable rates to electric consumers” and its Tariff Rule 41 (Prohibition of Residential Master Metering) “is the direct result of PURPA and is designed to conserve energy.” NEP Exc. at 38 (citing 1998 Pa. PUC LEXIS 206 at \*6). In denying Tiffany Associates’ request to master meter, NEP notes that the Commission reaffirmed that banning or limiting master metering is justified under the desire to conserve energy, and found that “[t]he public interest in the conservation of energy and in keeping energy costs low outweighs the benefits resulting from master metering.” NEP Exc. at 38 (quoting 1998 Pa. PUC LEXIS 206 at \*13).

NEP contends its proposed master meter and smart meter submeter regime provides lower energy costs and energy efficiency and conservation benefits to all stakeholders in the context of a master metered with submetering multifamily building. In contrast to *Tiffany Associates*, NEP submits there is no reason to ban or severely limit master metering when the availability of master meters and smart submeters provides both the energy savings and conservation/efficiency benefits PURPA and Tariff Rule 41 desire to achieve. NEP Exc. at 38.

Citing to *Crown American*, NEP notes that the Commonwealth Court upheld PPL’s tariff rule, which permitted master metering of multi-tenancy commercial buildings in certain limited circumstances, such as where installation of electric service has been completed prior to the effective date of the rule. According to NEP, *Crown American* is relevant to this case because of the Commonwealth Court’s observation that there was ample record evidence “indicating that tenants of residential multifamily dwellings who are individually metered, and thus are made aware of their true energy costs, substantially reduce their energy consumption to decrease those costs.” NEP Exc. at 38 (quoting *Crown American*, 463 A.2d at 1260). NEP argues that the reason the Court upheld the PPL limitation on master metering in its tariff rule – *i.e.*, the inability of customers to be aware of their true energy costs and substantially reduce their energy consumption to decrease their costs – is reason to recognize the conservation benefits of NEP’s proposal and approve its master meter and smart submeter program. NEP Exc. at 38‑39.

##### ii. Reply Exceptions

In its Replies to Exception No. 8, Duquesne argues that neither PURPA nor the cases cited by NEP support the proposed Tariff Rule 41.2. The Company submits that NEP misstates the real point of the ALJs’ findings and that a simple review of PURPA and the cited cases clearly demonstrate NEP’s misstatement and misapplication of the law. Duquesne R. Exc. at 15.

Regarding PURPA, Duquesne asserts that master metering of electric service in new buildings is generally prohibited and separate metering is required with limited exceptions. 16 U.S.C. §§ 2623, 2625. The Company contends that PURPA does not require master metering and that its tariff rules comply with PURPA because they require all individual units in new residential buildings to be separately metered. According to Duquesne, this gives individual tenants control over their electric usage and encourages conservation, which is one of PURPA’s primary goals. Additionally, Duquesne argues that the Commission has previously determined that the Company’s Tariff Rule 41 complies with PURPA. Duquesne R. Exc. at 16 (citing *Pa. PUC v. Duquesne Light Co.*, Docket No. R-80011069, 1981 Pa. PUC LEXIS 89 at \*191 – 92 (Order entered February 20, 1981), *vacated in part on other grounds,* *Duquesne Light Co. v. Pa. PUC*, 507 A.2d 433 (Pa. Cmwlth. 1986)). Thus, Duquesne concludes that PURPA does not support NEP’s proposal. Duquesne R. Exc. at 16.

Further, Duquesne argues that the cases cited by NEP do not support NEP’s proposal because all of them actually deny master metering with resale to residential customers. Moreover, several of NEP’s cited cases specifically address and uphold Duquesne’s prohibition against master metering and resale to residential customers. *Id*. at 16-17.

In *West Penn Power*, Duquesne notes that the Commission limited master metering to then-current locations, which is consistent with Duquesne’s current tariff. Although NEP contends its proposal incorporates smart submeters and is therefore distinguishable from *West Penn Power*, the Company asserts that this distinction cannot be read to mean that the Commission’s *West Penn Power* decision supports NEP’s proposal. Duquesne R. Exc. at 16.

Similarly, in *Motheral*, the Company contends that the Commission rejected a building owner’s request to waive Duquesne’s Tariff Rule 41 to allow master metering of an apartment building and upheld the justness and reasonableness of the existing tariff rule. *Id*.

Also, Duquesne explains that in *Crown American* an owner of several shopping malls challenged a Commission decision approving a ban on master metering at new multi-tenancy commercial service locations. The Commonwealth Court upheld the ban against master metering and concluded that the Commission’s duty was to protect customers and the public and not to advance private economic interests. Duquesne R. Exc. at 16-17 (citing *Crown American* 463 A.2d at 1260).

Duquesne contends that NEP’s attempt to distinguish *Motheral* and *Crown American* on the basis that NEP is not solely seeking personal economic advantage falls flat because the Company is well within its legal right to disallow master metering with resale to residential customers. Further, in *Tiffany Associates*, Duquesne asserts that the Commission again denied a request of a building owner to master meter a senior citizen apartment building in Duquesne’s service territory. The Company emphasizes that the prohibition on residential master metering was not only applied in order to promote conservation but to ensure the “optimization of the efficiency of use of facilities and resources, and equitable rates to consumers.” Duquesne R. Exc. at 17 (quoting *Tiffany Associates*, 1998 Pa. PUC LEXIS 206 at \*6).

According to Duquesne, NEP’s proposal will not provide for the efficient use of facilities and resources nor provide for equitable rates for consumers. Rather, the Company contends that it will deprive Duquesne of the revenue differential recouped by NEP while still requiring the Company to incur costs to monitor and enforce NEP’s proposal and litigation costs in the event complaints are filed. Duquesne R. Exc. at 17.

In its Replies, CAUSE-PA argues that the ALJs correctly found Duquesne’s current EE&C programs as rendering null NEP’s master metering with smart services program. Additionally, CAUSE-PA contends that PURPA and NEP’s cited cases do not support NEP’s proposal. CAUSE-PA R. Exc. at 22.

CAUSE-PA submits that NEP’s argument that its policies, procedures, and tariff proposal are consistent with PURPA are based on unsubstantiated arguments that its tariff proposal will result in greater conservation and efficiency compared to individually metered multifamily buildings. CAUSE-PA R. Exc. at 22 (citing CAUSE-PA RB at 33). CAUSE-PA contends that NEP’s touted benefits related to energy efficiency and conservation which are wholly unsupported by the record and actually undermine the accessibility and availability of numerous energy efficiency and conservation programs. Additionally, CAUSE-PA proffers that the fact that PURPA was not driven by concerns for consumer protections is irrelevant. CAUSE-PA contends that Chapters 14 and 28 of the Code were enacted long after PURPA was promulgated, and provide independent legal basis for upholding Duquesne’s current tariff prohibiting the practice of master/submetering in its service territory. According to CAUSE-PA, NEP flagrantly overlooks the real-world implications that its tariff proposal – and its practices and procedures – have on tenants in favor of focusing solely on the narrow and largely speculative business interests of commercial property owners. CAUSE-PA R. Exc. at 23.

Additionally, CAUSE-PA argues that the ALJs appropriately addressed the cited caselaw related to master/submetering of services. CAUSE-PA asserts that NEP’s reliance on each of the cases – which repeatedly denied similar claims as NEP’s proposal – is misplaced and largely based on illusory and unsubstantiated claims that NEP’s tariff proposal will promote energy efficiency and conservation rather than the personal economic gain of third-party master/submetering companies like NEP. CAUSE-PA R. Exc. at 23 (citing CAUSE-PA R.B. at 34-36). Rather, CAUSE-PA continues, the ALJs correctly analyzed and applied prior Commission and Commonwealth Court precedent, which concluded that economic interests of property owners do not suffice to invalidate a master metering prohibition and do not support NEP’s requested relief. CAUSE-PA R. Exc. at 23.

##### iii. **Disposition**

Upon review, we shall deny Exception No. 8. In contrast to NEP’s claims, the ALJs did not discount or diminish the importance of the efficiency and conservation goals expressed in PURPA. Rather, the ALJs explained that PURPA and the cited cases concern energy efficiency and conservation and the ability of customers to receive price signals. However, the ALJs found that Duquesne’s current services already address this goal through various energy efficiency and conservation programs and that residential customers already receive price signals for their accounts by being individually metered. See R.D. at 82. Significantly, the ALJs found that PURPA’s focus on energy conservation does not negate the numerous concerns related to customer protections raised by NEP’s proposal. *Id*. We find no error in the ALJs’ application of the evidentiary record, the consideration of the relevant caselaw, or the conclusions in this regard.

Moreover, NEP relies upon Commission and Commonwealth Court cases – *West Penn Power*, *Motheral*, *Tiffany Associates*, and *Crown American* – all of which denied master metering with resale to residential customers. NEP attempts to distinguish these decisions and argues that their holdings should not operate to prohibit its current proposal on the basis that its proposal provides energy conservation benefits. Similar to the ALJs’ consideration of the issue, NEP’s arguments fail to persuade us that these cases actually support NEP’s proposal. More importantly, however, the purported distinguishing environmental and conservation features in proposed Tariff Rule 41.2 do not appear to be supported by the evidentiary record.

For example, there is no evidence showing that master metering improves the overall energy efficiency in properties or otherwise reduces usage in individual units. CAUSE-PA St 1-R at 56. Rather, it is apparent that NEP is largely removed from the property owner’s decisions regarding installation of energy efficiency measures and NEP did not support its claim that building owners are better able to achieve energy efficiency goals. *Id*. at 56-57. Also, 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. CAUSE-PA St. 1-R at 56, Appx. A CAUSE-PA to NEP I‑25.

Additionally, NEP in its Main Brief at pages 23-24 listed some examples of banks and lenders that prioritize green investments. However, NEP did not provide support for the contention that a building must be master or submetered or that a property owner must present granular detail about individual tenant usage in order to access such capital or green financing options. In actuality, NEP’s proposal would appear to prevent low and moderate income residential consumers from accessing energy efficiency programs such as the LIURP, Act 129 programming offered by Duquesne, and the federal Weatherization Assistance Program operated by the Pennsylvania Department of Community and Economic Development. CAUSE-PA St. 1-R at 57. Furthermore, there is no evidentiary support for the contention that NEP’s proposal will advance other clean energy and carbon neutral goals. See CAUSE-PA R.B. at 9-10.

Accordingly, we are not persuaded that the prior Commission and Court decisions upholding master metering prohibitions are distinguishable or that they fully support NEP’s master meter and smart submeter program and the proposed Tariff Rule 41.2.

### 5. Cost/Revenue Shifting

#### a. The R.D. Erred in not Addressing why Cost/Revenue Shifting does not Need To Be Resolved Now if the Commission Rejects the R.D. and Ultimately Approves NEP’s Proposed Tariff Rule 41.2

##### i. NEP Exception No. 9

In its Exception No. 9, NEP argues that the ALJs’ Recommended Decision erroneously did not resolve competing claims by the OCA and the OSBA regarding the customer cost allocation relating to the implementation of NEP’s proposed Tariff Rule No. 41.2. NEP Exc. at 9 (citing R.D. at 83). NEP contends that, if NEP’s proposed Tariff 41.2 is approved by the Commission, then cost and revenue issues potentially exist and, therefore, the Recommended Decision should have addressed and resolved this issue. *Id.*

NEP notes that, the OSBA stated that, if NEP’s proposed Tariff Rule No. 41.2 is approved, then the Company has to provide a revenue allocation analysis as part of any proposed change to master metering of multifamily housing. NEP Exc. at 39 (citing R.D. at 78, OSBA R.B. at 3-4). Further, NEP states that, the OSBA’s witness, Mr. Robert D. Knecht, focused on cost and rate allocation issues among customer classes resulting from increased master metering in the Company’s service territory. *Id.* (citing OSBA St. 1-R at 25). Moreover, NEP notes that, the OCA challenged the OSBA’s arguments with regard to cost allocation. *Id.* (citing R.D. at 78; OCA R.B. at 1-6).

NEP asserts that, although the impacts of master metering on the Company’s revenues and cost allocations are speculative, the ALJs should have recommended NEP’s proposed Tariff Rule 41.2 for approval. NEP Exc. at 39 (citing OCA M.B. at 15). Furthermore, NEP avers that, the ALJs should have found that, upon the implementation of NEP’s proposed Tariff Rule No. 41.2, any cost allocation and rate design issues should be deferred until the first Duquesne base rate case following the implementation of NEP’s proposal. NEP Exc. at 39-40 (citing; NEP R.B. at 29-30).

##### ii. Reply Exceptions

In its Replies, Duquesne counters that the ALJs were correct not to address the potential cost and revenue allocation issues, explaining that, because NEP’s proposal is not in the public interest and should not be approved, addressing the cost and/or revenue shifting issues is unnecessary. The Company added that, if NEP’s proposal was adopted over the objections of Duquesne, the OCA, the OSBA, and CAUSE-PA, then resolving the cost and/or revenue shifting issues in this proceeding is premature. Duquesne R. Exc. at 18.

In its Replies, the OCA responds that the ALJs were correct not to respond to the substance of the OSBA’s proposed revenue impact analysis of NEP’s proposed Tariff Rule 41.2 and the OSBA’s cost allocation proposal because the ALJs denied NEP’s proposal. OCA R. Exc. at 6 (citing OSBA St. 1-R at 23). The OCA asserts that, to the extent that the Commission considers NEP’s proposed Tariff Rule 41.2, the OCA maintains its positions that: (1) NEP’s proposal would impact the Company’s multi-unit commercial property owners and not residential customers; and (2) the OSBA’s proposed allocation should not be approved. *Id.* (citing OCA R.B. at 6; OCA M.B. at 15-16).

##### iii. Disposition

Upon review, the ALJs’ correctly found it unnecessary to address the issues of cost shifting in their Recommended Decision. As noted by the ALJs in their Recommended Decision, a cost allocation design regarding NEP’s proposal was not recommended because the ALJs did not find that NEP had met its burden of proof regarding its proposal. As discussed above, we agree with the ALJs’ conclusion that NEP has failed to meet its burden of proof regarding its proposed Tariff 41.2. Accordingly, we do not find error with the customer cost/revenue allocation issues not being addressed in the Recommended Decision. Therefore, we shall deny NEP’s Exception No. 9.

# V. Conclusion

Based on the review of the record in this proceeding, and consistent with the foregoing discussion we shall: (1) grant, in part, and deny, in part, the Exceptions filed by NEP on October 22, 2021; (2) adopt the ALJs’ Recommended Decision, as modified, consistent with this Opinion and Order; (3) approve the Joint Petition for Approval of Settlement, without modification; (4) deny the Complaint of NEP; and (5) mark the Formal Complaints of the OCA, the OSBA, Diane Buzzard, Jan Vroman, and Sean D. Ferris as deemed satisfied and marked closed, consistent with this Opinion and Order; **THEREFORE:**

**IT IS ORDERED:**

1. That the Exceptions filed by Nationwide Energy Partners, LLC on October 22, 2021, are granted, in part, and denied in part, consistent with this Opinion and Order.

2. That the Recommended Decision of Deputy Chief Administrative Law Judge Joel H. Cheskis and Administrative Law Judge John M. Coogan, issued on October 12, 2021, is adopted, as modified, consistent with this Opinion and Order.

3. That the Joint Petition for Approval of Settlement, filed on September 3, 2021, by Duquesne Light Company, the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, the Pennsylvania Weatherization Providers Task Force, Inc., ChargePoint, Inc., and the National Resources Defense Council, Inc., is approved in its entirety without modification.

4. That Duquesne Light Company shall not place into effect the rates contained in Supplement No. 25 to Tariff Electric – Pa. PUC No. 25 which was filed on April 16, 2021, at Docket No. R-2021-3024750.

5. That Duquesne Light Company shall file tariff supplements incorporating the terms and changes to its rates, rules and regulations as set forth in Appendix A to the Joint Petition for Settlement referenced in Ordering Paragraph No. 3, above, to become effective on at least one (1) day’s notice after entry of this Opinion and Order, for service rendered on and after January 15, 2022, which tariff supplements increase Duquesne Light Company’s rates so as to produce an increase in annual revenue of not more than $74.2 million.

6. That after Duquesne Light Company files the required tariff supplements set forth in Ordering Paragraph No. 5 of this Opinion and Order, the Formal Complaints filed by the Office of Consumer Advocate at Docket No. C‑2021-3025538 and by the Office of Small Business Advocate at Docket No. C-2021-3025462 shall be deemed satisfied, and the Commission’s investigation at Docket No. R-2021-3024750 shall be terminated, and all three dockets shall be marked closed.

7. That the Complaint filed by Nationwide Energy Partners, LLC at Docket No. C-2021-3026057 against Duquesne Light Company’s Tariff Rules 18 and 41 is denied.

8. That the Complaint filed by Diane Buzzard against Duquesne Light Company at Docket No. C-2021-3027067 shall be deemed satisfied and marked closed.

9. That the Complaint filed by Jan Vroman against Duquesne Light Company at Docket No. C-2021-3026521 shall be deemed satisfied and marked closed.

10. That the Complaint filed by Sean D. Ferris against Duquesne Light Company at Docket No. C-2021-3026365 shall be deemed satisfied and marked closed.

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Description automatically generatedBY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: December 16, 2021

ORDER ENTERED: December 16, 2021

1. The various Petitions to Intervene were filed between April 26, 2021, and June 15, 2021. [↑](#footnote-ref-1)
2. Greenlots is a provider of electric vehicle charging software and services, and is a wholly owned subsidiary of Shell. R.D. Appendix I at 2. [↑](#footnote-ref-2)
3. *Pa.* *PUC v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Order entered December 19, 2013), at 28 (citations omitted). [↑](#footnote-ref-3)
4. ASU 2018-15 is the U.S. Financial Accounting Standard Board’s (FASB) Accounting Standards Update No. 2018-15 in August 2018 - Intangibles – Goodwill and other-Internal-Use Software (Subtopic 350-40): Customer’s Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That is a Service Contract (a consensus of the FASB Emerging Issues Task Force). [↑](#footnote-ref-4)
5. For purposes of this Opinion and Order, we will summarize certain pertinent portions of the Parties’ Statements in Support, including: (1) revenue requirement and exceptions to the “black box” under the Settlement; (2) Duquesne’s jurisdictional separation study; (3) modifications to the Company’s universal service programs; (4) Duquesne’s proposed Transportation Electrification (TE) Program; and (5) revenue allocation and rate design. For additional discussion of the Parties’ positions in the Settlement, *see* R.D. at 40-53. [↑](#footnote-ref-5)
6. *Pa. PUC v. Aqua Pennsylvania, Inc.*,Docket No. R-2011-2267958 (Order entered June 7, 2012) at 26-27; *Pa. PUC v. Peoples TWP LLC.*,Docket No. R‑2013-2355886 (Order entered December 19, 2013) at 27; Statement of Chairman Robert F. Powelson, Implementation of Act 11 of 2012, Docket No. M-2012-2293611 (Public Meeting August 2, 2012). [↑](#footnote-ref-6)
7. As noted, *supra*, ASU 2018-15 refers to the U.S. FASB Accounting Standards Update No. 2018-15 in August 2018 - Intangibles – Goodwill and other-Internal-Use Software (Subtopic 350-40): Customer’s Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That is a Service Contract (a consensus of the FASB Emerging Issues Task Force). [↑](#footnote-ref-7)
8. *See, e.g.*,66 Pa. C.S. § 2802(10) (“the Commonwealth must, as a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electric service.”); *see also*, 66 Pa. C.S. § 2802(17). [↑](#footnote-ref-8)
9. For a detailed summary of the Parties’ Main Briefs and Reply Briefs, see pages 57-78 of the Recommended Decision. [↑](#footnote-ref-9)
10. NEP’s Main Brief described its business model in detail and noted that NEP did not object to Duquesne’s proposed Tariff Rule 41.1, but proposed a new Tariff Rule 41.2 at NEP Exhibit TR-11. NEP M.B. at 9-11. NEP’s Main Brief also described features of its original proposed Tariff Rule 41.2, and certain modifications it proposed during the proceedings to address other Parties’ concerns with NEP’s proposal. NEP M.B. at 11-14. [↑](#footnote-ref-10)
11. 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.

    66 Pa. C.S. § 1313. [↑](#footnote-ref-11)
12. Tariff Rule 18 requires all energy to be consumed by the customer to whom it is supplied except for customer supply for another office building or any other customer who receives Duquesne’s consent upon a showing of special circumstances to allow that customer to redistribute energy to tenants of the customer but only if the tenants are not required to make a specific payment for the energy and refers to Rule 41 for requirements applicable to residential dwellings. *See id.* at 12 n.27. [↑](#footnote-ref-12)
13. Duquesne also responds to NEP’s contention, also raised in NEP’s Exception No. 1, that rejection of NEP’s proposal in *Duquesne’s* service territory cannot be reconciled with its existence in PECO’s service territory by asserting, *inter alia*, that PECO’s program is voluntary. In our discussion and disposition of these NEP Exceptions 2, 4, and 5, we address the legal standards applicable to Duquesne’s and NEP’s respective burdens in this proceeding. Our discussion and disposition of NEP’s references to a program in PECO’s service territory is addressed in response to NEP Exception Nos. 1, 3 and 6. [↑](#footnote-ref-13)
14. While Section 315(a) addresses the utility’s burden with respect to “rates,” Section 315(c) also places on the utility the burden to show that the service and facilities it provides are “adequate, efficient, safe, and reasonable[.]” 66 Pa. C.S. §§ 315(a), (c). [↑](#footnote-ref-14)
15. For this reason, we do not rely on *Kossman*, as cited by Duquesne, or *Brockway*, cited by both Duquesne and CAUSE-PA. *Zucker*, on the other hand, involved a customer challenge to an existing rate that had been approved by the Commission in a prior general rate increase case five years earlier and that was not proposed to change in the subsequent tariff filing. [↑](#footnote-ref-15)
16. PCOC is an acronym for the Pennsylvania Utility Law Project representing Pennsylvania Communities Organizing for Change, d/b/a ACTION United. [↑](#footnote-ref-16)
17. While the Commission is the ultimate arbiter of the evidence, the Commission typically will not disturb the ALJ’s evidentiary rulings or findings of fact unless it is determined to be an abuse of discretion or lacking substantial evidence. *Baker v. Sunoco Pipeline, L.P.*, Docket No. C-2018-3004294 (Order entered September 23, 2020) at 15. [↑](#footnote-ref-17)
18. *See Sharon Steel Corp. v. Pa. PUC*, 468 A.2d 860 (Pa. Cmwlth. 1983). Despite disagreeing with the Commission’s assignment of the burden of proving an existing tariff provision unreasonable upon the complainant in a base rate case on Commission motion, and distinguishing *Brockway* as a complaint-driven proceeding, the Court nonetheless affirmed the Commission’s rejection of the complainant’s rate reduction proposal because substantial evidence supported the Commission’s rejection. [↑](#footnote-ref-18)
19. The public interest historically considers the interests or ratepayers, investors, and the regulated community. *Pa. PUC v. Bell Atlantic-Pennsylvania, Inc*., Docket No. R-00953409, 1995 Pa. PUC LEXIS 193 (Order entered September 29, 1995). [↑](#footnote-ref-19)
20. We further address NEP’s reliance on *Coggins* in our discussion and disposition of NEP Exception No. 7, *infra.* [↑](#footnote-ref-20)
21. As examples, NEP cites to the Company’s tariff provisions pertaining to the following requirements: that Duquesne must enforce against customers all the terms and conditions it establishes in Contracts and Special Contracts with customers, Duquesne Tariff Electric-Pa. P.U.C. No. 25, Original Page No. 9; that Duquesne must be provided proof of compliance with insulation standards in residential buildings, Duquesne Tariff Electric-Pa. P.U.C. No. 25, Original Page No. 24; that customers must use electric service only at their premises and any change in connected load, demand or other condition of use requires Company notification, Duquesne Tariff Electric-Pa. P.U.C. No. 25, Original Page No. 25, Rule 16 Use of Service by Customer. Exc. at 30. [↑](#footnote-ref-21)
22. We note that the proposed Tariff Rule 41.2 language states that it would apply to “no more than 130 existing multi-tenant premises or any new construction multi-tenant premises that include at least four (4) dwelling units.” NEP Exh. TR-22. This language is unclear as to whether NEP is limiting the proposal to 130 existing premises and all new premises or to 130 existing and new premises in total. NEP appears to attempt to redress this ambiguity in its Main Brief by stating that the proposed tariff “will be subject to a total limit of 130 existing developments and new buildings.” NEP M.B. at 12. Nonetheless, the tariff proposal as submitted appears ambiguous as to the potential size of impacted premises. [↑](#footnote-ref-22)
23. The complainant in *Coggins* filed a complaint against PPL alleging in part that he was a resident of a campground which was overcharging him and others for electric service. PPL filed preliminary objections on the basis of lack of standing which the ALJ treated as motion for judgment on the pleadings. The Commission affirmed the ALJ’s decision dismissing PPL as a party to the suit but explained that the complainant may have standing to file a complaint against the campground in relation to the provision of private contract electric service to the complainant. Accordingly, the Commission granted the complainant thirty days to file an amended complaint substituting the campground as the respondent. Alternatively, the Commission stated that the complainant could file a private criminal complaint pursuant Sections 1313 and 3313 of the Code. *Coggins* at 5-7. There is no record of any further proceedings in the *Coggins* matter. [↑](#footnote-ref-23)
24. For, example CAUSE-PA witness Mr. Geller testified that NEP’s tariff proposal complicates the ability of tenants to prevent termination based on landlord nonpayment and undermines tenant protections against voluntary disconnection of services to leased units without notice and/or consent to tenants. CAUSE PA St. 1-R at 42-45. [↑](#footnote-ref-24)