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September 3, 2021

**VIA EFILING**

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

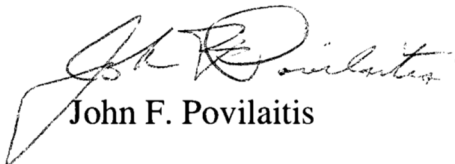
Re: Pennsylvania Public Utility Commission, Office of Consumer Advocate, Office of  
Small Business Advocate v. Duquesne Light Company;  
Docket No. R-2021-3024750, C-2021-3025538, C-2021-3025462, C-2021-  
3026057

Dear Secretary Chiavetta:

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

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

Very truly yours,



John F. Povilaitis

JFP/tlg  
Enclosure  
cc: Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**MAIN BRIEF OF NATIONWIDE ENERGY PARTNERS LLC**

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September 3, 2021

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## **I. STATEMENT OF THE CASE**

### **A. Introduction**

This complaint proceeding at Docket No. C-2021-3026057 – initiated by Nationwide Energy Partners LLC (“Nationwide” or “NEP”) on May 25, 2021 – relates to Duquesne Light Company’s (“Duquesne” or “DLC”) recent base rate request at Docket No. R-2021-3024750 to increase its operating revenues and effect changes to its Pennsylvania Public Utility Commission (“Commission” or “PaPUC”) approved tariff. As part of its base rate request, Duquesne proposed a new tariff Rule 41.1, that would allow affordable housing developers-customers to utilize master metering.

NEP is a Columbus, Ohio-based provider of installation, sub-metering, billing, collections, electrification and energy efficiency services to the owners and developers of multifamily properties. With more than twenty years of experience serving over 32,000 residents at over 150 properties, *including in excess of 1,600 tenant residents in PECO’s service territory*, NEP has developed a multifamily-specific energy service model (“Smart Property Platform”) that provides substantial benefits to property owners who are utility customers and their tenants. NEP’s Smart Property Platform incorporates proven and reliable industry standard equipment, infrastructure and smart meters. NEP offers many sustainability features, such as demand management and frequency response technology, ChargePoint electric vehicle charging stations, designed infrastructure, plus a substantial amount of usage data and analytics for property managers and maintenance personnel, along with an online resident portal providing tenants with visibility into – and control over – their personal utility usage. NEP’s customers are typically multifamily development owners, developers or condominium associations (“Property Owner(s)").<sup>1</sup>

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<sup>1</sup> NEP St. No. 1, at 2:14-28, 3:1-4.

As a provider of energy services to multi-family buildings, it is essential that NEP and other similar providers have the ability to take electric service from the local electric distribution company at a single master meter located at the building so it can then deploy its state of the art smart meter technology to sub-meter the individual dwelling units in the building. This business paradigm has provided numerous benefits to Property Owners, tenants and the public generally for a number of years – including in the PECO service territory in Pennsylvania since 2008 – where there is no ban or significant limitation on the ability to take service for an entire building at a single master meter from the local utility.

Duquesne imposes severe limitations on master metering in its service territory, thereby depriving Property Owners, tenants and the public generally the choice of how they would like to take service and receive the energy efficiency and conservation benefits NEP (but not always the local utility) can provide.

Through its complaint, Nationwide seeks to remedy Duquesne’s existing tariff provisions on redistributing electric energy and master metering that, through tariff language, interpretation and implementation, have all but eliminated Nationwide’s ability to conduct business in Duquesne’s service territory, to the detriment of all relevant stakeholders. Duquesne’s tariff provisions implicating master metering and the redistribution of electric energy are unjust, unreasonable and not in the public interest. In contrast, Nationwide’s 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. It is time for Duquesne to recognize that Property Owners and their tenants can and should have more choices for how they live and



how they procure their electric energy, conservation and efficiency benefits. Rapidly changing world climate change demands these increased choices and options for tenants in multifamily buildings as well as Property Owners.

**B. Procedural History**

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 Rider charges into base rates.

On April 23, 2021, the Office of Small Business Advocate (“OSBA”) filed a formal complaint and public statement against the tariff filing and the Commission’s Bureau of Investigation and Enforcement (“I&E”) intervened into this case. On April 27, 2021, the Office of Consumer Advocate (“OCA”) filed a formal complaint and public statement against the tariff filing. Petitions to intervene were filed by the Pennsylvania Weatherization Providers Task Force, Inc. (“PWPTF”), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), the Natural Resources Defense Council (“NRDC”), United States Steel Corporation (“U.S. Steel”), and Peoples Natural Gas Company LLC (“Peoples”).

On May 20, 2021, the Commission suspended Duquesne’s filing by operation of law until January 15, 2022 pursuant to Section 1308(d) of the Public Utility Code (“Code”), unless permitted by the Commission to become effective at an earlier date. Among other things, the Commission noted that the proposed tariff filing and the supporting data indicate that the proposed changes in rates, rules and regulations may be unlawful, unjust, unreasonable and contrary to the public interest. The Commission assigned the case to the Office of Administrative Law Judge for the prompt scheduling of hearings as may be necessary culminating in the issuance of a Recommended Decision.

On May 25, 2021, Nationwide filed a formal complaint against Duquesne's tariff filing 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 of its commercial customers of the opportunity to reduce their rates for service and, therefore, Duquesne's current and proposed rates may be contrary to law. Nationwide further argued, among other things, that Duquesne's current tariff contains a ban or severely limits the use of new master metering arrangements in tenant-occupied buildings that are Nationwide's customers.

A prehearing conference was held in this proceeding on May 27, 2021. Thereafter, a Scheduling Order was issued on May 28, 2021 which, among other things, 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 Nationwide and the petition to intervene filed by Peoples.

On June 2, 2021, and in response to a request from the presiding officers, Nationwide filed a motion to consolidate its formal 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 Nationwide's complaint. In its answer, among other things, Duquesne denied Nationwide's characterization of Duquesne's current and proposed master metering tariff rules, namely Rule 18 and Rule 41. Duquesne also denied that its master metering tariff provisions deprive certain commercial customers the opportunity to reduce

their rates, but averred that those provisions are the result of expressed stakeholder interest and are intended to ensure residential tenant protections. Duquesne also asserted that Nationwide does not have standing to be granted party status in this proceeding and that Nationwide is not entitled to the relief it seeks.

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

On June 9, 2021, Nationwide filed an answer to Duquesne's Preliminary Objection. In its answer, Nationwide argued that, by attempting to obtain dismissal of Nationwide's complaint in this proceeding, Duquesne is repeating the legal error it committed in its prior base rate increase case when it attempted to exclude the participation of Peoples Natural Gas Company. Nationwide noted that the Commission decisively rejected Duquesne's arguments in the prior rate case and the arguments should be rejected here again. Nationwide argued, among other things, that (i) its lack of customer status is not relevant to standing when the complaint does not involve the utility's quality of service; (ii) its interest in the proceeding is immediate because Duquesne's proposed change to Tariff Rule 41 (by creating Rule 41.1) will occur in this proceeding, and (iii) Nationwide's interest in this proceeding is far greater than that of a general member of the public because Nationwide is advancing very specific interests that also impact commercial and residential customers in Duquesne's service territory.

In an order dated June 21, 2021, the presiding Administrative Law Judges ("ALJ's") dismissed Duquesne's Preliminary Objections and consolidated Nationwide's complaint into this proceeding at Docket No. R-2021-3024750.

The parties engaged in extensive discovery in advance of the scheduled evidentiary hearings.

The initial evidentiary hearing was held in this matter telephonically on August 17, 2021. All the parties waived cross examination of each other's witnesses and stipulated into the record (with the ALJs' approval) the admission of various pre-served testimony, attachments, exhibits, including specifically identified hearing and cross exhibits. Duquesne also announced at the hearing that (i) its revenue requirement had been resolved, (ii) other issues were in the process of being resolved, and (iii) the only issue likely continue to full litigation in this proceeding would be Nationwide's complaint regarding Duquesne's effective ban on master metering.

This Main Brief is being submitted in accordance with the ALJs' Briefing Order dated August 17, 2021.

**C. Burden of Proof**

Nationwide's complaint arises in the context of Duquesne's base rate proceeding, implicating provisions of the Code as well as prevailing common law in Pennsylvania.

In a base rate case, the burden of proof of the proposed rate is on the public utility. Code Section 315(a) states that:

[i]n any proceeding upon the motion of the [C]ommission, 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.

66 Pa.C.S. § 315(a).

The public utility must satisfy its burden of proof 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." *Energy Conservation Council v. Pennsylvania Public Utility Commission*, 995 A.2d 465, 478 (Pa. Cmwlth 2010). In addition,

the Commission’s decision must be supported by “substantial evidence,” which is evidence that a reasonable mind might accept as adequate to support a conclusion. A mere “trace of evidence or a suspicion of the existence of a fact” is insufficient. *Norfolk and Western Railway Co. v. Pa. Pub. Util. Comm’n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

The Commission and the Courts have clearly held that the burden of proof does not shift to the party challenging a requested rate increase. While the burden going forward may shift, the burden of establishing the justness and reasonableness of every component of a requested rate increase remains on the utility. The opposing parties have no such burden. The utility’s burden of establishing the justness and reasonableness of every component of its rate request is an affirmative one. In contrast, there is no similar burden placed on an intervener to justify a proposed adjustment to the company’s filing. *See, Berner v. Pa. PUC*, 382 Pa. 622, 116 A.2d 738 (1955).

While Duquesne has suggested that Nationwide’s proposed new tariff Rule 41.2 could have rate/revenue shift implications<sup>2</sup>, that tariff rule is not itself a rate being proposed by Duquesne. To the extent Nationwide has proposed tariff Rule 41.2, the burden of proof on the reasonableness of that rule would fall on Nationwide in accordance with Code Section 332(a), which states that “[e]xcept as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof.” 66 Pa.C.S. § 332(a).

This conclusion is consistent with applicable Pennsylvania law. In *NRG Energy, Inc. v. Pennsylvania Public Utility Commission* (“*NRG Energy*”), 233 A.3<sup>rd</sup> 936 (Pa. Cmwlth. Ct. 2020), 2020 Pa. Commw. LEXIS 420, the Commonwealth Court discussed the interplay of Code Sections

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<sup>2</sup> Duquesne St. No. 6-R, at 24:12-23, 25:1-14.

315(a) and 332(a) in the context of NRG’s proposed alternative rate allocation methodology to the one previously used by PECO Energy in a base rate proceeding and approved by the Commission:

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. 66 Pa.C.S. § 315(a). This burden does not shift from a utility whose burden has been statutorily imposed. *Berner v. Pa. Pub. Util. Comm’n*, 116 A.2d 738, 744 (Pa. 1955). 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.” *Allegheny Center Assocs. v. Pa. Pub. Util. Comm’n*, 570 A.2d 149, 153 (Pa. Cmwlth. 1990). Furthermore, Section 332(a) establishes a separate burden of proof than that in Section 315 for those entities that propose a rule or order. 66 Pa.C.S. § 332(a).

*NRG Energy* at 950.

The Commonwealth Court in *NRG Energy* found no clear error in the Commission requiring the utility (i.e., PECO) to prove entitlement to its own cost allocation proposal “while the burden of proving that changes should be made to PECO’s current cost allocation rests on NRG.” *NRG Energy* at 950.<sup>3</sup>

Under these principles, Nationwide acknowledges its burden of proof in this proceeding to show the just and reasonableness of its proposed master metering and smart sub-meter program under tariff Rule 41.2.

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<sup>3</sup> The Commission has made similar findings on the burden proof with respect to proposals made in the context of a utility’s base rate proceeding. *See, Pennsylvania Public Utility Commission et al v. Metropolitan Edison Company and Pennsylvania Electric Company; Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of a Rate Transition Plan, Re: Merger Savings Remand Proceeding*, Docket Nos. R-00061366; R-00061366C0001; R-00061366C0002; R-00061366C0003; R-00061366C0005-; R-00061366C0013; R-00061367; R-00061367C0001; R-00061367C0002; R-00061367C0003; R-00061367C0005; R-00061367C0007; R-00061367C0008; P-00062213; P-00062214; A-110300f0095; A-110400F0040 2007 Pa. PUC LEXIS 5 (Order entered January 11, 2007) at 30-31 (“Additionally, 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.”).

**D. NEP's Business Model**

NEP provides installation, sub-metering, billing, collections, electrification and energy efficiency services to the owners and developers of multifamily properties.<sup>4</sup> This includes service to over 32,000 residents at over 150 properties, including in excess of 1,600 tenant residents in PECO's service territory.<sup>5</sup> NEP delivers services via its Smart Property Platform.<sup>6</sup> NEP's customers are typically multifamily development owners, developers or condominium associations, and NEP often acts as a Property Owner's authorized representative with the local utility.<sup>7</sup>

As NEP Witness Ringenbach<sup>8</sup> noted, the cornerstone of NEP's business model is the Property Owner's ability to "... choose to manage the energy of an entire tenant-occupied building through a master meter construct with the property under a single account owned by the local utility and smart sub-meters installed in each rental unit at the multifamily building(s)."<sup>9</sup>

NEP's business model is a service provided to multifamily Property Owners or developers who construct or renovate such properties. NEP establishes a direct contractual relationship with relevant Property Owner or developer and is typically retained to handle the design, construction, management and billing of all energy services. While NEP's common service is electricity and water, it also handles natural gas service. The foundation of NEP's service is the design of the infrastructure. Working as the authorized representative of the Property Owner or developer to

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<sup>4</sup> NEP St. No. 1, at 2:1-3.

<sup>5</sup> NEP St. No. 1, at 2:16-18.

<sup>6</sup> NEP St. No. 1, at 2:18-19.

<sup>7</sup> NEP St. No. 1, at 3:4-5.

<sup>8</sup> NEP Witness Teresa Ringenbach has twenty years' experience in the energy industry, including work for several companies in the competitive electric supplier space, as well as technical, legislative and regulatory experience in retail energy, advanced energy and energy efficiency. She has represented multiple energy companies before state government and regulatory commissions, testified before legislative bodies and commissions and crafted policy, strategy and legislation to support advanced energy markets including issues of energy efficiency, grid modernization, renewable energy and retail energy. NEP Exhibit TR-1.

<sup>9</sup> NEP St. No. 1, at 4:5-9.

engineer the energy infrastructure behind the meter, NEP is able to ensure the full value and use of the property for the Property Owner and tenants.<sup>10</sup>

NEP often finances the energy infrastructure equipment installed at the multi-family building and recovers its costs through a “capped billing model.”<sup>11</sup> This model allows NEP to add other energy services including, but not limited to, advanced billing options, a carbon or green total property supply guarantee, electric vehicle charging stations, demand response and energy efficiency technologies, all while ensuring tenant billing is tied to the tenant’s usage and never more than what the local utility would have charged.<sup>12</sup>

NEP’s program starts with the installation of a utility master meter at the curb for the multi-family property occupied by residential tenants. NEP then builds out the infrastructure at the multi-family property, including transformers and conduit privatized on the property similar to commercial master metered customers. This infrastructure includes an Advanced Metering Infrastructure (“AMI”) utility/revenue grade smart sub-meter installed for each tenant. The important elements of NEP’s program include tenant control over their usage, the provision of detailed data to each tenant on their usage, smart technologies and participation in aggregated demand response programs.<sup>13</sup>

As noted by NEP Witness Ringenbach, tenants in the NEP master metering and sub-metering program “will never be charged more than they would pay if they were individually metered residential customers of the utility, and if they participate in control options made available to them, they will pay less.”<sup>14</sup>

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<sup>10</sup> NEP St. No. 1, at 8:20-23, 9:1-4.

<sup>11</sup> NEP St. No. 1, at 9:8-9.

<sup>12</sup> NEP St. No. 1, at 9:9-13.

<sup>13</sup> NEP St. No. 1, at 9:19-2, 20:4-7.

<sup>14</sup> NEP St. No. 1, at 10:8-10. 66 Pa.C.S. § 1313.



**E. NEP Proposed Tariff Rule 41.2**

NEP did not object to Duquesne Propose Rule 41.1,<sup>15</sup> but proposed a new DLC tariff Rule 41.2, NEP Exhibit TR-11, which allows for master metering and redistribution of energy to any multifamily property under the following conditions:

- Master metering will be allowed for non-low income new and existing multifamily properties.
- Sub-metering must be AMI or other advanced revenue metering
- Technologies must be provided with billing to allow tenants access to their usage and optional controls to receive a credit based on conservation actions.
- Redistribution of energy costs may never exceed the total bill a customer would have received for the same amount of usage for the tariffs in effect for the same time period consistent with Section 1313 of the Public Utility Code.<sup>16</sup>

In its surrebuttal testimony, NEP advised the parties and the ALJs that it was amenable to certain modifications to its proposed new Duquesne Tariff Rule 41.2<sup>17</sup> in order address some of the concerns about NEP's proposed master and sub-metering program raised by Duquesne, CAUSE-PA, OCA and OSBA.<sup>18</sup>

As discussed by NEP Witness Ringenbach, NEP proposed to clarify portions of proposed Tariff Rule 41.2 and expand other requirements of the rule to address certain concerns of the parties, as follows (and as reflected in NEP Exhibit TR-22, full text of the amended Rule is attached for convenience as Appendix A):

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<sup>15</sup> NEP St. No. 1, at 26:3-10.

<sup>16</sup> NEP St. No. 1, at 24:6-18; NEP St. No. 2, at 1:17-22, 2:1-5.

<sup>17</sup> NEP Exhibit TR-22.

<sup>18</sup> NEP St. No. 2, at 13:13-16.

- NEP’s proposed master and sub-metering program reflected in Tariff Rule 41.2 will be subject to a total limit of 130 existing developments and new buildings. Requests to convert to NEP’s master and sub-metering-type program for existing buildings will be treated on a first come, first served basis. Duquesne will provide the number of development spots still available to a property owner upon request.
- A mandatory minimum \$2 per month and per tenant bill credit regardless of income level or usage. This will ensure tenants receive an immediate benefit from a master meter construct.
- To address concerns in the differences in bill collection activity compared to Duquesne, NEP provides the following modifications:
  - Number of days due from bill issue date including number of days grace period will match the current Duquesne tariff in effect for the month the bill is issued.
  - Any past due or collection recovery fees may not exceed the collection recovery fees of the utility based on the tariff requirements in effect for the month the bill to collect such costs is issued.
  - Meter testing fees and testing request requirements will match the applicable time to test and fee recovery amounts applicable to a utility under Pennsylvania law and the applicable utility tariff.
  - A payment plan option must be made available to tenants having trouble paying their bills, but such plan shall not greater than the lesser of (i) 12 months or (ii) the remaining term of the tenant’s lease. Unlike Duquesne, which can continue to work with a payment troubled customer at a new

location if payments under a plan are not made, a property owner/master meter provider will not have the same access once a tenant moves. This ensures payment plans are offered, but recognizes NEP is not providing a utility service and is restricted to receiving payments under a plan to the time when a tenant resides at the property.

- Notices of disconnection must match the number and type of notices provided by the rules, regulations and statutes applicable to Duquesne. This will resolve DLC's concern that the Property Owner or NEP provides all such notices, except for a post termination notice after full disconnect.
- Service may only be disconnected for non-payment.
- Tenants must be informed prior to lease signing of the following:
  - Signing the lease will include sub-metering electricity service.
  - Certain low income programs available from a utility to assist payment troubled customers will not be available to tenants served via a property master meter and privately installed smart sub-meters.
  - Prior to lease signing, individual tenants will be notified that the property owner has chosen a competitive supplier on their behalf. However, individual tenants will receive a written explanation of emissions and environmental attributes of the chosen supply.
  - An explanation of how the bill is calculated and which technologies have been provided under Tariff Rule 41.2 (i.e., Thermostat, smart energy control devices and EV charging).

EV charging or other technologies chosen by the property owner may not be separately billed to the tenant, or treated as a separate line item of usage and are also subject to the total bill cap amount less \$2 per month credit to qualify for Tariff Rule 41.2.<sup>19</sup>

## **II. STATEMENT OF THE QUESTIONS INVOLVED**

1. Has Duquesne, through its interpretation and implementation of its tariff provisions on redistributing electric energy and master metering, all but eliminated the ability of private companies like NEP to deploy master metering and smart sub-meters in multifamily rental buildings in Duquesne's service territory, thereby depriving eligible Property Owners, tenants and the public interest the benefits of NEP's business model that has been in effect in PECO's service territory for over ten years?

Suggested Answer: Yes.

2. Is NEP's proposed use of master metering and smart sub-meters in multifamily rental buildings in Duquesne's service territory, in a manner similar to its successful deployment of such a program for over ten years in PECO's service territory, just, reasonable and in the public interest?

Suggested Answer: Yes.

3. Do the criticisms of NEP's proposed use of master metering and smart sub-meters in multifamily rental buildings in Duquesne's service territory, in a manner similar to its successful deployment of such a program for over ten years in PECO's service territory, justify and support denying the approval of NEP's proposed Tariff Rule 41.2?

Suggested Answer: No.

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<sup>19</sup> NEP St. No. 2, at 14:20-23, 15:1-22, at 16:1-20.

4. Has NEP demonstrated by a preponderance of evidence substantial benefits to tenants, customer/Property Owners, Duquesne and the public in connection with its proposed master metering and smart sub-meter program and Duquesne tariff Rule 41.2?

Suggested Answer: Yes.

### **III. SUMMARY OF ARGUMENT**

NEP's proposed master and sub-metering program, reflected in its new proposed Duquesne Tariff Rule 41.2 (as revised in NEP's surrebuttal testimony and in NEP Exhibit TR-22), is just, reasonable and in the public interest. The new Tariff Rule 41.2 will allow for expanded master meter and sub-metering by commercial customer Property Owners, who may obtain services such as those offered by private companies like NEP in Duquesne's service territory much as it is presently doing pursuant to tariff in PECO's service territory.<sup>20</sup> The Commission should not allow Duquesne to ban customer metering options in western Pennsylvania, when those same options have been made available without measurable harm to tenants in eastern Pennsylvania. The new tariff rule has been crafted to address many of the concerns expressed by various parties in the proceeding, particularly with respect to protections for tenants in multi-family buildings who would no longer be direct customers of Duquesne in buildings in which Property Owners have elected to use the provisions of new Tariff Rule 41.2. The tariff rule, unlike the effective ban on master metering presently in effect in Duquesne's service territory, recognizes the interests of *all* relevant stakeholders, including Duquesne, Property Owners, tenants in multi-family buildings, and the public more broadly since NEP and similar companies can provide a broader array of choices in how tenants obtain their electric energy, energy efficiency and conservation programs

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<sup>20</sup> NEP Exhibit TR-18 attached as Appendix E.

than may be available solely through Duquesne. Among other things, this helps to more effectively manage issues surrounding global climate change.

The challenges and opposition to NEP's program, including its revised Tariff Rule 41.2, are predicated on speculative and unproven concerns about protections for tenant consumers, ignoring that the benefits to a broader array of stakeholders of NEP's program greatly outweigh the speculative concerns that have not materialized in PECO's service territory. No demonstrated adverse consequences have occurred with master metering and sub-meter services in PECO's service territory, where nine companies besides NEP provide master meter and sub-meter services, along with a large number of low income residents, or in Duquesne's territory, where 130 master metered buildings continue to operate without incident.<sup>21</sup>

#### IV. ARGUMENT

##### A. The Benefits of NEP's Business Model to Commercial Customer Property Owners, Utilities, Tenants and the Public Interest

The heart of NEP's proposal in this proceeding is a master metering option for commercial customers/Property Owners with multi-family buildings that presently exists in Duquesne's service territory in grandfathered form<sup>22</sup>, and is currently available in PECO's service territory<sup>23</sup>, but for practical purposes is banned from use in Duquesne's service territory. Duquesne proposed a limited exception to that ban in this case in proposed tariff Rule 41.1, but has now withdrawn it. This ban does not exist for commercial customers with non-residential tenants under Duquesne tariff Rule 18. While Duquesne has tried to characterize NEP's proposal as solely profit motivated,

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<sup>21</sup> NEP St. No. 2, at 18:16-24, 19:1-5; NEP Exhibit TR-21.

<sup>22</sup> Duquesne currently serves approximately 130 master metered buildings with residential dwelling units. NEP St. No. 1, at 6:8-9; NEP Exhibit TR-2.

<sup>23</sup> PECO's tariff Rule 13.1 states that residential units may be individually metered by the landlord and that master metered heating, cooling or water heating service may be provided if such supply would result in energy conservation. NEP Exhibit TR-18.

that characterization is contradicted by the substantial benefits to multifamily Property Owners/customers, tenants, Duquesne and the public interest associated with NEP's proposal.

**1. The benefits to the Duquesne multifamily Property Owner/commercial customer.**

Allowing commercial customers to use a master meter with smart sub-meters opens additional opportunities beyond using the utility's infrastructure within the multifamily property.<sup>24</sup> The choice is between using the utility's facilities at a single point of connection at the curb or having the utility's infrastructure installed throughout multifamily buildings according to the utility's direction. Opting for a master meter with smart sub-meters provides the commercial customer with much greater flexibility and control of the building's internal electrical infrastructure. As NEP Witness Ringenbach testified, the foundation of a sub-meter company's service "begins with the design of the infrastructure."<sup>25</sup> With a master meter, the commercial customer can engineer the energy infrastructure behind the meter to: (i) work with the utility to keep Property Owner facilities separate from the utility distribution systems, (ii) provide for safety concerns, such as distance from playgrounds or pools, (iii) customize metering to fit the dwelling unit by using utility/revenue grade mini meters, transformers and conduit, (iv) obtaining financing for the infrastructure by using a company such as NEP and purchasing their services, and (v) equip them to participate in aggregated demand response programs.<sup>26</sup> Once this infrastructure using master meters/smart sub-meters is installed, the Property Owner can now take advantage of other energy services, such as advanced tenant billing options, a carbon free or green total property supply guarantee offered to prospective tenants, electric vehicle charging stations, demand response and energy efficiency technologies, while ensuring tenant billing is tied to usage and not

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<sup>24</sup> Note that a commercial property can include multiple buildings within a single community.

<sup>25</sup> NEP St. No. 1, at 9:1-2.

<sup>26</sup> NEP St. No. 1, at 9:1-23, 10:1-7.

more than the tenant would pay the utility “for the same quantity of service under the residential rate of its [utility] tariff then currently in effect.”<sup>27</sup> These are substantial benefits to the commercial customer and “[u]nlike some earlier attempts to deploy master meters in utility service territories with tariff rules similar to DLC’s rules, the primary goal of NEP’s use of master meters is not to economically advantage the Property Owner at the cost of conservation of energy.”<sup>28</sup>

NEP’s master meter proposal is a reminder that the world of a multifamily Property Owner is broader than the offerings and choices made available by the local electric utility, like Duquesne. Master metering provides the Property Owner with control over the energy decisions for the entire property; under Duquesne’s current tariff Rules, the Property Owner must cede control over electric service in all the residential dwelling units to Duquesne, which is the vendor of electric service to the tenant.<sup>29</sup>

Master metering can provide a multifamily Property Owner with: (i) the ability to make long-term investments, (ii) the ability to track usage at the community complex, building and resident level, (iii) predictive insights and control for maintenance/troubleshooting for equipment failures without waiting for the utility to respond to a tenant complaint, (iv) comparisons of usage for residents interested in conservation, (v) an incentive and payback for energy efficiency and demand response investments lacking when a tenant reducing usage has no impact on the Property Owner/commercial customer’s bill (as opposed to increasing rent charges to recover conservation/efficiency investments), (vi) full control and a single consistent, measureable and verifiable account for the entire property allowing a baseline measurement for reductions and investor requirements, loan programs or certifications such as LEED<sup>30</sup> for the measurement of

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<sup>27</sup> NEP St. No. 1, at 9:9-13; 66 Pa.C.S. § 1313.

<sup>28</sup> NEP St. No. 1, at 9:15-18.

<sup>29</sup> NEP St. No. 1, at 12:12-13.

<sup>30</sup> LEED or “Leadership in Energy and Environmental Design.”



complete property electric usage (not dependent on access to tenant account information by the utility), (vi) better ability for older properties to compete in the rental market through new customized design and energy options that better utilize space and increase safety (without costly or refused requests to the utility for relocation of their equipment), the ability to offer a tenant a holistic combined electric, water, and in some circumstances, natural gas bill, (vii) relief from utility mandates for installed infrastructure at utility dictated costs, equipment specifications and construction timetable (avoiding delays that jeopardize the start of receipts from tenants), (viii) the ability to quickly and efficiently install demand controls across all rental units in a property, aggregating at the master meter, permitting participation in PJM demand response programs that reduce demand on the utility grid with a single account and master metered baseline (with participating tenant bill credits – a participation unlikely by the tenant due to lack of property ownership and move-in/move-out patterns).<sup>31</sup> In the aggregate and especially with respect to the PJM demand response option, Witness Ringenbach noted that such long-term benefits exceed the costs of establishing individual accounts for each tenant.<sup>32</sup>

The opponents of expanded master metering in this case have not given any weight to the 40 years of innovation that has occurred in the sub-metering space, but more importantly, they have failed to recognize the importance of Property Owners/commercial customers being able to demonstrate awareness of the importance of climate change, conservation and efficiency to prospective tenants, LEED certifiers, investors and banks who provide capital to fuel the rental property market. Master meters combined with smart sub-meters allow Property Owners to take

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<sup>31</sup> NEP St. No. 1, at 12:13-14; NEP St. No. 1, at 13:6-20; NEP St. No. 1, at 15:1-23; NEP St. No. 1, at 16:1-20; NEP St. No. 1, at 17:1-8; NEP St. No. 1, at 20:1-14.

<sup>32</sup> NEP St. No. 1, at 20:14-15.

advantage of incentives offered by investors, loan programs or green certifications, as explained by Witness Ringenbach in her Direct Testimony.<sup>33</sup>

Elimination of the master metering option jeopardizes two of the most important benefits to Property Owners and the public interest. That is, being able to establish an environmentally preferred electricity for an entire building's load or community load and obtaining loans and investment targeted at climate sensitive apartment buildings.

Without master metering, a Property Owner has no control over the type of energy consumed on its property and cannot make claims of green or carbon free because the Property Owner has no insights or controls over the type of energy contracted by each tenant. NEP Witness Ringenbach succinctly summarized how selecting a green, premium electricity supply *for an entire multifamily property* (something impossible to do when tenants are individually metered by a utility like Duquesne) is beneficial to the Property Owner and tenants:

NEP only shops (as the authorized representative) for carbon free or renewable energy supply. This ensures that the entire property can claim the carbon or renewable benefit. It aligns Property Owner interest in climate change and carbon reduction control with the properties they own. Without a master meter, Property Owners who shop have no insight or controls over the type of energy used. As tenants move in and out, their decisions to shop may not align with the climate and carbon reduction goals of the property. Today, many investors in multifamily buildings are looking for commitments on carbon and efficiency and the ability of a Property Owner to meet those requirements through a master meter and supply control that benefits both the owner through investment and tenants through control and savings. The NEP model provides tenants an energy cost that cannot exceed what they otherwise would have paid to the utility for what is normally a "premium" (i.e., carbon free) supply product and benefits Property Owners who are trying to meet their climate goals. This also permits the Property Owner or developer

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<sup>33</sup> NEP St. No. 1, at 16:8-12.

to market a carbon free or green option for tenants so inclined to support such accommodations.<sup>34</sup>

Can a tenant metered by the utility select a green/carbon free energy product? Yes. But as Witness Ringenbach explained, “[o]ften these types of electricity supply products come at a premium cost to the residential tenant compared to default service or plain vanilla system mix electricity supply from a supplier.”<sup>35</sup> NEP Witness Ringenbach elaborated on how a climate sensitive electricity choice for an entire property is beneficial to the tenant even though the tenant has knowingly waived its individual electric shopping opportunity:

Even though the tenant would voluntarily forgo the opportunity to shop for an electricity supplier, by leasing in a property focused on climate change targets and energy controls they can enjoy using a carbon free and climate focused electricity supply without an additional cost.

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In addition, this product does not change as long as the tenant lives at the property; therefore, no EGS contract renewal or supplier contract terms changes apply. This approach actually *allows more tenant load to participate in the competitive market than would otherwise likely occur*. Multifamily tenants tend to reside in their communities short-term, often one or two years. This rules out long-term agreements for tenants and a frequent shifting of supply changes by unit to the extent there is shopping. It also means a Property Owner who wants climate focused energy solutions may be restricted from creating a fully carbon neutral or green property based on the decisions of other tenants. Given that premium products often come at a higher cost for residential customers, master metering allows for a capped bill, insights to likely lower their bill, and customized approaches specific to a customer who rents their home. Being a submetered tenant behind a master meter is more economically beneficial to the tenant, especially if the

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<sup>34</sup> NEP St. No. 1, at 11:11-23, 12:1-6. Proposed tariff Rule 41.2, as updated in NEP Exhibit TR-22 intends that the conditions of master metering service include the requirement of a green electricity supply for the building. This could be clearer and the final compliance version of the Rule will do so.

<sup>35</sup> NEP St. No. 1, at 22:17-19.

Property Owner passes along a bill credit based on the lower cost of a commercial load versus a residential load.<sup>36</sup>

The bill credit is made possible by initiatives, such as the use of PJM demand response programs.<sup>37</sup> There is no indication Duquesne has a similar demand response credit or benefit for residential tenant customers, which reduces benefits to tenants when units are individually metered by Duquesne. Duquesne disparagingly refers to NEP as primarily motivated by profit seeking<sup>38</sup>, a surprising charge for a business entity that is constantly vigilant about its rate of return; but NEP's bill credit which is mandated as an eligibility condition under proposed tariff Rule 41.2 demonstrates that NEP's master metering with smart sub-metering option, is a win for Property Owners, tenants, the utility and the public interest.

The second particularly significant benefit to Property Owners and the public from the master meter option is its support of the current interest by investors and banks in making more climate sensitive deployments of capital. NEP is not "against" conservation and efficiency options provided by Duquesne to its customers by legal mandate. However, utility programs are only one source of conservation/efficiency options for customers and some of those non-utility options are tied to financing. NEP Witness Ringenbach emphasized that "under NEP's master and sub-metering program, property owners are able to provide access to other non-utility related energy conservation programs that often provide substantial benefits to tenants in the multi-family

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<sup>36</sup> NEP St. No. 1, at 22:19-23, 23:1-8. As noted later in this Main Brief, part of the master meter concept NEP proposes in this proceeding is a requirement to share the acknowledged price differential created by Property Owners purchasing service from the utility as a commercial customer and providing electric service to tenants at no more than the utility's residential rate. ("By buying electricity at a commercial customer rate and reselling it to tenants at no more than the utility's residential customer rate, NEP's model creates a purchase and reselling differential that makes funds available to the Property Owner's use. This allows and incents the Property Owner to invest in efficiency upgrades, infrastructure and other energy controls, and such improvements become part of the building 'product' that is offered to tenants. This form of financing, by using the differential discussed above, ensures a permanent cap that will likely lower tenants' energy bills for premium (i.e. carbon free) services, while allowing a shared recovery of costs and payment of services to NEP."). NEP St. No. 1, at 17:22-23, 18:1-7.

<sup>37</sup> NEP St. No. 1, at 23:10-22.

<sup>38</sup> Duquesne St. No. 6-SR, at 3:22-23, 4:1-2.

buildings taking advantage of our services.” Duquesne claims that elements of its Energy Efficiency and Conservation Act 129 Program available to multi-family building tenants make NEP’s offerings unnecessary, but those programs appear to be focused and marketed toward low income multi-family building tenants.<sup>39</sup> Low income tenants are not a focus of the Property Owners that use companies like NEP to facilitate master metering with smart sub-meters.

There are investment opportunities and loan programs designed around Renewable/Resilient/Climate/Energy Efficiency/Demand Response programs unrelated to Duquesne that are available.<sup>40</sup> NEP’s witness provided examples of the significant change in both access to capital and in investor decisions over the last few years.<sup>41</sup> Today, large banks and investors are looking for the businesses they lend to or invest in to provide environmental and climate data.<sup>42</sup> As NEP Witness Ringenbach stated, “[m]aster metering not only maintains the data in a single place (i.e., the master meter account), but also allows for the property owner’s decisions to be based on this data to meet the needs of the entire community/building.”<sup>43</sup>

Examples of this investor and banking movement abound:

- Citigroup Inc. announced a new five-year, 2025 Sustainable Progress strategy to help accelerate the transition to a low-carbon economy, including a \$250 billion environmental finance goal.<sup>44</sup>
- BlackRock Inc.’s CEO Larry Fink in his 2021 letter to CEOs asserted that no issue ranks higher than climate change on our client’s list of priorities, that as more and more investors choose to tilt their investments toward sustainability-focused companies the tectonic shift we are seeing will accelerate further, that a successful transition – one that is just, equitable, and protects people’s livelihoods-will require both technological innovation and planning over decades and can only be accomplished with leadership, coordination, and support at every level of government, working in partnership with the private sector to maximize prosperity, and because better sustainability disclosures

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<sup>39</sup> NEP Cross Exhibit 14, at 21, 42.

<sup>40</sup> NEP St. No. 2, at 23:11-17.

<sup>41</sup> NEP St. No. 2, at 23:22-23, 24:1-5; NEP Exhibit TR-17.

<sup>42</sup> NEP St. No. 2, at 24:1-2.

<sup>43</sup> NEP St. No. 2, at 24:2-5.

<sup>44</sup> NEP Exhibit TR-17, The Citiblog 1/5.

are in companies' as well as investors' best interests, he urged companies to move quickly to issue them rather than waiting for regulators to impose them.<sup>45</sup>

- Deutsche Bank chief executive Christian Sewing has warned that lenders' risk losing their license to operate "if they fail to make green finance a priority, as the group raised its own targets."<sup>46</sup>
- Forbes Real Estate Council's Bradford Dockser reports that what started as a humble effort to deliver proven building energy efficiency solutions across the addressable markets too often missed by the incumbent energy services company model-commercial real estate (CRE) and private equity-has since flourished into a global enterprise situated at the nexus of real estate, sustainability, technology and capital markets. The premium that CRE developers and investors assign to "green" or sustainable building construction and among building owners, operators and tenants, climate-aligned operations, has grown increasingly well-established. Nuveen, another U.S.-based investment firm with a multibillion-dollar CRE portfolio, has pledged to implement onsite renewable generation, deep energy retrofits and other measures across its properties to achieve net-zero carbon emissions by 2040. Only 3.3% of investment-grade multifamily units and 13.8% of all commercial office buildings in the top 30 multifamily and office markets in the U.S., respectively, were certified "green".<sup>47</sup>
- Steve Culp of Accenture Digital Risk and Compliance reports to Forbes that nearly two-thirds (62%) of banks surveyed are monitoring clients' emissions and environmental profiles and he is seeing banks working to develop the data models, analytical tools, and approaches needed to assess their clients' environmental impact. As more stakeholders, including investors and customers, focus on climate change and climate risk there are important implications for banks who can get it right, with 73% of banks surveyed believing that effectively managing climate risk and promoting the transition to a green economy will help their bank attract talent and customers.<sup>48</sup>

The convenient and readily available baseline measurement of the entire property's usage through master metering, from which reductions in usage can be documented, is a requirement for investors, loan programs and LEED certifications. Master metering makes compliance with these dictates faster and easier. Aggregating individual tenant usage when tenants are regularly moving

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<sup>45</sup> NEP Exhibit TR-17, Larry Fink CEO Letter, 1-8.

<sup>46</sup> NEP Exhibit TR-17, *Turn green or lose 'license to operate', says Deutsche Bank Chief*, May 20, 2021, Climate Capital 1.

<sup>47</sup> NEP Exhibit TR-17, *Lack of U.S. Climate Finance Regulation Presents Unique Opportunity For CRE Investors*, May 21, 2021, 1-4.

<sup>48</sup> NEP Exhibit TR-17, *Banks Increasingly See Climate Risk As Top Priority*, June 29, 2021, 1-4.

in and out, or tenants who are served by the utility and multiple suppliers with accounts that change with each new tenant, make it nearly impossible for the Property Owner to prove compliance.<sup>49</sup>

NEP has presented an interrelated set of benefits that arise from allowing a controlled use of master metering in Duquesne's service territory. As explained by NEP Witness Ringenbach, master meters with sub-meters (i) enable whole property green supply benefiting tenants, (ii) create a cost differential for the Property Owner that fuels conservation/efficiency initiatives, and (iii) makes available aggregated whole property data that can be used to obtain capital from investors and banks looking for green opportunities for climate and business reasons.

## **2. Implementation of NEP's master metering and smart sub-meter program can provide benefits to Duquesne.**

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.<sup>50</sup> This also means utility call centers can operate more efficiently and the utility has one customer contact during a service outage. The time, costs and effort to install and replace metering within a multifamily development or building is reduced with a master meter.<sup>51</sup> Deployment of smart thermostats and replacement of inefficient appliances is achieved with more certainty relative to tenants when the Property Owners who control the dwellings can make decisions on a property-wide basis. In contrast, there is a higher risk that tenants who have no property interest and a move –in move –out propensity, will not have the authority to install equipment, will not pursue or actually use equipment obtained from a utility Energy Efficiency and Conservation Plan measure.<sup>52</sup>

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<sup>49</sup> NEP St. No. 1, at 16:7-18.

<sup>50</sup> NEP St. No. 1, at 20:18-20.

<sup>51</sup> NEP St. No. 1, at 20:20-23.

<sup>52</sup> NEP St. No. 1, at 20:23, 21:1-6.

A utility's service load is more stable with master metering because, as tenants move-in and move-out, load is not shifted on and off default service, but maintained by a supplier contract arranged by the Property Owner.<sup>53</sup> In addition, collection risk is shifted away from the utility with master meters because uncollectible accounts are typically greater for residential customers than commercial customers.<sup>54</sup> Duquesne has not studied uncollectibles for multifamily commercial accounts associated with master metered buildings compared to individually metered tenant accounts in its service territory, and such lack of study belies Duquesne Witness Phillips concerns about increased collection risks due to property owner/landlord defaults on payment.<sup>55</sup>

Master metering can also reduce the capital requirements Duquesne can obligate the commercial customer to supply compared to individual utility meters for each tenant. This obstacle also applies to construction of new affordable housing, which has been brought to Duquesne's attention by affordable housing developers.<sup>56</sup> Duquesne was willing to forego these capital contributions through its proposed tariff Rule 41.1, but that offer has been withdrawn and therefore was never extended to non-affordable housing Property Owners. Allowing master metering with third-party-installed behind the curb infrastructure and smart meters like that proposed by NEP in this proceeding allows both the Property Owner and Duquesne to avoid these expenditures.<sup>57</sup> These benefits have also been ignored by the critics of proposed tariff Rule 41.2.

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<sup>53</sup> NEP St. No. 1, at 21:7-9.

<sup>54</sup> NEP St. No. 1, at 21:9-11.

<sup>55</sup> NEP St. No. 1, at 25:7-17; NEP Exhibit TR-7.

<sup>56</sup> NEP St. No. 2, at 10:21-23, 11:1-9; NEP Exhibit TR-19. Affordable housing developers have stated that avoiding a large and unnecessary outlay of funds through required contributions to Duquesne can better enhance their properties and create better environments for low-moderate income seniors in the region. NEP St. No. 2, at 11:6-12; NEP Exhibit TR-20.

<sup>57</sup> NEP St. No. 2, at 11:3-6.



### 3. Tenant benefits are created by NEP's master meter/smart sub-meter model.

Benefits to tenants from master metering start with the smart sub-meter. The smart sub-meter information and control options available to a tenant under master metering give them detailed insight into their electricity usage and provides them with control over the consumption of electricity in their unit.<sup>58</sup> The sample bill<sup>59</sup> provided by NEP Witness Ringenbach demonstrates the capability modern sub-metering provides to the tenant dwelling in a building with more than four units:

- A tenant can choose to pay weekly, bi-monthly or on a date they set for the month.<sup>60</sup>
- Tenants receive or have access to *daily* usage information allowing them to actively make decisions about their energy usage to encourage conservation and reduce costs to meet their budget.<sup>61</sup>
- The tenant's bill shows usage trends in their building relative to neighbors.<sup>62</sup>
- Notifications when their bill exceeds a particular amount or is estimated to exceed a specified amount by the end of the billing period.<sup>63</sup>
- Tenants would waive their shopping opportunity after notice, but would enjoy using a carbon free and climate focused electricity supply without the usual premium cost over default service or the plain vanilla system mix electricity supply from a competitive supplier.<sup>64</sup>
- Use of a shopped electricity supply throughout the term of their lease without the burden of shopping or contract renewal issues.<sup>65</sup>

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<sup>58</sup> NEP St. No. 1, at 21:14-17.

<sup>59</sup> NEP Exhibit TR-9. Note that bills that would be rendered in the Duquesne service territory would have robust capabilities, but would also conform to any billing conditions set forth in the master metering tariff Rule approved by the Commission.

<sup>60</sup> NEP St. No. 1, at 21:18-20.

<sup>61</sup> NEP St. No. 1, at 21:20-22, 22:1-4.

<sup>62</sup> NEP St. No. 1, at 22:4-6.

<sup>63</sup> NEP Exhibit TR-10.

<sup>64</sup> NEP St. No. 1, at 22:14-19.

<sup>65</sup> NEP St. No. 1, at 22:19-21.

- Tenant access to participation in PJM demand response programs, rooftop solar and Electric Vehicle charging stations that can be part of a property owner's green smart building, financed through the master meter model.<sup>66</sup>
- A minimum credit of \$2.00 per month below what the utility would charge for the same electricity service.<sup>67</sup>

It is important to note that before it withdrew the proposed affordable housing master meter tariff Rule 41.1 proposal that it developed through the Commission-ordered collaborative, Duquesne was willing to provide master metering without any sub-metering, that is without tenants receiving feedback on their electricity consumption, fully disconnecting them from their usage and costs.<sup>68</sup>

NEP's proposed Tariff Rule 41.2 provides benefits to multifamily Property Owners, tenants and the utility. And by creating an option for broader use of climate sensitive technologies and tenant access to those technologies, more tenant awareness and control of their electricity usage, this multifamily master meter with smart sub-meters model produces benefits that are in the public interest and unlikely to occur without this tariff.

NEP has met its evidentiary burden of showing that Duquesne's current tariff Rules, which effectively ban master metering of multifamily buildings, are unreasonable because they preclude a reasonable option that creates benefits for commercial customer multifamily dwelling Property Owners, tenants, Duquesne and the public interest. These are benefits being enjoyed by these

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<sup>66</sup> NEP St. No. 1, at 23:10-18.

<sup>67</sup> NEP St. No. 1, at 23:19-22, 24:1-2.

<sup>68</sup> NEP St. No. 1, at 7:8-14. Although the master meter collaborative was not limited by the Commission to low income customer master meter options, and Duquesne was aware of NEP's interest in customers obtaining a master meter option in its service territory, the Company did not provide notice to NEP of the collaborative's meetings. While Duquesne may suggest it was NEP's responsibility to be in its prior base rate case so it was aware of the collaborative, it is hardly practical for all customers and affected business interests to intervene and monitor each base rate case, and NEP doubts that would be Duquesne's preference.

stakeholders in PECO's service territory and they should also be made available in Duquesne's service territory.

**B. NEP's Proposed Meter and Sub-metering Program and Tariff Rule 41.2 are Consistent with PURPA and its Policy Directives.**

The Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 2601 *et seq.* ("PURPA") was enacted following the energy crisis of the 1970s as part of the National Energy Act<sup>69</sup> to encourage, among other things, (i) the conservation of electric energy; (ii) increased efficiency in the use of facilities and resources by electric utilities; (iii) equitable retail rates for electric consumers<sup>70</sup>. The statute is jointly implemented by the Federal Energy Regulatory Commission ("FERC") and the states.<sup>71</sup>

Of particular relevance to this proceeding are PURPA's provisions addressing master metering. Although not defined in PURPA, "master metering" generally refers to measuring utility usage of multiple tenants in a single building via the use of a single utility installed meter. This is in contrast to "direct" or "sub-metering", where each individual unit's utility consumption is measured by its own separate meter.<sup>72</sup> PURPA Section 113(b)(1) established the following *federal standard* with respect to master metering:

To the extent determined appropriate under section 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.

16 U.S.C. § 2623(b)(1).

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<sup>69</sup> The National Energy Act was conceived in reaction to the energy crisis of 1973. It contained a plethora of legislation that would aim to drastically cut the demand for imported oil. One such act was PURPA.

<sup>70</sup> PURPA Section 101, 11 U.S.C. § 2611.

<sup>71</sup> See, <https://www.ferc.gov/qf>

<sup>72</sup> See, <https://greencoast.org/master-metering/>

It is clear that 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.

16 U.S.C. § 2625(d). This view was reiterated by NEP Witness Ringenbach.<sup>73</sup> Consistent with the PURPA Section 115(d) above, Ms. Ringenbach properly opined that she never understood PURPA to *mandate* individual utility meters for each tenant in multi-family buildings.<sup>74</sup>

As noted by NEP Witness Ringenbach, the policy behind PURPA was to incentivize residential customers (including tenants in multi-family buildings) to *conserve electric energy* by metering and paying based on their actual usage rather than being billed without regard to their actual individual use.<sup>75</sup> PURPA created a standard under which the costs and benefits of individual meters could be evaluated in a multi-tenant building, principally from the perspective of tenant conservation and energy efficiency.<sup>76</sup> PURPA is rooted in high level policies in favor of conservation and energy efficiency – *not* the customer protection approach used by NEP’s critics in this proceeding.<sup>77</sup> Providing protection to consumers (for such things as security deposits, customer assistance programs, electric supply shopping programs, service termination for the

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<sup>73</sup> NEP St. No. 2, at 5:22-23.

<sup>74</sup> NEP St. No. 2 at 9:11-12.

<sup>75</sup> NEP St. No. 1, at 4:8-11.

<sup>76</sup> NEP St. No. 2, at 5:23, t 6:1-2.

<sup>77</sup> NEP St. No. 2, at 6:2-4.

building, protection for abuse, etc.), although important, were *not* the drivers behind PURPA's treatment of master metering and energy conservation.<sup>78</sup>

Finally, PURPA's policy emphasis on energy conservation and efficiency predated the availability of smart sub-meters 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. PURPA's discouragement of master-metered buildings was based on the assumption that individual residential units in such multi-family buildings would not have separate individual meters, thereby foreclosing tenants from direct control of and knowledge about their energy consumption. NEP's master meter regime expressly provides for the use of individual dwelling unit sub-meters (albeit not owned by the local utility like Duquesne), thereby providing residential tenants the very energy information and customer control over usage PURPA is attempting to address. Thus, NEP's master meter and sub-meter program and proposed tariff Rule 41.2 are completely consistent with PURPA and its conservation and energy efficiency policies. Duquesne's blanket 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.<sup>79</sup>

**C. NEP's Proposed Master Meter/Smart Meter Program is Consistent with Pennsylvania Law On Master Metering**

Both the Commission and the Pennsylvania courts have over the years addressed certain issues in connection with master metering, PURPA, utility treatment of master metered buildings, etc. in the Duquesne service territory. These cases fully support NEP's master meter and smart sub-meter program and the proposed new Duquesne Tariff Rule 41.2.

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<sup>78</sup> NEP St. No. 2, at 10:11-13.

<sup>79</sup> NEP St. No. 2, at 6:7-23.

In *Pennsylvania Public Utility Commission v. West Penn Power Company*, 1970 Pa. PUC LEXIS 37, 32 PUR 4th 245 (August 27, 1979), the Commission addressed master metering in the context of West Penn Power Company's ("West Penn") then-pending base rate proceeding. The Commission accepted Commission staff's recommendation to restrict West Penn's then Tariff Rule 21 by limiting master metering to present customer locations. Consistent with NEP's earlier expressed view that limitations on master metering have focused historically on *conservation of energy*, the Commission accepted the limitation (not ban) on master metering noting that "[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." 1979 Pa. PUC LEXIS 156-157. Since NEP's business model expressly incorporates smart sub-meters, along with master metering, which collectively allow tenants in multi-family buildings to get the appropriate price and usage signals necessary to conserve energy, there is *no need* to limit master metering as suggested by NEP's critics in this proceeding. The model also incentivizes Property Owners to invest in conservation and energy efficient equipment which in turn reduces sub-metered usage when utilized by tenants.

In *Motheral, Inc. v. Duquesne Light Company* ("*Motheral*"), 2001 Pa. PUC LEXIS 4 (March 23, 2001), the Commission considered Duquesne's denial of Motheral, Inc.'s request to master meter an apartment building in Duquesne's service territory. Motheral, Inc. leased a 28-unit apartment building to Carnegie Mellon University for use as a dormitory. Since Motheral, Inc. was responsible for paying the electric bills and the building had 29 separate meters, Motheral, Inc. sought Commission relief from the administrative burden and cost associated with paying 29 separate bills each month, effectively seeking a waiver of Duquesne's Tariff Rule 41. 2001 Pa.

PUC LEXIS 4, \*3. The Commission, relying on *Crown American Corporation v. Pennsylvania Public Utility Commission*, 463 A.2d 1257 (Pa. Cmwlth. 1983) (“*Crown American*”), rejected Motheral Inc.’s claim of economic disadvantage because protection of a property owner’s economic interest is not an objective of the Code. 2001 Pa. PUC LEXIS 4, \*12. 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. 2001 Pa. PUC LEXIS 4, \*12-13.

*Motheral* is clearly distinguishable from and not determinative of NEP’s request to expand master metering here. Unlike the complainant in *Motheral*, NEP is not solely seeking personal economic advantage or relief from paying bills from pre-existing individual meters in a multi-family building. Rather, as outlined in this Main Brief, NEP seeks to bring a host of economic, conservation and energy efficiency benefits to Property owners, their tenants, Duquesne and the public interest with its master metering and smart sub-meter program. Further, since NEP’s proposal has not been implemented yet in Duquesne’s service territory and, where such proposal has been implemented in PECO’s service territory where no rate discrimination claims have emerged, there is no reason to deny the key stakeholders the benefits of NEP’s program in the Duquesne service territory based on speculative and unproven claims of adverse and discriminatory impacts on Duquesne’s other customers.

In *Tiffany Associates v. Duquesne Light Company*, 1998 Pa. PUC LEXIS 206 (November 20, 1998) (“*Tiffany Associates*”), the Commission considered the complaint of Tiffany Associates against Duquesne for its refusal to grant Tiffany Associates’ request to master meter its senior citizen apartment building. Relevant to this proceeding, Duquesne argued not only that PURPA

“is more than just equitable rates to electric consumers”, but its Tariff Rule 41 (Prohibition of Residential Master Metering) “is the direct result of PURPA and is designed to conserve energy.” 1998 Pa. PUC LEXIS 206,\*6. In denying Tiffany Associates’ request to master meter, the Commission (i) reaffirmed that banning or limiting master metering is justified under the desire to conserve energy, and (ii) found that “[t]he public interest in the conservation of energy and in keeping energy costs low outweighs the benefits resulting from master metering.” 1998 Pa. PUC LEXIS 206,\*13. In this case, NEP has clearly demonstrated that its proposed master meter and smart meter sub-meter regime provides lower energy costs and energy efficiency and conservation benefits to all stakeholders in the context of a master metered with sub-metering multi-family building. There is no reason to ban or severely limit master metering when the very availability of master meters (along with smart sub-meters) provides both the energy savings and conservation/efficiency benefits PURPA and Tariff 41 desire to achieve.

In *Crown American*, the Commonwealth Court upheld PPL’s Tariff Rule 5F, which permitted master metering of multi-tenancy commercial buildings in certain limited circumstances, e.g., where installation of electric service has been completed prior to the effective date of the rule. *Crown American*, 463 A.2d 1257, 1258. Relevant to this case is the Commonwealth Court’s observation that there was ample record evidence “. . . indicating that tenants of residential multi-family dwellings who are individually metered, and thus are made aware of their true energy costs, substantially reduce their energy consumption to decrease those costs.” *Crown American*, 463 A.2d 1257, 1260. The very reason the Court in *Crown American* upheld the PPL limitation on master metering in tariff Rule 5F – 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 the reason to approve NEP’s proposed master meter *and* smart sub-meter program in this proceeding.

**D. Duquesne is Predisposed to Reject Any Expansion of Master Metering**

Duquesne, in both conduct and in words, has demonstrated a settled intent to discourage master metering in its service territory, notwithstanding the benefits that accrue to various stakeholders from NEP’s master and sub-metering program and the undeniable fact the NEP has successfully deployed its business model 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.<sup>80</sup> Indeed, the length to which Duquesne is prepared to go to stamp out any semblance of master metering expansion in its service territory is no better demonstrated than by how quickly it withdrew its own self-proclaimed *limited* master metering expansion under proposed Tariff Rule 41.1, allegedly because of its unsubstantiated claim that “the potential customer benefits of allowing limited residential metering, as contemplated in the Company’s initial proposal, are substantially outweighed by the risk of customer harm that could result from expanding residential master metering more generally.”<sup>81</sup>

Duquesne Witness Phillips claims that Duquesne “has historically taken a cautious position with respect to residential master metering because of its attendant potential for customer harm ...”<sup>82</sup> NEP respectfully suggests that Duquesne’s position demonstrates a desire to effectively ban any such master metering expansion in its service territory in the absence of any empirical or other hard data suggesting any actual consumer/customer harm. Even Ms. Phillips’ mis/understatement about taking a *cautious position* on master metering is combined with the factually accurate use of

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<sup>80</sup> NEP St. No. 2, at 10:14-16 and 12:5-10.

<sup>81</sup> Duquesne St. No. 6-SR 3, at 3:19-22.

<sup>82</sup> Id. at 3:11-13.

the word “potential” (i.e., not actual or real) when addressing harm to customers. Key stakeholders should not be denied the benefits of NEP’s proposed master metering and sub-metering program, reflected in Tariff Rule 41.2, based on wholly speculative concerns about *potential* customer harm.

NEP Witness Ringenbach observed that Duquesne’s Tariff Rules 18 and 41<sup>83</sup> effectively and unnecessarily prohibit sub-metering arrangements that could achieve the higher conservation benefits than individual metering.<sup>84</sup> These rules, put in place more than 40 years ago, appear to have been implemented as a full ban on master metering, which was not PURPA’s goal with respect to master metering.<sup>85</sup> Further, these rules do not address or account for the innovation that has occurred in the sub-meter space in the last 40 years, which effectively allows Property Owners and their agents like NEP to provide to tenants of multi-family buildings the tools necessary (e.g., individual smart meters) to monitor their energy usage and achieve the kinds of energy efficiency and conservation goals PURPA sought to achieve.<sup>86</sup>

As NEP Witness Ringenbach observed:

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<sup>83</sup> These current tariff rules are as follows:

18. REDISTRIBUTION All electric energy shall be consumed by the customer to whom the Company supplies and delivers such energy, except that (1) the customer owning and operating a separate office building, and (2) any other customer who, upon showing that special circumstances exist, obtains the written consent of the Company may redistribute electric energy to tenants of such customer, but only if such tenants are not required to make a specific payment for such energy. This Rule shall not affect any practice undertaken prior to June 1, 1965. See Rule No. 41 for special requirements for residential dwelling units in a building.

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

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

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

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

<sup>84</sup> NEP St. No. 1, at 4:11-13.

<sup>85</sup> NEP St. No. 1, at 4:6-8.

<sup>86</sup> NEP St. No. 1, at 4:1-23.

With the advancement of smart energy technologies and the ability of the private sector to make available to Property Owners/NEP customer programs that are efficient and cost effective, the advantages of utility individually metered tenant premises are no longer preferable to master metered smart and green properties. In fact, master metering with submetering – NEP’s business model – provides faster access to these technologies and controls without the need for lagging regulatory approvals or one size fits all utility programs.<sup>87</sup>

Beyond Tariff Rules 18 and 41 being outdated, not reflective of 40 years of changes in the master metering and sub-metering space and their inconsistency with PURPA and its treatment of master metering and energy conservation, Duquesne’s actions with respect to these rules further substantiate its bias against master metering expansion in its service territory. Duquesne, over time, has shifted the issues around the application of Tariff Rule 18 from energy conservation, which was previously an explicit exception to the ban on the redistribution of energy, to one of consumer protection.<sup>88</sup> For example, as noted by NEP Ringenbach, Tariff Rule 18 previously contained an exception as follows: “except where such payments would encourage energy conservation.” However, in its 2018 rate case at Docket No. R-2018-3000124, Duquesne eliminated the energy conservation exception completely. Similarly, in 2018 Duquesne removed Tariff Rule 14.3 from its tariff, which expressly allowed sub-metering at customer expense. It is not clear if these Rule changes were appreciated by the Commission or the parties in Duquesne’s 2018 rate proceeding because Rule 14.3 was purportedly removed “as unnecessary” and Rule 18 was amended “for clarity.”<sup>89</sup> This is important because this elimination effectively precluded customers from using sub-meters to support the energy conservation exception in Tariff Rule 18

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<sup>87</sup> NEP St. No. 1, at 4:17-23.

<sup>88</sup> NEP St. No. 2, at 7:20-23.

<sup>89</sup> See NEP Exhibit TR-13.

that allowed the redistribution of energy that would occur in master metered buildings with sub-metering.<sup>90</sup>

In addition, Duquesne has made it clear that in the last five years it has never found the “special circumstances” provided for in Tariff Rule 18 as an exception to the ban on redistribution of electric energy to be present.<sup>91</sup> In fact, one of Duquesne’s special circumstances criteria for an exception to tariff Rule 18 has never been applied.<sup>92</sup>

It is clear that Duquesne considers its tariff to *prohibit master metering* and has no plans to provide an exception to the ban on master metering, other than its proposed Rule 41.1, which it has now withdrawn.<sup>93</sup> Further, in the context of a request for a conversion of eight (8) individual meters to one master meter, a Duquesne employee remarked that they had never heard of DLC doing this at a customer’s request.<sup>94</sup>

As NEP witness Ringenbach properly concluded:

The effect of Duquesne’s tariff changes has been to disconnect master metering limitations from the inability to conserve electric energy, and to justify limitations/bans on master metering on “consumer protections”, which are not the basis for master metering limitations contained in PURPA or in Duquesne’s earlier tariff rules on master metering.<sup>95</sup>

It is clear that Duquesne’s prior conduct and implementation of tariff Rules 18 and 41 evidence a settled intent and predisposition against master metering, which remain extant in connection with its treatment of NEP’s proposed master and sub-metering program in this proceeding.

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<sup>90</sup> NEP St. No. 2, at 7:22-23 and at 8:1-9.

<sup>91</sup> NEP St. No. 2, at 8:10-12.

<sup>92</sup> NEP St. No. 2, at 8:12-13; *See also* NEP Exhibit TR-14, Set I No. 2, Set I No. 3, Set I No. 12 and NEP Set II, No. 5.

<sup>93</sup> NEP St. No. 2, at 8:14-16; *See also* NEP Exhibit TR-15.

<sup>94</sup> NEP St. No. 2, at 8:16-19; *See also* NEP Exhibit TR-16.

<sup>95</sup> NEP St. No. 2, at 8:19-23.

**E. The Criticisms of NEP’s Proposed Master Metering and Sub-Metering Program Are Unfounded and Unsupportable.**

**1. NEP’s Proposed Master Meter and Sub-Meter Program Does Not Need to Provide the Same Nature and Scope of Consumer Protections as Are Presently Available to Duquesne Customers Who are Individually Metered in Multi-Family Buildings.**

One of the primary bases on which NEP’s proposed master metering and sub-metering program have been challenged is the claimed lack of consumer protections for tenants in multi-family buildings with master meters.<sup>96</sup> This criticism seeks to unreasonably impose on NEP, a private entity, certain legal and other standards applicable to Duquesne as a regulated public utility.<sup>97</sup> Far from attempting to “step into the utility’s shoes” with respect to sub-metered tenants as Duquesne Witness Phillips incorrectly claims<sup>98</sup>, NEP is proposing a new and different service to eligible Property Owners and their tenants. As NEP Witness Ringenbach notes, attempting to hold NEP and its master metering proposal to a “public utility” standard:

. . . [C]reates an improper basis on which to evaluate NEP and its proposal as a private company, which provides value and options for property owners and in turn their tenants in multi-family buildings that are *different* than what a typical local utility like Duquesne might offer. Claiming a service like that proposed by NEP should be disallowed based solely on whether or not the utility may also offer a partially similar service is not the appropriate standard by which to judge NEP’s offering and certainly not a reason to suggest – indirectly or otherwise -- that NEP is a public utility and should provide identical or nearly identical products and services as a public utility.<sup>99</sup>

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<sup>96</sup> See Duquesne St. 6-R, at 3:11-24; CAUSE-PA St. 1-R, at 15-59; OCA St. 4-R, at 6-8.

<sup>97</sup> NEP St. No. 2, at 2:25 and 3:1-2; Duquesne St. No. 6-R, at 2:16-23 and 3:1-21. OCA shared concerns regarding lack of consumer protections for low income tenants. OCA St. No. 4R, at 6-8. However the Rule 41.2 master metering proposal is not intended for affordable housing and potential low income tenants will be given notice that traditional utility payment assistance programs such as CAP will not be available if they elect to sign a lease.

<sup>98</sup> Duquesne St. No. 6-R, at 2:18.

<sup>99</sup> NEP St. No. 2, at 3:2-9.

NEP is not a public utility and should not be deprived of an opportunity to offer infrastructure installations on private property, billing or supply services that are unrelated to Duquesne public utility services. Importantly, under NEP's proposed service model, Duquesne will retain its fundamental role as the provider of electric distribution services and in that connection will still deliver power to and bill the property, albeit a property that will now be centralized into a single master meter account.<sup>100</sup>

As NEP Witness Ringenbach pointed out, while there are differences between what a utility like Duquesne is required by law and regulations to provide to its customers and what NEP as a private entity provides to tenants in multi-family buildings, NEP does provide consumer protection services, albeit ones that do not directly match Duquesne's protections.<sup>101</sup> The key point is that there is no reason for these different products and services to provide the same protections to customers/tenants.<sup>102</sup>

None of Duquesne's claimed consumer protections apply today to any of the 130 master metered properties or the commercial master metered properties operating in Duquesne's service territory. And, none of the critics of NEP's master and sub-metering program have alleged any systemic problems with tenants in multi-family buildings being served by NEP that justify *identical* consumer protections from both a public utility like Duquesne and a private company like NEP.<sup>103</sup> CAUSE-PA's Witness Geller had no specific knowledge of complaints, lawsuits or other disputed filed or asserted against NEP for service in Pennsylvania.<sup>104</sup> He was not aware of any specific consumers served by NEP in PECO's service territory where a tenant was unable to

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<sup>100</sup> NEP St. No. 2, at 3:9-15.

<sup>101</sup> NEP St. No. 2, at 3:23 and 4:1-4.

<sup>102</sup> NEP St. No. 2, at 4:4-5.

<sup>103</sup> NEP St. No. 2, at 4:5-11.

<sup>104</sup> NEP Cross Exhibit 1.

access the statutory and regulatory rights previously available to them prior to re-metering.<sup>105</sup> He could not identify any specific instances where a NEP sub-metered bill resulted in material harm and costs to tenants.<sup>106</sup> And he could not identify any instance in which anyone has charged or claimed Nationwide has treated tenants unjustly, inequitably and/or discriminatorily regarding security deposit policies and procedures in connection with the metering and sub-metering program in PECO's service territory.<sup>107</sup>

Duquesne's proposed tariff Rule 41.1 was withdrawn, but it was a product of a collaborative in which CAUSE-PA participated, and it would have made master metering available to developers of new affordable housing projects. The origin of the collaborative was the testimony of CAUSE-PA's witness in Duquesne's prior rate case.<sup>108</sup>

CASE-PA's testimony in that proceeding sought amendment of Duquesne's tariff rules to allow some amount of master metering. The reasons offered by CAUSE-PA for why master metering should be made available to affordable housing developers are similar to the support for master metering offered by NEP in this proceeding. CAUSE-PA's witness argued:

- With master metering, Duquesne could avoid that cost associated with installing, maintaining, reading, billing and accounting for individual meters.<sup>109</sup>
- The tenant units would be more than likely sub-metered for purposes of insuring usage controls over tenant consumption and to monitor spikes in usage attributable to specific units in the building.<sup>110</sup>

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<sup>105</sup> NEP Cross Exhibit 6.

<sup>106</sup> NEP Cross Exhibit 9.

<sup>107</sup> NEP Cross Exhibit 10.

<sup>108</sup> *Pa.P.U.C. v. Duquesne Light Company*, Docket Nos. R-2018-3000124, R-2018-3000829.

<sup>109</sup> NEP Exhibit TR-12, CAUSE-PA St. No. 2, at 9:7-8.

<sup>110</sup> NEP Exhibit TR-12, CAUSE-PA St. No. 2, at 9:8-11.

- Duquesne Light is the only major electric distribution company that has a blanket prohibition on master metering.<sup>111</sup>
- Advances in customer-side sub-metering technology address the issue of tenants not having a direct connection to their electric usage with master metering.<sup>112</sup>
- Allowing residential master metering with appropriate assurances of sub-metering or other checks on tenant usage should be sufficient to change Duquesne’s tariff.<sup>113</sup>
- Duquesne should allow master metering where individual tenant metering is not feasible, or any other valid reason, including but not limited to added additional operating costs associated with individual metering, and where master metering would not have an increased usage and waste impact.<sup>114</sup>
- Tariff changes allowing multifamily housing providers to convert properties that are currently individually metered and tenant-paid to master metered should first show tenants who reside in the building would not be materially impacted in terms of their total housing costs, rent and utilities combined, shown by the building owner/developer at the time it wishes to convert service.<sup>115</sup>
- PECO’s tariff provides a model for how a change to master metering could be accomplished with applicants for master metering showing specified conditions should be met before the Company approved the master metering.<sup>116</sup>

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<sup>111</sup> NEP Exhibit TR-12, CAUSE-PA St. No. 2, at 9:17-18.

<sup>112</sup> NEP Exhibit TR-12, CAUSE-PA St. No. 2, at 10:5-9.

<sup>113</sup> NEP Exhibit TR-12, CAUSE-PA St. No. 2, at 10:8-10.

<sup>114</sup> NEP Exhibit TR-12, CAUSE-PA St. No. 2, at 10:5-16.

<sup>115</sup> NEP Exhibit TR-12, CAUSE-PA St. No. 2-SR, at 3:10-14. As explained by Witness Ringenbach, NEP did not oppose proposed tariff Rule 41.1 which was designed to work with developers of affordable housing. The business model which NEP described and presented is not focused on affordable housing buildings, and for that reason a different tariff Rule 41.2, was designed. The conditions proposed by NEP for tariff Rule 41.2 will impact tenants living in converted buildings in the direction of tenant savings, not additional costs.

<sup>116</sup> NEP Exhibit TR-12, CAUSE-PA St. No. 2-SR, at 5:15-19.



CAUSE-PA's prior testimony supporting master metering in Duquesne's service territory shares common elements with the foundation NEP has offered for tariff Rule 41.2 being adopted. In concept, the customer protections NEP has added to proposed Rule 41.2 are the logical parallel to what CAUSE-PA believed affordable housing developers should demonstrate before being eligible for use of master metering in new or converted buildings.

Tenants behind commercial customer owned master metered buildings are *not* utility customers and should not be treated as such in addressing what the various parties characterize as "customer protections."<sup>117</sup> As NEP Witness Ringenbach testified, NEP is unaware that existing protections for tenants served under NEP's master meter and smart sub-meter program in the City of Philadelphia (i.e., PECO's service territory) have been found inadequate by the Commission or the General Assembly.<sup>118</sup> Further, NEP itself has a very low level of complaints (i.e., 7 in the last four years, including none in 2018 and 2021) against it wherever it operates.<sup>119</sup> The parties critical of NEP's alleged lack of consumer protections do not ". . . appear to be concerned that 130 multi-family buildings with master meters served by Duquesne are grandfathered under Tariff Rule 18, and those tenants are presumably exposed to the same alleged dangers (i.e., lack of consumer protections) of being a tenant behind a master meter. Similar to Philadelphia, there has been no outcry for further consumer protections for master metered tenants in Pittsburgh."<sup>120</sup>

It is not necessary, as suggested by NEP's critics, that NEP's master meter and smart sub-meter program be permitted only if Property Owners of multi-family buildings be required to implement such things as Chapter 56 service termination rules, customer assistance programs

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<sup>117</sup> NEP St. No. 2, at 4:21-23.

<sup>118</sup> NEP St. No. 2, at 12:7-9.

<sup>119</sup> NEP St. No. 2, at 12:9-10.

<sup>120</sup> NEP St. No. 2, at 12:10-16.

(“CAP”), Chapter 14 and more.<sup>121</sup> A key consumer protection available to tenants in multi-family buildings served by NEP is already in place under Section 1313 of the Code, 66 Pa.C.S. § 1313.<sup>122</sup> As NEP Witness Ringenbach testified, “[c]onsistent with legal requirements, tenants will never be charged more than they would pay if they were individually metered residential customers of the utility, and if they participate in control options made available to them, they will pay less.”<sup>123</sup> Further, the provisions of Code Sections 1521-1533, Discontinuance of Service to Leasehold Premises, 66 Pa.C.S. §§ 1521-1533, provide clear service termination and related protections to tenants in residential buildings that are receiving service from a public utility in the event of a landlord’s failure to pay for service, irrespective of whether the building is master metered with smart sub-meters like those used by NEP or the dwelling units in the building are individually metered by the utility. Duquesne can avoid its Chapter 15 obligations when it individually meters tenants and the costs of following this Code mandate.

Notwithstanding the obvious differences in services and customer protections available to customers of public utilities and tenants served under a master meter and smart sub-meter program offered by NEP, in its surrebuttal testimony NEP advised the parties and the ALJs that it was amenable to certain modifications to its proposed new Duquesne Tariff Rule 41.2 in order address some of the concerns about NEP’s proposed master and sub-metering program raised by Duquesne, CAUSE-PA, OCA and OSBA, including alleged lack of consumer protections.<sup>124</sup> Those tariff modifications and consumer protections are addressed in Section I.E. of this Main

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<sup>121</sup> NEP St. No. 2, at 18:1-4.

<sup>122</sup> § 1313. Price upon resale of public utility services. “Whenever any person, corporation or other entity, not a public utility, electric cooperative corporation, municipality authority or municipal corporation, purchases service from a public utility and resells it to consumers, the bill rendered by the reseller to any residential consumer shall not exceed the amount which the public utility would bill its owner residential consumers for the same quantity of service under the residential rate of its tariff then currently in effect.”

<sup>123</sup> NEP St. No. 1, at 10:8-10.

<sup>124</sup> NEP St. No. 2, at 13:13-16; NEP Exhibit TR-22.

Brief, but include, among other things, (i) alignment with Duquesne on the number of days due from bill issue date including number of days grace period in effect for the month the bill is issued; (ii) any past due or collection recovery fees may not exceed the collection recovery fees of the utility based on the tariff requirements in effect for the month the bill to collect such costs is issued; (iii) a payment plan option must be made available to tenants having trouble paying their bills, but such plan shall not be greater than the lesser of (a) 12 months or (b) the remaining term of the tenant's lease; and (iv) notices of disconnection must match the number and type of notices provided by the rules, regulations and statutes applicable to Duquesne.

Critical for customer protection purposes is the requirement in proposed tariff Rule 41.2 that tenants must be informed prior to lease signing of the following<sup>125</sup>:

- Signing the lease will include sub-metering electricity service.
- Certain low income programs available from a utility to assist payment troubled customers will not be available to tenants served via a property master meter and privately installed smart sub-meters.
- Prior to lease signing, individual tenants will be notified that the property owner has chosen a competitive supplier on their behalf. However, individual tenants will receive a written explanation of emissions and environmental attributes of the chosen supply.
- An explanation of how the bill is calculated and which technologies have been provided under Tariff Rule 41.2.

Along with the Code provisions identified above, these proposed tariff protections for tenants in master metered buildings whose Property Owners are proceeding under Tariff Rule 41.2

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<sup>125</sup> NEP Exhibit TR-22.

are just and reasonable, and address many of the issues raised about NEP's proposal from a consumer protection perspective.

**2. Concern regarding cost shifting between classes should not delay the limited availability of master metering NEP proposes in this proceeding.**

The conversion of a multifamily building currently metered with individual utility meters for tenants to a master metered building with sub-metered tenants implicates a building's load shifting from being billed under residential rates to a commercial rate. Duquesne Witness Phillips claimed that converting a building from individual to a master-metered service "may produce inter- and intra-class revenue allocation impacts."<sup>126</sup> Ms. Phillips added that shifting load between customer classes could "produce unpredictable corresponding shifts in revenue allocation."<sup>127</sup>

To probe the depth of Duquesne's concern about shifts, NEP explored in discovery the extent to which Duquesne has studied the issue, given that it already serves approximately 130 grandfathered master metered buildings with tenants, and it proposed tariff Rule 41.1, master meter service for new affordable multifamily building housing, with no capped limit on the number of installations under the new Rule. Witness Ringenbach summarized the results of the inquiry:

In discovery, DLC advised that it currently serves 130 master metered buildings with one or more residential dwelling units. *See* NEP Exhibit TR-2. It is clear that DLC has little information beyond the number of master metered buildings and has done little analysis of these types of arrangements. For example, DLC has no records indicating when any of the master metered installations were made or how many of these master metered buildings have submeters installed. *See* NEP Exhibit TR-3. It does not know the number of master metered buildings that are occupied by low-income tenants. *See* NEP Exhibit TR-4. Moreover, DLC has not performed any studies and has no documents from within the last five years addressing inter or intra-class revenue allocation impacts that might result from converting existing services from individually metered dwellings to master metered buildings. *See* NEP Exhibit TR-5. Nor

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<sup>126</sup> Duquesne St. No. 6, at 6:4-6.

<sup>127</sup> Duquesne St. No. 6, at 6:7-9.

has DLC performed any studies or has any documents in the last five years addressing inter or intra-class revenue allocation impacts from prospectively allowing master meters on buildings that house multi-family tenants who would otherwise be individually metered under DLC's existing tariff rules. *See* NEP Exhibit TR-6. DLC has not prepared any study or report comparing uncollectibles associated with master metered residential buildings to those with individually metered residences in its service territory. *See* NEP Exhibit TR-7.<sup>128</sup>

In short, Duquesne has assiduously avoided inquiry into master meter cost/revenue shifts or uncollectible impacts, even when it was proposing master metering in Rule 41.1 and when it serves approximately 130 master metered properties.

OSBA Witness Knecht noted with respect to Duquesne's proposal to expand master metering through proposed tariff Rule 41.1 that: (i) Duquesne does not know how many buildings would have qualified for the proposed rate treatment in the past five years, (ii) Duquesne does not know how the proposed change in the tariff will affect revenues, (iii) Duquesne has no estimate for the future number of buildings and residential units that will qualify for master-metering under the proposed tariff change and (iv) Duquesne has conducted no analysis of the load profile for the residential loads that will be served through general service tariffs under the revised master-metering proposal.<sup>129</sup> In addition, Witness Knecht pointed out that Duquesne did not perform a revenue allocation impact analysis specified in the settlement of its 2018 rate case because the Rule 41.1 was proposed only for new customers.<sup>130</sup>

NEP Witness Ringenbach testified that based on NEP's experience in Pennsylvania and in other states, master metering consistent with its model would not trigger significant shifts in Duquesne's inter or intra class revenue allocations between now and when Duquesne's likely next

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<sup>128</sup> NEP St. No. 1, at 6:8-23, 7:1.

<sup>129</sup> OSBA St. No. 1-R, at 18:8-20.

<sup>130</sup> OSBA St. No. 1-R, at 19:8-10.

base rate case.<sup>131</sup> In rebuttal, Witness Phillips took issue with Ms. Ringenbach's estimate of a significant revenue shift and observed that NEP has not estimated the number of buildings or customers that may be involved in a rate class switch if tariff Rule 41.2 is permitted to go into effect.<sup>132</sup>

NEP has the most credible and probative position on the issue of cost and revenue shifts that may arise from allowing proposed tariff Rule 41.2 to be included in Duquesne's tariff. To allay these cost/revenue concerns, Witness Ringenbach in her Surrebuttal Testimony proposed that new multifamily buildings with four or more units and conversions of existing individually metered buildings approved under Rule 41.2 be limited to no more than 130 existing and new developments.<sup>133</sup> This limits new master metering to the same range that already exists in Duquesne's service territory, i.e., 130 properties. This number of master metered properties has neither been a cost/revenue allocation issue up to now nor a situation that in Duquesne's mind warrants further study of cost/revenue shift impacts. Moreover, Duquesne was willing to launch proposed tariff Rule 41.1, master metering for affordable housing multifamily buildings, without any study of cost/revenue impacts and without any estimate of how many multifamily buildings would be using master metering in the interval between now and its next rate case. As Witness Ringenbach explained:

This interval would also provide an opportunity to do the studies recommended by OSBA (OSBA St. 1-R, pp. 23-25) on the effect of Tariff Rules 41.1 and 41.2 (including the impact of Duquesne's current 130 current master metered buildings) on Duquesne's revenues and cost allocations. Duquesne has proposed Tariff Rule 41.1 without the benefit of such studies. Rather than reject Tariff Rule 41.1 for failure to prepare such studies in advance, the

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<sup>131</sup> NEP St. No. 1, at 24:19-22, 25:1-6.

<sup>132</sup> Duquesne St. No. 6-R, at 24:21-23, 25:1-14. OSBA Witness Knecht also has concerns about the rate impact of allowing master metering and made suggestions about what changes in cost and revenue allocation may be appropriate if the Commission allows master metering. OSBA St. No. 1-R, at 25:1-7.

<sup>133</sup> NEP St. No. 2, at 13:13-23, 14:1-3.

Commission should provide additional time for real world experience to be accumulated on the effect of these rules in DLC's service territory based on proper revenue and cost allocation analyses.<sup>134</sup>

After Duquesne has accumulated actual experience with conversions of buildings to master metering and new properties utilizing master meters with smart sub-meters, the Commission will be in a better position to entertain presentations on impact and what changes, if any, are needed for cost/revenue allocation. In the meantime, there is little risk of a significant revenue shift that would harm Duquesne. As Witness Ringenbach stated:

“NEP disagrees that there is a 1:1 cost and revenue loss when a residential tenant is moved to submetering. Unlike a single family home where the infrastructure is curb connected to each individual home for multifamily there are not multiple wires to multiple tenants tied directly to the curb distribution system. Rather it is a meter installation with costs and infrastructure still born by the property owner as indicated by DLC. See NEP Exhibit TR-19. The master meter and all infrastructure to the curb will continue to service the property from DLC and be paid for by the master metered commercial account. Also, as tenants move regularly and create vacancies, there is not a one to one correlation of the number of units submetered and the number of residential accounts moved from Duquesne. Some units may not be occupied or consistently occupied. *The likelihood of a significant shift in residential customers for DLC is small.*”<sup>135</sup> (Emphasis added).

Concerns over potential cost/revenue shifts from the limited amount of new potential master metered buildings that would be possible under Rule 41.2 and the uncertain effect of that deployment do not justify delaying the option of master metering in Duquesne's service territory as proposed by NEP.

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<sup>134</sup> NEP St. No. 2, at 14:4-14.

<sup>135</sup> NEP St. No. 2, at 26:1-13.

**3. NEP is committed to ensuring tenants pay no more to Property Owners for electric service than they would pay to Duquesne, as required by the Code.**

PECO permits sub-metering and the use of NEP’s service model by tariff rule.<sup>136</sup> NEP is proud of its excellent low complaint record across all served states since 2017: 2017 – two complaints, none resolved in the complainant’s favor; 2018 – no complaints; 2019 – 3 complaints, none resolved in the complainant’s favor; 2020, three complaints, none resolved in the complainants’ favor; 2021 no complaints.<sup>137</sup> NEP has successfully delivered its services in PECO’s service territory since 2008 without being challenged as abusive of tenants.<sup>138</sup> Code Section 1313, which protects tenants from Property Owner electric service charges being greater than the local electric utility would charge a residential customer for service, has been in effect throughout this period.<sup>139</sup>

NEP is well aware that it must adhere to Code Section 1313 and that any person that purchases service from a public utility and resells it to any “residential consumer”, cannot 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.”<sup>140</sup> Witness Ringenbach described the measures NEP takes, and which any Property Owner seeking master metering under tariff Rule 41.2 would be required to take, to ensure adherence to this statutory mandate:

NEP employs a team of qualified individuals to monitor the approved rates of the local electric utilities in each service territory in which it operates, including all riders and fees. That team maintains the inputs in NEP’s billing system against which each resident’s usage is calculated to arrive at a total billing amount. By applying each component of a utility’s tariffed rates individually and simply rounding each resulting component down to the nearest cent

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<sup>136</sup> NEP St. No. 2, at 10:13-14; NEP Exhibit TR-18.

<sup>137</sup> NEP Cross Exhibit 10.

<sup>138</sup> NEP St. No. 2, at 10:14-16.

<sup>139</sup> 66 Pa.C.S. § 1313.

<sup>140</sup> Id.



before summing those components, NEP ensures that its total bill amount never exceeds the amount that would be applied by the local utility on a total bill basis. By further applying a credit (i.e., the two dollar credit discussed later in my testimony) to each bill, NEP is able to mimic the benefits residents are likely to realize by successfully shopping for an electric generation supplier. In conjunction with NEP's commitment to secure only carbon-free generation supply, residents end up receiving a premium, environmentally-friendly product while receiving a guaranteed total bill that is less than the utility, all without having to lift a finger.

Of course, human error is still possible, and NEP encourages residents to compare their total bill against the local utility's online rate calculator where available. If a discrepancy is found, NEP will issue a credit on the resident's next monthly bill, though in practice this is extremely rare.<sup>141</sup>

Duquesne attempts to sully NEP's record for proper charges to tenants by citing fees it has charged in PECO's territory.<sup>142</sup> First, these fees (i.e., service reconnection, late payment charges, payment processing charges, returned payment charges, deferred payment arrangement charges) are unrelated to the *quantity* of service used, which is the service to which the Code Section 1313 standard applies. Second and more importantly, in response to these criticisms, NEP provided that Property Owners using tariff Rule 41.2 must fully match Duquesne's policies and fees on when bills are due, including grace periods, past due or collection recovery fees, meter testing fees and testing request requirements, making a payment plan option available and notices of disconnection.<sup>143</sup>

Duquesne's criticism that master metered with smart sub-metered tenants would not have access to the Duquesne Light Standard Offer Program and would pay more than "Duquesne's" charges for electric service is also unfounded.<sup>144</sup> Electric Generation Supplier charges are not

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<sup>141</sup> NEP St. No. 1, at 10:11-23, 11:1-7.

<sup>142</sup> Duquesne St. No. 6-R, at 13:2-23, 14:1-20.

<sup>143</sup> NEP St. No. 2, at 15:5-22, 16:1-4.

<sup>144</sup> Duquesne St. No. 6-R, at 15:14-23, 15:1-6.

Duquesne's charges and Duquesne has made no showing that tenants can be expected to utilize the Standard Offer Program. Moreover, under Duquesne's theory on this issue, there would be multiple "Duquesne" charges for the same quantity of service (e.g., Standard Offer Program Service and Default service), rendering it impossible to apply the Code Section 1313 standard in a clear and certain manner. To resolve this issue and ensure clear financial benefits to tenants in multi-family buildings receiving master meter and smart sub-meter services, NEP has made it a requirement in proposed Tariff Rule 41.2 that master metered tenants receive a minimum of a two dollar discount each month from the otherwise applicable utility charge for residential service.<sup>145</sup>

To the extent Duquesne claims that residential tenant bills would be higher under Rule 41.2 than if Duquesne provided service because its CAP program and other forms of utility provided bill payment assistance would be unavailable, NEP's proposed tariff Rule provides notice to prospective tenants that certain low income programs available from a utility to assist payment troubled customers will not be available to tenants served via a master meter and privately installed sub-meters.<sup>146</sup>

**4. NEP's recommendation that Commission staff have a role in the review of Rule 41.2 requests is necessary and appropriate.**

NEP has proposed in tariff Rule 41.2 that Commission staff be available to mediate any requests under proposed Rule 41.2 master metering that are alleged by Duquesne to have deficiencies.<sup>147</sup> Duquesne responded by calling this process "unreasonably vague" and "impractical".<sup>148</sup> Duquesne also criticized NEP for not providing the request form through which

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<sup>145</sup> NEP St. No. 2, at 16:18-20.

<sup>146</sup> NEP St. No. 2, at 16:6-10.

<sup>147</sup> NEP Exhibit TR-22. ("The Company shall participate in a Commission staff mediation of any unresolved deficiencies should one be requested by the Customer or its authorized representative.")

<sup>148</sup> Duquesne St. No. 6-R, at 25:16-20.

a customer would request master metering under tariff Rule 41.2.<sup>149</sup> Finally, in Rejoinder Testimony, Duquesne Witness Phillips complains that revised tariff Rule 41.2 expands the landlord requirements that Duquesne would need to police and NEP does not provide it with the resources or enforcement powers to do so.<sup>150</sup>

NEP Witness Ringenbach responded to Duquesne's concerns about Commission staff resources being used to mediate rejections of tariff Rule 41.2 requests as follows:

Duquesne's concerns regarding PaPUC staff involvement in reviewing determinations under Rule 41.2 are unsupportable. Given the history of Duquesne's handling of master meter exceptions in the past, the steps Duquesne has taken to effectively ban master meters and eliminate pro-conservation options despite the advent of smart submeters, its efforts to bar NEP from this proceeding, and its failure to address broader master meter issues in its master meter collaborative, Duquesne's judgments under Tariff Rule 41.2 should be subject to Commission staff review. Such a process and use of PaPUC staff resources is warranted, similar to how utility treatment of competitive suppliers' issues were made subject to the Commission staff-operated Office of Competitive Market Oversight ("OCMO") process, which also required an allocation of staff resources.

NEP also pointed out how in its 2018 rate case, Duquesne "tightened the noose" around master metering by eliminating all reference to a conservation exception in tariff Rule 18 and removed the option for customers to pay for sub-meters by removing Rule 14.3.<sup>151</sup> In addition, Duquesne has never found in the last five years the special circumstances provided for in Rule 18 as an exception to the ban on redistribution of electric energy to be present and has never applied one of the supposed criteria for special circumstances being shown.<sup>152</sup>

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<sup>149</sup> Duquesne St. No. 6-R, at 26:26-33.

<sup>150</sup> Duquesne St. No. 6-RJ, at 2:15-18.

<sup>151</sup> NEP St. No. 2, at 7:19-23, 8:1-9.

<sup>152</sup> NEP St. No. 2, at 8:10-14; NEP Exhibit TR-15.

It is against this backdrop of Duquesne opposition to master metering, and the lack of progress NEP has had with informally discussing the issue with Duquesne that NEP has suggested Commission staff involvement with rejected requests under tariff Rule 41.2. Absent this process being available, a customer whose tariff Rule 41.2 request was rejected would have no recourse but to file a formal complaint against Duquesne, which would greatly increase the expenditure of Commission staff resources beyond the costs of mediation, not cost Duquesne anything incrementally due to its existing budgets for inside and outside counsel for complaint defense, and impose costs on customers they should not have to absorb. Once agreeing to use of the mediation process, the Commission can decide how its resources should be used prudently and practically, just as it did in setting up and deploying the OCMO process.

There is no need to create a tariff Rule 41.2 request form until the final form of the Rule is clear. Because it will be Duquesne's form, it makes sense for the final form to be the product of a Duquesne-NEP collaborative effort.

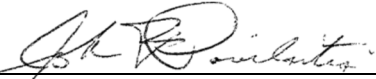
Duquesne's concerns about policing tariff Rule 42.1 and its authority to do so should be disregarded. Duquesne enforces a large tariff with many rules all the time. Tariff Rule 41.2's requirements apply to customers, who must comply with Duquesne's tariff. Duquesne is accustomed to policing its tariff, and if it needs assistance with that task, to ease its "burden", it can propose reporting/status requirements for customers accessing Rule 41.2 to request master metering.

V. **CONCLUSION**

For all the reasons specified in this Main Brief, Nationwide Energy Partners LLC respectfully requests that the Commission approve its proposed Tariff Rule 41.2 in its entirety.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

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**APPENDIX A**

**NEP Exhibit TR-22**

**18. REDISTRIBUTION** All electric energy shall be consumed by the Customer to whom the Company supplies and delivers such energy, except for (1) any Customer who owns and operates a separate office building, or (2) any Customer who meets the requirements of Rule 41.1 and Rule 41.2 addressing the use of master meters in buildings with at least four (4) residential dwelling units may redistribute electric energy to the tenants of such customer.

**41.2. RESIDENTIAL MASTER METERING IN NON-LOW-INCOME SUPPORTIVE HOUSING** Notwithstanding anything in Rule No. 41 to the contrary, the Company shall install, own, operate and maintain a single commercial utility account (“Master Metering”), and redistribution of electric energy may occur, for no more than 130 existing multi-tenant premises or any new construction multi-tenant premises that include at least four (4) dwelling units where, all of the following criteria are met:

1. The Customer or its authorized representative verifies in writing that it will comply with the requirements of 66 Pa.C.S. § 1313, price upon resale of public utility services.
2. The Customer or its authorized representative provides each dwelling unit in the premises with (1) a revenue grade smart meter according to the American National Standards Institute (2) shared access to electric vehicle charging on the premises and (3) at least one energy technology for energy efficiency, energy control or demand response.
  - a. Technologies used to achieve compliance with this tariff, including electric vehicle charging, may not be separately billed, or treated as a separate line item of usage and are subject to the requirements of 66 Pa.C.S.1313
3. A mandatory minimum \$2 per tenant bill credit is provided regardless of income level or usage.
4. Collection and billing for submetered usage must meet the following requirements:
  - a. Number of days due from bill issue date including number of days grace period will match the current Duquesne Light Company tariff rules, applicable statutes and regulations in effect for the month the bill is issued.
  - b. Any past due or collection recovery costs may not exceed the collection recovery costs of Duquesene Light based on the tariff rules, applicable statutes and regulations in effect for the month the bill to collect such costs is issued.
  - c. Meter testing fees and testing request requirements will match the applicable time to test and fee recovery amounts as applicable to a electric utility under Pennsylvania law or Duquesne Light tariff rules, applicable statutes and regulations.

- d. A payment plan option must be made available but is not required to exceed 12 months and may not be shorter than the term of the tenant's lease.
  - e. Notices of disconnection must match the number and type provided by the applicable Duquesne tariffs rules, applicable statutes and regulations.
  - f. Service may only be disconnected for non-payment or a safety concern but may not be disconnected for any other reason.
5. Tenants must be informed prior to lease signing of the following:
- a. Signing the lease will include submetering electricity service.
  - b. Applicable low income programs which will not be accessible during submetering
  - c. That supplier choice is made by the property including individual tenants along with an explanation of emissions and environmental attributes of the chosen supply.
6. An explanation of how tenants' bills are calculated and which technologies have been provided under this tariff (ie. thermostat, smart energy control devices and EV charging). The tenant in each dwelling unit in the premises will have access to information on their hourly, monthly and annual electric energy usage.

Customers or their authorized representative permitted to use Master Metering under this Rule shall also comply with the following:

1. The Company may request and the Customer or its authorized representative shall provide within 60 days of a request information to certify ongoing compliance with the above criteria: and

The Company shall provide a Commission approved form for Customer or Authorized Representative contact information and required details to ensure proper delivery of a request under this rule; Customers or their authorized representative shall notify Duquesne of their decision to Master Meter under this Rule and shall submit the notice to the Company using a form previously reviewed and approved by the Commission. The Company shall make the form available on its website. The Company shall advise the Customer if the form has any deficiencies within fourteen (14) days of its submission. The Company shall participate in a Commission staff mediation of any unresolved deficiencies should one be requested by the Customer or its authorized representative.



## APPENDIX B

### PROPOSED FINDINGS OF FACT

1. NEP is a Columbus, Ohio-based provider of installation, submetering, billing, collections, electrification and energy efficiency services to the owners and developers of multifamily properties with more than twenty years of experience serving over 32,000 residents at over 150 properties, including in excess of 1,600 tenant residents in PECO's service territory. (NEP St. No. 1, at 2:14-18).
2. NEP's Smart Property Platform incorporates proven and reliable industry standard equipment, infrastructure and smart meters. (NEP St. No. 1, at 2:20-22).
3. As a provider of energy services to multi-family buildings, it is essential that NEP and other similar providers have the ability to take electric service from the local electric distribution company at a single master meter located at the building so it can then deploy its state of the art smart meter technology to submeter the individual dwelling units in the building. (NEP St. No. 1, at 3:5-9).
4. NEP's business paradigm has provided numerous benefits to Property Owners, tenants and the public generally for a number of years – including in the PECO service territory in Pennsylvania since 2008 – where there is no ban or significant limitation on the ability to take service for an entire building at a single master meter from the local utility. (NEP St. No. 1, at 3:18-21).
5. Duquesne's tariff Rules impose severe limitations on NEP responding to master metering interest in its service territory, thereby depriving Property Owners, tenants and the public generally the choice of how they would like to take service and receive the energy efficiency and conservation benefits NEP can provide. (NEP St. No. 1, at 3:22-23, 4:1-5).
6. NEP's business model is a service provided to multifamily Property Owners or developers who construct or renovate such properties. NEP establishes a direct contractual relationship with relevant Property Owner or developer and is typically retained to handle the design, construction, management and billing of all energy services. While NEP's common service is electricity and water, it also handles natural gas service. The foundation of NEP's service is the design of the infrastructure. Working as the authorized representative of the Property Owner or developer to engineer the energy infrastructure behind the meter, NEP is able to ensure the full value and use of the property for the Property Owner and tenants. (NEP St. No. 1, at 8:20-23, 9:1-4).
7. NEP provides the option to Property Owners to finance the energy infrastructure equipment installed at the multi-family building and recovers its costs through a capped billing model. This model allows NEP to add other energy services including, but not limited to, advanced billing options, a carbon or green total property supply guarantee, electric vehicle charging stations, demand response and energy efficiency technologies, all while ensuring tenant

billing is tied to the tenant's usage and never more than what the local utility would have charged for the utility services. (NEP St. No. 1, at 9:8-13).

8. NEP designs and builds out the infrastructure at the multi-family property, including transformers and conduit privatized on the property similar to commercial master metered customers. The infrastructure includes an Advanced Metering Infrastructure ("AMI") utility/revenue grade smart submeter installed for each tenant. These important elements of NEP's program include the ability of tenants to control over their usage, the provision of detailed data to each tenant on their usage, smart technologies and participation in aggregated demand response programs. (NEP St. No. 1, at 9:1-2, 19-23, 20:4-7).
9. By utilizing a master meter, the commercial customer can engineer the energy infrastructure behind the meter to: (i) work with the utility to keep Property Owner facilities separate from the utility distribution systems, (ii) provide for safety concerns, such as distance from playgrounds or pools, (iii) customize metering to fit the dwelling unit by using utility/revenue grade mini meters, transformers and conduit, (iv) obtaining financing for the infrastructure by using a company such as NEP and purchasing their services, and (v) equip them to participate in aggregated demand response programs. (NEP St. No. 1, at 9:1-23, 10:1-7).
10. NEP's proposed master and submetering program reflected in Tariff Rule 41.2 will be subject to a total limit of 130 existing developments and new buildings. Requests to convert to NEP's master and submetering-type program for existing buildings will be treated on a first come, first served basis. Duquesne will be required to provide the number of development spots still available to a property owner upon request. (NEP St. No. 2, at 14:20-22, 15:1-2).
11. Under tariff Rule 41.2, a mandatory minimum \$2 per month and per tenant bill credit regardless of income level or usage which ensures tenants receive an immediate benefit from a master meter construct. (NEP St. No. 2, at 15:3-4).
12. Tariff Rule 41.2 will require customers seeking master metering to: (i) match Duquesne's policy for the number of days the bill is due, including any grace period for the tenant's monthly bill, (ii) match Duquesne's past due fees or collection recovery fees, (iii) match Duquesne's meter testing fees, meter testing request requirements and any applicable fee recovery amounts for these services, (iv) provide a payment plan option to payment troubled tenants not greater than the lesser of 12 months or the remaining term of the tenant's lease, and (v) notices of disconnection of electric service that match the number and type of notices provided by Duquesne. (NEP St. No. 2, at 15:7-22).
13. Tariff Rule 41.2 will require customers to inform tenants prior to their signing a lease that: (i) they will receive submetering service, (ii) low income programs available from the utility to assist payment troubled customers will not be available, (iii) the Property Owner has chosen a competitive electricity supplier and they will receive written explanations of the emissions and environmental attributes of the supply, and (iv) they will receive an explanation of how their electric bill is calculated and which technologies have been provided to them (e.g. thermostat, smart energy control, EV charging). (NEP St. No. 2, at 16:6-17).

14. To qualify for using tariff Rule 41.2, the customer cannot separately bill the tenant for electric vehicle (“EV”) charging, and provide a \$2 per month credit. (NEP St. No. 2, at 16:18-20).
15. Provision of a master meter to a customer allows the commercial customer to engineer the energy infrastructure behind the meter to: (i) work with the utility to keep Property Owner facilities separate from the utility distribution systems, (ii) provide for safety concerns, such as distance from playgrounds or pools, (iii) customize metering to fit the dwelling unit by using utility/revenue grade mini meters, transformers and conduit, (iv) obtaining financing for the infrastructure by using a company such as NEP and purchasing their services, and (v) equip them to participate in aggregated demand response programs. (NEP St. No. 1, at 9:1-23, 10:1-7).
16. Master metering provides the Property Owner with control over the energy decisions for the property, a control now shared in Duquesne’s service territory with the utility and the tenant. (NEP St. No. 1, at 12:12-13).
17. Master metering provide a multifamily Property Owner with tangible long-term benefits, including: (i) the ability to make long-term investments, (ii) the ability to track usage at the community complex, building and resident level, (iii) predictive insights and control for maintenance/troubleshooting for equipment failures without waiting for the utility to respond to a tenant complaint, (iv) comparisons of usage for residents interested in conservation, (v) an incentive and payback for energy efficiency and demand response investments lacking when a tenant reducing usage has no impact on the property owner/commercial customer’s bill (leaving the Property Owner with the only option to increase rent charges to recover conservation/efficiency investments), (vi) full control and a single consistent, measureable and verifiable account for the entire property allowing a baseline measurement for reductions and investor requirements, loan programs or certifications such as LEED for the measurement of complete property electric usage (not dependent on access to tenant account information by the utility), (vi) better ability for older properties to compete in the rental market through new customized design and energy options that better utilize space and increase safety (without costly or refused requests to the utility for relocation of their equipment), the ability to offer a tenant a holistic combined electric, water, and in some circumstances, natural gas bill, (vii) relief from utility mandates for installed infrastructure at utility dictated costs, equipment specifications and construction timetable (avoiding delays that jeopardize the start of receipts from tenants), (viii) the ability to quickly and efficiently install demand controls across all rental units in a property, aggregating at the master meter, permitting participation in PJM demand response programs that reduce demand on the utility grid with a single account and master metered baseline (with participating tenant bill credits – a participation unlikely by the tenant due to lack of property ownership and move-in/move-out patterns). (NEP St. No. 1, at 12:13-14; NEP St. No. 1, at 13:6-20; NEP St. No. 1, at 15:1-23; ; NEP St. No. 1, at 16:1-20; NEP St. No. 1, at 17:1-8; NEP St. No. 1, at 20:1-14).
18. It is important that Property Owners/commercial customers be able to demonstrate awareness of the importance of climate change, conservation and efficiency to prospective tenants, LEED certifiers, investors and banks who provide capital to fuel the rental property market. Master meters combined with smart submeters allow property owners to take advantage of

incentives offered by investors, loan programs or green certifications. (NEP St. No. 1, at 16:8-12).

19. Master metered customers, or their representative, can shop for carbon free or renewable energy supply. This ensures that the entire property can claim the carbon or renewable benefit. It aligns Property Owner interest in climate change and carbon reduction control with the properties they own. Without a master meter, Property Owners who shop have no insight or controls over the type of energy used. As tenants move in and out, their decisions to shop may not align with the climate and carbon reduction goals of the property. Today, many investors in multifamily buildings are looking for commitments on carbon and efficiency and the ability of a Property Owner to meet those requirements through a master meter and supply control that benefits both the owner through investment and tenants through control and savings. The master meter model provides tenants an energy cost that cannot exceed what they otherwise would have paid to the utility for what is normally a “premium” (i.e., carbon free) supply product and benefits Property Owners who are trying to meet their climate goals. This also permits the Property Owner or developer to market a carbon free or green option for tenants so inclined to support such accommodations. NEP only shops (as the authorized representative) for carbon free or renewable energy supply. This ensures that the entire property can claim the carbon or renewable benefit. It aligns Property Owner interest in climate change and carbon reduction control with the properties they own. Without a master meter, Property Owners who shop have no insight or controls over the type of energy used. (NEP St. No. 1, at 11:11-23, 12:1-6).
20. As tenants move in and out, their decisions to shop may not align with the climate and carbon reduction goals of the property. Today, many investors in multifamily buildings are looking for commitments on carbon and efficiency and the ability of a Property Owner to meet those requirements through a master meter and supply control that benefits both the owner through investment and tenants through control and savings. This model provides tenants an energy cost that cannot exceed what they otherwise would have paid to the utility for what is normally a “premium” (i.e., carbon free) supply product and benefits Property Owners who are trying to meet their climate goals. This also permits the Property Owner or developer to market a carbon free or green option for tenants so inclined to support such accommodations. (NEP St. No. 1, at 11:10-23, 12:1-2).
21. Use of a green electricity product obtained by the Property Owner means this product does not change as long as the tenant lives at the property; therefore, no EGS contract renewal or supplier contract terms changes apply. This approach actually allows more tenant load to participate in the competitive market than would otherwise likely occur. Multifamily tenants tend to reside in their communities short-term, often one or two years. This rules out long-term agreements for tenants and a frequent shifting of supply changes by unit to the extent there is shopping. It also means a Property Owner who wants climate focused energy solutions may be restricted from creating a fully carbon neutral or green property based on the decisions of other tenants. Premium electricity products often come at a higher cost for residential customers, but master metering allows for a capped bill, insights to likely lower their bill, and customized approaches specific to a customer who rents their home. Being a sub-metered tenant behind a master meter is more economically beneficial to the tenant when

the Property Owner passes along a bill credit based on the lower cost of a commercial load versus a residential load. (NEP St. No. 1, at 22:19-23, 23:1-8).

22. Master meters combined with smart submeters allow property owners to take advantage of incentives offered by investors, loan programs or green certifications. (NEP St. No. 1, at 16:8-12).
23. Utility programs are only one source of conservation/efficiency options for customers and some of those non-utility options are tied to financing. (NEP St. No. 2, at 23:11-17).
24. Master meters with submeters: (i) enable whole property green supply benefiting tenants, (ii) create a cost differential for the Property Owner that fuels conservation/efficiency initiatives, and (iii) makes available aggregated whole property data that can be used to obtain capital from investors and banks looking for green opportunities for climate and business reasons. (NEP St. No. 1, at 11:11-13, 17:22-23, 18:1-4; NEP St. No. 2, at 23:11-23, 24:1-5).
25. 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. (NEP St. No. 1, at 20:18-20).
26. Utility call centers can operate more efficiently through master metering if the utility has one customer contact during a service outage. The time, costs and effort to install and replace metering within a multifamily development or building is reduced with a master meter. (NEP St. No. 1, at 20:20-23).
27. Deployment of smart thermostats and replacement of inefficient appliances are achieved with more certainty relative to tenants when the Property Owners who control the dwellings can make decisions on a property-wide basis. (NEP St. No. 1, at 20:23, 21:1-6).
28. A utility's service load is more stable with master metering because, as tenants move-in and move-out, load is not shifted on and off default service, but maintained by a supplier contract arranged by the Property Owner. (NEP St. No. 1, at 21:7-9).
29. Collection risk is shifted away from the utility with master meters because uncollectible accounts are typically greater for residential customers than commercial customers. (NEP St. No. 1, at 21:9-11).
30. Master metering can reduce the capital requirements Duquesne can obligate the commercial customer to supply compared to individual utility meters for each tenant. (NEP St. No. 2, at 10:22-23, 11:1-6).
31. Allowing master metering with third-party-installed behind the curb infrastructure and smart meters allows both the Property Owner and Duquesne to avoid these expenditures. (NEP St. No. 2, at 11:3-6).

32. 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 St. No. 1, at 21:14-17).
33. Under master metering with smart submeters, a tenant's bill can be rendered weekly, bi-monthly or on a date they set for the month. (NEP St. No. 1, at 21:18-20).
34. Under master metering with smart submeters, tenants receive or have access to daily usage information allowing them to actively make decisions about their energy usage to encourage conservation and reduce costs to meet their budget, as well as usage trends relative to neighbors and the community. (NEP St. No. 1, at 21:20-22, 22:1-6).
35. Master metering with smart submeters allows tenant notifications when their bill exceeds a particular amount or is estimated to exceed a specified amount by the end of the billing period. (NEP Exhibit TR-10).
36. Master metering with smart submeters allows tenants the ability to participate in PJM demand response programs, rooftop solar and EV charging stations that can be part of a Property Owner's green smart building, financed through the master meter model. (NEP St. No. 1, at 23:10-18).
37. Property Owners taking service under tariff Rue 41.2 will provide a minimum credit of \$2.00 per month below what the utility would charge for the same electricity service. (NEP St. No. 1, at 23:19-22, 24:1-2).
38. Before it withdrew proposed tariff Rule 41.1, Duquesne was willing to provide master metering without any submetering, leaving tenants without feedback on their electricity consumption and fully disconnecting them from their usage and costs. (NEP St. No. 1, at 7:8-14).
39. Duquesne's Tariff Rules 18 and 41 effectively and unnecessarily prohibit submetering arrangements that could achieve the higher conservation benefits than individual metering. These rules, put in place more than 40 years ago, have been implemented as a full ban on master metering. (NEP St. No. 1, at 4:11-13).
40. Duquesne's tariff Rules 18 and 41.1 do not address or account for the innovation that has occurred in the submeter space in the last 40 years, which effectively allows Property Owners and their agents like NEP to provide to tenants of multi-family buildings the tools necessary (e.g., individual smart meters) to monitor their energy usage and achieve energy efficiency and conservation goals. (NEP St. No. 1, at 4:6-13).
41. In the last five years, Duquesne has never found the "special circumstances" provided for in Tariff Rule 18 as an exception to the ban on redistribution of electric energy to be present. (NEP St. No. 2, at 8:10-12).

42. One of Duquesne's special circumstances criteria for an exception to tariff Rule 18 has never been applied. (NEP St. No. 2, at Id, at 8:12-13).
43. Master meters with smart submeters are a different product and service than what is supplied by Duquesne and there is no reasons the customer protections should be identical given there are laws governing submetering and the Commission has authority over submetering. (NEP St. No. 2, at 3:21-23, 4:1-5).
44. If master metering with smart submetering is approved, Duquesne will retain its fundamental role as the provider of electric distribution services and in that connection will still deliver power to and bill the property, albeit a property that will now be centralized into a single master meter account. (NEP St. No. 2, at 3:9-15).
45. Duquesne's claimed necessary customer protections do not apply to any of the 130 master metered properties operating in the Company's service territory and no one has alleged any systematic problems with tenants in multi-family buildings served by NEP that could justify identical consumer protections from both a public utility like Duquesne and a private company. (NEP St. No. 2, at 4:4-11).
46. Existing protections for tenants served under NEP's master meter and smart submeter program in the City of Philadelphia, PECO's service territory, have not been found to be inadequate by the Commission or the General Assembly, despite Philadelphia having a high concentration of low income residents. (NEP St. No. 2, at 12:5-9).
47. NEP has a low level of complaints wherever it operates. (NEP St. No. 2, at 12:9-10).
48. CAUSE-PA's Witness had no specific knowledge of complaints, lawsuits or other disputed filed or asserted against NEP for service in Pennsylvania. He was not aware of any specific consumers served by NEP in PECO's service territory where a tenant was unable to access the statutory and regulatory rights previously available to them prior to re-metering. He could not identify any specific instances where a NEP sub-metered bill resulted in material harm and costs to tenants. And he could not identify any instance in which anyone has charged or claimed Nationwide has treated tenants unjustly, inequitably and/or discriminatorily regarding security deposit policies and procedures in connection with the metering and submetering program in PECO's service territory. (NEP Cross Exhibit 1; NEP Cross Exhibit 6; NEP Cross Exhibit 9; NEP Cross Exhibit 10).
49. Duquesne has not studied the cost and revenue implications of the 130 master metered buildings it currently serves or the impact of proposing additional master metering in the form of proposed tariff Rule 41.1. (NEP St. No. 1, at 6:8-23, 7:1; OSBA St. No. 1-R, at 18:8-20).
50. New multifamily buildings with four or more units and conversions of existing individually metered buildings approved under Rule 41.2 shall be limited to no more than 130 existing and new developments, which limits new master metering to the same range that already exists in Duquesne's service territory, i.e., 130 properties. This number of master metered

properties has neither been a cost/revenue allocation issue up to now nor a situation that Duquesne believes warrants further study of cost/revenue shift impacts. (NEP St. No. 2, at 13:13-23, 14:1-3).

51. After Duquesne has accumulated actual experience with conversions of buildings to master metering and new properties utilizing master meters with smart submeters, the Commission will be in a better position to entertain presentations on impact and what changes, if any, are needed for cost/revenue allocation, and in the meantime, there is little risk of a significant revenue shift that would harm Duquesne. (NEP St. No. 2, at 13:21-23, 14:1-7).
52. Having an optional Commission staff mediation review process of requests under tariff Rule 41.2 that are rejected by Duquesne is a reasonable and justified use of Commission resources given Duquesne's historic opposition to master metering. (NEP St. No. 2, at 22:6-18).



## APPENDIX C

### PROPOSED CONCLUSIONS OF LAW

#### BURDEN OF PROOF

1. In a base rate case, the burden of proof of the proposed rate is on the public utility, i.e., Duquesne. Code Section 315(a).
2. Duquesne must satisfy this burden by a preponderance of the evidence. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990).
3. "Preponderance of the evidence" requires a party to present evidence that is more convincing than that presented by the other parties. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990) *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992).
4. While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).
5. In a utility rate case, there is no burden placed on placed on an intervener to justify a proposed adjustment to the company's, i.e., Duquesne's filing. *Berner v. Pa. PUC*, 382 Pa. 622, 116 A.2d 738 (1955).
6. Any Commission decision must be supported by "substantial evidence," which is evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk and Western Railway*

*Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

7. Utility tariffs can include schedules of rates, and all rules, regulations, practices or contracts involving rates and have the force of law and are binding on both the utility and its customer. *Behrend v. Bell Telephone Company*, 242 Pa. Super. 47, 363 A.2d 1152 (1976).

8. Where a complaint involves an *existing* utility rate, the burden then falls upon the customer to prove that the charge is no longer reasonable. *Zucker v. Pennsylvania Public Utility Commission*, 401 A.2d 1377 (Pa. Cmwlth.1979).

8. In a utility base rate proceeding, it is not clear error for the Commission to require a complainant/intervenor like NEP to prove the basis for any proposed changes to or modifications of the utility's (i.e., Duquesne's) existing retail service tariff. In *NRG Energy, Inc. v. Pennsylvania Public Utility Commission*, 233 A.3<sup>rd</sup> 936 (Pa. Cmwlth. 2020).

#### **COMMISSION JURISDICTION AND APPLICABLE STANDARD**

9. The Commission has jurisdiction over Duquesne in this base rate proceeding as a certificated public utility providing public service in the Commonwealth of Pennsylvania. Code Chapters 5 and 15.

10. The Commission has jurisdiction over NEP as the party seeking relief from the Commission with respect to Duquesne's allegedly defective and unlawful tariff. Code Section 701.

11. All rates to be charged by and tariff provisions implemented by public utilities must be just and reasonable. Code Chapter 13.

12. NEP is required to demonstrate and prove by a preponderance of evidence that its proposed tariff Rule 41.2 to Duquesne's retail tariff is just and reasonable. Code Chapters 5 and 13, and Code Section 332(a).

13. NEP has demonstrated and proven by a preponderance of evidence that its proposed tariff Rule 41.2 to Duquesne's retail tariff is just and reasonable.

14. Duquesne, CAUSE-PA, OCA and the OSBA have not proven or demonstrated any criticisms or other objections to NEP's proposed tariff Rule 41.2 to Duquesne's retail tariff that justify disapproving that NEP's proposed meter and smart sub-meter program specified in proposed Duquesne Tariff Rule 41.2.

15. NEP's proposed meter and smart sub-meter program specified in proposed Duquesne Tariff Rule 41.2 is consistent with the master meter and individual meter requirements of PURPA.

16. Tenants in multi-family properties with master meters and smart sub-metering as proposed by NEP are protected against excessive electric charges due to the provisions of Code Section 1313 that provide express limitations on the amount a reseller of electric energy can charge to residential tenant-consumers.

18. Tenants in multi-family properties with master meters and smart sub-metering as proposed by NEP are protected under Code Chapter 15 against possible default by the Property Owner of its electricity charges in the same manner as tenants in multi-family buildings that are directly metered by and are customers of the local electric utility.

## **APPENDIX D**

### **PROPOSED ORDERING PARAGRAPHS**

#### **IT IS ORDERED:**

1. That NEP's proposed Tariff Rule 41.2 to Duquesne's existing retail electric service tariff is approved in its entirety without modification.

2. That Duquesne is hereby directed and authorized to file with the Commission a revised Tariff Rule 41.2 to its retail tariff consistent with NEP's proposed meter and smart sub-meter rule in accordance with the compliance filing to be made by Duquesne following the Commission's Final Order in this proceeding.

3. That NEP's Formal Complaint at Docket No. C-2021-3026057 with respect to Duquesne's base rate proceeding at R-2021-3024750 and Rules 18 and 41 is sustained in accordance with the terms hereof and, after Duquesne's compliance with the terms of this order, NEP's Formal Complaint shall be marked satisfied and closed.

**APPENDIX E**

**NEP Exhibit TR-18**

**PECO Energy Company**

**Electric Service Tariff**

**COMPANY OFFICE LOCATION**

**2301 Market Street**

**Philadelphia, Pennsylvania 19103**

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**For List of Communities Served, See Page 4.**

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**Issued June 15, 2021**

**Effective July 1, 2021**

**ISSUED BY: M. A. Innocenzo – President & CEO  
PECO Energy Distribution Company  
2301 MARKET STREET  
PHILADELPHIA, PA. 19103**

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**NOTICE**

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**RULES AND REGULATIONS (continued)**

**12.6 RELOCATION OF DELIVERY POINT.** In the event that the Company shall be required by any public authority to place underground any portion of its mains, wires, or service-supply lines, or relocate any poles or feeders, the customer, at the customer's own expense, shall change the location of his point of delivery to a point readily accessible to the new location.

**13. CUSTOMER'S USE OF SERVICE**

**13.1 RESALE OF SERVICE.** Pursuant to Section 1313 of the Public Utility Code, 66 Pa. C.S. § 1313, a customer may resell Energy and Capacity and/or service provided by PECO Energy under its default service plan if: (1) the Company provides such service under a single contract at one application of an available Base Rate and for the total requirements of the premises served, and (2) the location and use of the service conforms to the availability requirements of this Tariff for provision to the customer for the customer's own account.

All residential units connected after May 10, 1980, except those dwelling units under construction or under written contract for construction as of that date must be individually metered by either the Company, the AMSP or the landlord for their basic electric service supply. Centrally supplied master metered heating, cooling or water heating service may be provided if such supply will result in energy conservation. The bill rendered by the reseller to any consumer shall not exceed the amount which PECO Energy would bill its own residential customers for the same quantity of service under the applicable tariffed residential rate.

The requirements for individually metered dwelling units in new construction may be waived at the sole discretion of the Company. Such waiver will only be granted when the owner can demonstrate to the Company that there are valid reasons for such waiver and that there will not be a significant impact on the consumption of an individual customer.

In accordance with the Commission's Policy Statement at Docket No. M-2017-2604382, the electricity sales by a person, corporation (C) or other entity, not a public utility, owning and operating an electric vehicle charging facility for the sole purpose of recharging an electric vehicle battery for compensation shall not be construed to be sales to residential consumers and therefore do not fall under the pricing requirements of 66 Pa.C.S. § 1313. Such sales are therefore not considered a resale of service as defined in this tariff rule, Rule 13.1.

Electric Vehicle charging stations shall be constructed in accordance with the Company's service installation policies contained (C) in its Electric Service Requirements Manual ("Blue Book"), a copy of which may be found at [www.peco.com](http://www.peco.com). The customer, who may be either the owner or the host of a third-party owned charging station, shall notify the Company at least one hundred twenty (120) days in advance of the planned installation date and may be required to install metering for the station as determined by the Company.

**13.2 FLUCTUATIONS.** Electric service must not be used in such a manner as to cause unusual fluctuations or disturbances in the Company's supply system, and, in the case of violation of this rule, the Company may discontinue service, or require the customer to modify the installation and/or equip it with approved controlling devices.

**13.3 TYPE OF INSTALLATIONS.** Motor and other installations connected to the Company's lines must be of a type to use minimum starting current and must conform to the requirements of the Company as to wiring, character of equipment, and control devices.

**13.4 UNBALANCED LOAD.** The customer shall at all times take, and use, energy in such manner that the load will be balanced between phases to within nominally 10%. In the event of unbalanced polyphase loads, the Company reserves the right to require the customer to make the necessary changes at the customer's expense to correct the unsatisfactory condition, or to compute the demand used for billing purposes on the assumption that the load on each phase is equal to that on the greatest phase.

**13.5 ADDITIONAL LOAD.** The service connection, transformers, meters and equipment supplied by the Company for each customer, have definite capacity, and no additions to the equipment or load connected thereto will be allowed except by consent of the Company.

**13.6 CHANGE OF INSTALLATION.** The customer shall give immediate written notice to the Company of any proposed increase or decrease in, or change of purpose or location of, the installation.

**13.7 FAILURE TO GIVE NOTICE.** Failure to give notice of additions or changes in load or location shall render the customer liable for any damage to the meters or their auxiliary apparatus, or the transformers, or wires, of the Company, caused by the additional or changed installation.

**14. METERING**

**14.1 SUPPLY OF METERS.** An EGS that is also an AMSP may provide Advanced Meter Services in accordance with the Electric Generation Supplier Coordination Tariff. Otherwise, subject to Rules 14.3 and 14.9, the measurement of service for billing purposes shall be by meters furnished and installed by the Company. The Company will select the type and make of metering equipment to be used for meters supplied by the Company, and may, from time to time, change or alter the equipment, its sole obligation being to supply meters that will accurately and adequately furnish records for billing purposes. In fulfilling its obligations with respect to metering and meter reading, and with respect to AMSPs that provide Advanced Meter Services, the Company will comply with Electric Generation Supplier Coordination Tariff.

**14.2 SPECIAL MEASUREMENTS.** The Company shall have the right, at its option and its own expense, to place demand meters, reactive-component meters, or other instruments, on the premises of any customer except for any customer for whom an AMSP is providing Advanced Meter Services, for the purpose of measuring the demand and/or the power factor, or for other tests of all, or any part, of the customer's load.

**14.3 CUSTOMER REQUEST FOR SPECIAL METER.** If a customer for whom the Company is providing either metering and meter reading wishes to replace its billing metering equipment, to the extent technically possible, the Company may offer, provide and support a selection of qualified meters and may perform installation within a reasonable amount of time and at the expense of the customer. The customer must pay for any such metering equipment based on the net incremental cost of purchasing and installing the new metering equipment as approved by the Commission. The Company will own and maintain all such new metering equipment.

**(C) Denotes Change**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

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

**Via Email:**

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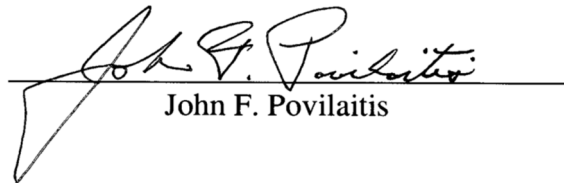
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Date: September 3, 2021



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