


COMMONWEALTH OF PENNSYLVANIA



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September 13, 2021

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

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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Reply Brief in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

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Certificate of Service

*317212

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate’s Reply Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 13th day of September 2021.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF
OF THE
OFFICE OF CONSUMER ADVOCATE

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I. INTRODUCTION

On April 16, 2021, Duquesne Light Company (Duquesne or Company) filed Supplement No. 25 to Tariff Electric- Pa. P.U.C. No. 25 (Supplement No. 25) with the Public Utility Commission (Commission) at Docket No. R-2021-3024750. The Office of Consumer Advocate's (OCA) Main Brief detailed the various components of the Company's filing. See OCA M.B. at 1-2. On September 3, 2021, the parties to this proceeding filed a Joint Petition for Approval of Settlement that resolved all litigated issues except Nationwide Energy Partners, LLC's (NEP) proposed Tariff Rule 41.2. Also, on September 3, 2021, the OCA, Duquesne, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), the Office of Small Business Advocate (OSBA), and NEP filed Main Briefs addressing NEP's proposal. The OCA responds here to the Main Brief of NEP and the OSBA Main Brief.

II. STATEMENT OF THE CASE

The OCA's Main Brief sets forth a complete Statement of the Case in this proceeding. See, OCA M.B. at 4-7.

III. SUMMARY OF THE REPLY ARGUMENT

In its Main Brief, the OCA addressed many of the arguments raised in NEP's and OSBA's Main Brief. The OCA will not address these arguments again here. Nothing contained in the Main Briefs filed in this proceeding alter the OCA's position as detailed in its Main Brief. The OCA submits that NEP's proposal is fundamentally flawed in that it does not ensure that ratepayers receive the consumer protections they are entitled to under the Public Utility Code and the Commission's Regulations. OSBA has proposed that if Tariff Rule 41.2 is adopted, the costs should be allocated to residential customers, and not commercial customers. The OSBA argument is flawed, however, as the residential units that NEP's proposal would "master meter" are primarily commercial apartment properties. For the reasons set forth in this Reply, in the OCA's Main Brief,

and the Main Briefs of Duquesne and CAUSE-PA, the OCA respectfully requests that the Commission reject NEP's proposal and OSBA's proposed allocation of master-metered building costs to residential customers.

IV. ARGUMENT

A. Overview of NEP Proposal

The OCA's Main Brief set forth a complete overview of NEP's proposal. OCA M.B. at 8-10. In its Main Brief, NEP also summarizes its proposal on pages 11 to 14. NEP M.B. at 11-14. As discussed in the OCA's Main Brief, the proposed revisions to NEP's proposal do not address the core concerns presented by the OCA in this case, particularly with respect to low-income customers. See, OCA M.B. at 10-14. The OCA submits that NEP's proposal should be denied.

B. NEP's Proposed Tariff Rule 41.2 Should be Denied

In its Main Brief, NEP argues that NEP is being denied the opportunity to provide master-metered service in the Duquesne service territory, and NEP touts the potential benefits of the Company's business model for commercial property owners and the potential environmental benefits. NEP M.B. at 16-25. NEP also argues that there could be benefits for Duquesne and for prospective tenants. NEP states that Duquesne could benefit by NEP potentially streamlining customer contacts in an outage, by improving compliance with energy efficiency goals, by removing collection risk, and by reducing the capital requirements that Duquesne can obligate the commercial customer to provide. NEP M.B. at 25-26.¹ NEP also argues that there are benefits for tenants by providing additional insights into electricity usage, control over consumption, and billing options. NEP M.B. at 27-29. The OCA submits that these "benefits" are speculative and,

¹ The OCA notes that in its Main Brief, Duquesne refutes many of these NEP-identified benefits. Duquesne M.B. at 20-25.

if realized, would come at the expense of the consumer protections to which Duquesne’s residential customers are entitled.

In its Main Brief, NEP argues that it is not, as a private entity, a public utility and should not be held to the standards of a public utility. NEP M.B. at 39-46; NEP St. 1-SR at 2-3 (Public Version). While NEP is not a public utility certificated by the Public Utility Commission, Section 1313 of the Public Utility Code, however, specifically brings resellers of electricity under the jurisdiction of the Public Utility Commission.² NEP acknowledges that Section 1313 would apply to the Company and avers that it will adhere to the requirements of Section 1313 of the Public Utility Code. NEP M.B. at 50-51. As Duquesne points out, however, NEP could still charge tenants fees that would not otherwise be applicable to a utility customer. See, Duquesne M.B. at 14-15; Duquesne St. 6-R at 13-14. Similarly, CAUSE-PA identifies in its Main Brief concerns regarding how NEP’s proposed tariff rule would be applied under Section 1313, the lack of clarity around the parameters of rebilling, and how a customer could verify their charges to ensure that it was consistent with Section 1313 of the Public Utility Code. CAUSE-PA M.B. at 48-51.³ The OCA agrees with Duquesne’s and CAUSE-PA’s position that charging additional fees could potentially violate Section 1313.

OCA’s primary concern is that by virtue of adoption of the NEP proposal and by NEP’s own admission, tenants that otherwise would have retained protections afforded utility customers would now no longer be considered customers of the public utility. See, NEP M.B. at 43. In its Surrebuttal Testimony, NEP argues that “tenants behind master metered buildings are not utility customers and should not be treated as such as addressing what the various parties characterize as “customer protections.” NEP St. 1-SR at 4 (Public Version). The OCA submits that this is

² 66 Pa. C.S. § 1313.

³ Id.

precisely the concern. The OCA submits that, under its proposal, NEP will stand in the place of the public utility by reselling electric distribution service to its tenants, and as such, its tenants will lose the umbrella of consumer protections under the law that they would otherwise have as utility customers. Some of the consumer protections provided under the Public Utility Code and the Commission's regulations that will be lost include: (1) billing and payment standards; (2) credit and deposit standards; (3) number and length of payment arrangements; (4) termination of service protections; (5) winter moratorium protections; (6) medical certification protections; (7) access to Public Utility Commission dispute resolution and informal and formal complaint protections; and (8) protections for victims of domestic violence. See, CAUSE-PA M.B. at 23-43; OCA St. 1-R at 7-8.⁴

OCA witness Colton expressed a concern regarding how those protections might be provided under the proposed Tariff Rule 41.2. As Mr. Colton testified:

... I have a concern how, if at all, basic consumer protections will be provided. For example, in my Direct Testimony, I identify a population of customers whose income is not sufficiently low to qualify a customer for universal service programs, but not sufficiently high to allow the customer to sustainably pay their electric bill over time. For such customers, protections such as reasonable payment plans are an important part of providing electric service. It is not clear how any or all of the Commission's consumer protections would be extended to tenants whose service is subject to the tariff as proposed by NEP.

OCA St. 4-R at 7. For example, NEP proposes in its Surrebuttal Testimony that tenants would be provided with a payment arrangement that NEP also provides that "but such plan shall not [sic] greater than the lesser of (i) 12 months or (ii) the remaining term of the tenant's lease." NEP St. 1-SR at 14 (Public Version). The OCA submits that this payment arrangement length may be significantly shorter than the timeframe provided for under Chapter 14. Under Section 1405 of the Public Utility Code, a low-income customer at or below 250% of the Federal Poverty Level is

⁴ See, 52 Pa. Code § 56.1, et seq.; 66 Pa. C.S. § 1401, et seq.

eligible for longer payment arrangement. Section 1405 provides for a payment arrangement of three years for customers with income from 151%-250% of the Federal Poverty Level or five years for customers with income below 150% of the Federal Poverty Level.⁵ Tenants would also lose access to Duquesne's universal service programs, including access to its Hardship Fund. OCA St. 1-R at 7-8.

NEP argues that "NEP does provide consumer protection services, albeit ones that do not directly match Duquesne's protections. The key point is that there is no reason for these different products and services to provide the same protections to customers/tenants." NEP M.B. at 40 (footnote omitted). Provision of electric utility service, however, is not merely a product or service; it is a life-sustaining essential need. The consumer protections provided under the law "ensure fair treatment of Pennsylvania households and a reasonable assurance of ongoing access to essential utility services." OCA St. 4-R at 7-8. The issue presented in this case that NEP cannot overcome is that under NEP's proposal, no one, not Duquesne and not NEP, would be affording tenants the breadth of consumer protections provided under Chapter 14 and Chapter 56.

In its proposal, NEP offers only one provision that would address low-income customers. NEP proposes to simply inform customers signing the lease that certain low-income programs available to a utility customer will not be available to tenants. NEP M.B. at 45, 51. As OCA witness Colton discussed, NEP's proposal does not address the potential that tenants may experience unexpected financial hardships. NEP's proposed revision in its Surrebuttal Testimony to provide tenants with information in advance of signing the lease states that customers does not address the problem. NEP St. 1-SR at 16 (Public Version). The information provided prior to

⁵ 66 Pa. C.S. §1405(b)(1),(2).

signing the lease will not help the consumer if that consumer has a change in income such that he or she can no longer afford utility service. See related, OCA St. 4-R at 6-7.

In its Main Brief, CAUSE-PA enumerates each of these protections under Chapter 14 and how each of these protections would be impacted by NEP's proposal. CAUSE-PA M.B. at 24-43. CAUSE-PA also discusses potential impacts to customer privacy because the proposal would provide to the landlord highly personal household information "including whether a tenant is home, whether they go on vacation, whether they have visitors, appliance usage, what temperature they keep their homes, and other highly personal and sensitive household information." CAUSE-PA M.B. at 52, citing CAUSE-PA St. 1-R at 50. For the reasons set forth above and in the OCA's Main Brief, the OCA submits that NEP's proposed Tariff Rule 41.2 should be denied.

C. OSBA's Proposal to Allocate the Costs of Master Metered Multifamily Service to Residential Customers Should be Denied

In its Main Brief, OSBA stated only that it "raised a number of concerns about NEP's proposal as set forth in the rebuttal testimony of Mr. Knecht." OSBA M.B. at 5, citing OSBA St. 1-R at 22. The OSBA did not specifically address its recommendation that if master-metered multifamily service is approved under Tariff Rule 41.2 that the costs should be included as a part of the residential class costs for cost allocation and revenue allocation purposes. See, OSBA St. 1-R at 23. In Rebuttal Testimony, one of Mr. Knecht's "concerns", however, was that a sub-class of master-metered multifamily customers should be created within the Rate RS class if the NEP proposal is accepted. See, OSBA St. 1-R at 23. The OCA submits, however, that the NEP proposal would directly result in Duquesne multi-unit commercial property owners – not residential customers. For the reasons set forth in the OCA's Main Brief, the OCA submits that OSBA's proposal set forth in the Rebuttal Testimony of Mr. Knecht should be denied. OCA M.B. at 15-16.

V. CONCLUSION

For the reasons set forth in this Reply and in the OCA's Main Brief, the OCA respectfully requests that NEP's proposed Tariff Rule 41.2 be denied.

Respectfully Submitted,

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