

Buchanan

Ingersoll · Rooney

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

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

October 22, 2021

VIA EFILING

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

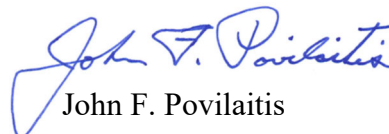
Re: Pennsylvania Public Utility Commission, Office of Consumer Advocate, Office of
Small Business Advocate v. Duquesne Light Company;
Docket No. R-2021-3024750, C-2021-3025538, C-2021-3025462, C-2021-
3026057

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission please find the
Exceptions of Nationwide Energy Partners, LLC (“Exceptions”) to the Recommended Decision of
Deputy Chief Administrative Law Judge Joel H. Cheskis and Administrative Law Judge John M.
Coogan, in the above-referenced proceeding

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

Very truly yours,


John F. Povilaitis

JFP/tlg

Enclosure

cc: Office of Special Assistants (OSA) (via email ra-OSA@pa.gov)
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	:	

EXCEPTIONS OF NATIONWIDE ENERGY PARTNERS LLC

BUCHANAN INGERSOLL & ROONEY PC

John F. Povilaitis (I.D. #28944)

Alan M. Seltzer (I.D. #27890)

409 North Second Street, Suite 500

Harrisburg, PA 17101-1357

Phone: 717 237 4800

Fax: 717 233 0852

E-mail: john.povilaitis@bipc.com

E-mail: alan.seltzer@bipc.com

Counsel to Nationwide Energy Partners LLC

Dated: October 22, 2021

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
I. INTRODUCTION	1
II. SUMMARY OF EXCEPTIONS	1
III. NEP’S BUSINESS MODEL	5
IV. EXCEPTIONS	7
Exception No. 1: The RD fails to give proper weight to the fact that NEP’s proposed master meter and smart submeter program has been successfully deployed for over 10 years in PECO’s service territory without material complaints by any stakeholders, while bestowing benefits to the key stakeholders.	7
Exception No. 2: The RD incorrectly placed on NEP the burden to show that Duquesne’s existing Tariff Rule 41 prohibiting master metering in its service territory was unreasonable. (RD at 78, 80; Conclusions of Law 19, 28, 35).....	10
Exception No. 3: The Recommended Decision errs in suggesting that the only benefits of NEP’s proposed master meter and smart submeter program are those for the Property Owner. (RD at 79; Finding of Fact 114).	13
Exception No. 4: The Recommended Decision erroneously holds and evaluates NEP and its proposed master meter and smart submeter program to the requirements applicable to Duquesne as an EDC (RD at 80-82; Findings of Fact 106-113, 115-122, 124; Conclusions of Law 31-32).....	21
Exception No. 5: The RD errs in implicitly or explicitly concluding that it was necessary to find that Duquesne’s “prohibition” on master metering and NEP’s proposed master meter and smart submeter Tariff Rule 41.2 cannot both be reasonable; nor did the RD recognize NEP’s suggestion that its proposed master meter program be limited in Duquesne’s service territory similar to a trial-type pilot program. (RD at 80).....	26
Exception No. 6: The Recommended Decision erroneously claims not to comprehend the “public” when evaluating NEP’s proposed master meter and smart submeter program (RD at 80).	29

Exception No. 7: The RD’s concerns about tenant enforceability of violations of proposed NEP Tariff Rule 41. 2 are unfounded (RD at 81-82; Conclusion of Law 33).	29
Exception No. 8: The RD erred in finding that Duquesne’s EE&C programs render null any possible basis for allowing master metering with smart submeters and that PURPA and Pennsylvania case law do not support NEP’s proposal (RD at 82-83; Conclusion of Law 26).	33
Exception No. 9: The RD erred in not addressing why cost/revenue shifting does not need to be resolved now if the Commission rejects the RD and ultimately approves NEP’s proposed Tariff Rule 41.2 (RD at 83).	39
V. CONCLUSION.....	40

TABLE OF AUTHORITIES

	Page(s)
Court and Administrative Cases	
<i>Coggins v. PPL Electric Utilities Corporation</i> , Docket No. C-2012-2312785 (July 18, 2013)	31, 32
<i>Crown American Corporation v. Pennsylvania Public Utility Commission</i> , 463 A.2d 1257 (Pa. Cmwlth. 1983)	37, 38
<i>Motheral, Inc. v. Duquesne Light Company</i> , Docket No. C-00003926, 2001 Pa. PUC LEXIS 4 (March 23, 2001)	37
<i>Pennsylvania Public Utility Commission v. Philadelphia Gas Works</i> , Docket No. R-2021-3023970 (Order Entered August 26, 2021)	28
<i>Pennsylvania Public Utility Commission v. West Penn Power Company</i> , Docket No. R-78100685 <i>et al.</i> , 1979 Pa. PUC LEXIS 37, 32 PUR 4th 245 (August 27, 1979)	36
<i>Tiffany Associates v. Duquesne Light Company</i> , 1998 Pa. PUC LEXIS 206 (November 20, 1998)	37, 38
Statutes	
66 Pa.C.S. § 501(c)	32
66 Pa.C.S. § 1313	<i>passim</i>
66 Pa.C.S. §§ 1521-1533	24
66 Pa.C.S. § 3301(a)	32
16 U.S.C. § 2601 <i>et seq.</i>	33
16 U.S.C. § 2623(b)(1)	34
16 U.S.C. § 2625(d)	34

I. INTRODUCTION

On October 12, 2021, the Pennsylvania Public Utility Commission (“Commission” or “PaPUC”) served via Secretarial Letter the Recommended Decision (“Recommended Decision” or “RD”) of Deputy Chief Administrative Law Judge Joel H. Cheskis and Administrative Law Judge John M. Coogan (“ALJ’s”) on the parties to this proceeding. Exceptions to the RD are due on October 22, 2021. These Exceptions to the RD are being filed by Nationwide Energy Partners, LLC (“NEP”).

The RD approves a Joint Petition for Settlement of Duquesne Light Company’s (“Duquesne” or “DLC”) base rate proceeding, in which Duquesne sought an increase of \$115 million per year in additional operating revenues. As noted in the RD, the only issue remaining in the case for full litigation is NEP’s request that the Commission approve NEP’s proposed new Duquesne tariff rule (i.e., Tariff Rule 41.2) to clarify the circumstances under which master metering and smart submetering of non-low-income multifamily properties can be implemented in Duquesne’s service territory. As discussed further below, the RD rejected NEP’s proposed program and related tariff, despite the fact that the same program has been operating in the PECO Energy service territory for over 10 years.

II. SUMMARY OF EXCEPTIONS

The RD commits multiple errors, the net effect of which is to deny NEP and similar providers of master metering and smart submetering services to multifamily Property Owners the opportunity to provide new and different energy, conservation, demand management and similar services to property owners and their non-low-income tenants. The irony is that the RD rejects NEP’s proposed program and tariff when similar services and products are allowed for other commercial customers and such services are already being provided in PECO’s service territory under a Commission-approved tariff that has been in effect for over 10 years. The RD inappropriately creates completely disparate treatment of master metering and smart submetering for multifamily properties in two

distinct portions of the Commonwealth, as well as allowing commercial tenants to continue to be submetered in master meter buildings under Tariff Rule 18 while not allowing it for residential tenants. The Commission must reverse the RD and allow the provision of master meter and smart submeter services in the Duquesne service territory in a manner consistent with the PECO service territory.

The RD rejects NEP's proposal largely because it improperly sets as the bar the wrong legal standard against which NEP's master metering and smart submeter program is evaluated. The RD incorrectly evaluates NEP's program as if it were being provided by a public utility (which it is not), and treats the program as completely new, when in fact it clarifies existing master metering and redistribution of electricity rules already in Duquesne's existing tariff. At the misguided urging of Duquesne and CAUSE-PA, the RD evaluates the NEP program based on what Duquesne, as a regulated electric distribution company ("EDC") utility, is required to provide to residential tenant/customers in individually metered multifamily properties. However, this is a nonutility service with different requirements and benefits. An identical and perfect match to an EDC is *not* the standard for what it is reasonable for a multifamily Property Owner to offer its tenants who agree to lease a dwelling unit with full knowledge of the terms of electric usage. To hold master metering with smart submeters to a utility standard with respect to customer offerings and protections doomed NEP's case to failure. But it did not have to end this way. Indeed, it should not have ended with a rejection of NEP's proposal.

NEP readily acknowledged from the outset of the proceeding that it is not a public utility, it is not providing public utility services, and should therefore not be required to provide the exact same protections and services to customers that the Commission requires Duquesne to provide to customers. While the low-income customer protection concerns and issues raised primarily by Duquesne and CAUSE-PA are appropriate for a utility, they do not justify rejecting the NEP proposal as was done here. Importantly, NEP heard the concerns raised by the parties in the proceeding and incorporated

many (but admittedly not all due to the transient nature of multifamily leases) of those protections into the updated version of proposed Tariff Rule 41.2.

The RD, again erroneously relying on the positions of NEP's opponents, fails to recognize that the real party in interest and applicant under NEP's proposed Tariff Rule 41.2 are Property Owners of multifamily properties and *not* NEP. Those Property Owners will need to make specific commitments to providing products and services within their master metered buildings in order to qualify under the proposed Tariff Rule and, more importantly, incur the costs of providing such products and services to tenants. The RD improperly distorts the multi-faceted master metering proposal with benefits to tenants, utilities, Property Owners and the public interest into a one-dimensional "profit grab" by landlords so that the proposal appears to fit the profile of prior master metering proposals that have been rejected. This incorrect characterization may have made it easier to reject master metering, but it does not match the evidentiary record of this case or the issues raised by NEP. The specific requirements of NEP's proposed Tariff Rule 41.2 start with benefits to tenants and would prohibit master metering if the basic tenant benefits are not satisfied. The rules also provide the standards necessary to determine when and under what circumstances the redistribution of energy within the multifamily building (a critical component of any master metering and smart submeter regime) may be provided in Duquesne's service territory. The requirements of proposed Tariff Rule 41.2 fill in the gaps in Duquesne's current master meter/redistribution of energy tariff regime, essentially providing more details about how and when master metering/redistribution of energy will be permitted and eliminating the broad discretion Duquesne currently has to determine the fate of master metering/redistribution of energy in its service territory.

The RD's determination that either NEP failed to show the benefits of its proposal or that the benefits are limited to just property owners is incorrect and completely inconsistent with the overwhelming evidence to the contrary. It is incomprehensible that the RD could characterize the

benefits of NEP's master meter and smart submeter program as "speculative" when the record evidence in this case (including years of real world market experience in PECO's service territory) demonstrates the exact opposite.

The RD labors under the inappropriate premise that to approve NEP's proposed Tariff Rule 41.2 as being "reasonable" it was necessary to first find that Duquesne's existing Tariff Rule 41 was "unreasonable." The analysis is far more nuanced and the evidence is in fact to the contrary. NEP properly recognized that Duquesne's Tariff Rule 41.1 (addressing master metering for low-income rental properties) would co-exist with NEP's proposed Tariff Rule 41.2, and in that sense both are "reasonable." The RD ignores that Duquesne's master meter/redistribution of energy regime is the combination of a prohibition on master metering in existing Tariff Rule 41 along with a vague standard in Tariff Rule 18 requiring Duquesne to find "special circumstances" before it will allow any redistribution of energy within a customer's multifamily property. It is this combination that is unreasonable and which requires proposed Tariff Rule 41.2. NEP's proposed Tariff Rule 41.2 provides clearer guidelines for when Duquesne must allow the redistribution of energy, thereby eliminating the broad discretion Duquesne has for years used to stifle the type of master metering and smart submetering proposed by NEP in this proceeding.

The RD ignores (i) the requirements of proposed Tariff Rule 41.2 that mandate benefits to tenants in order for a property to be eligible to master meter and (ii) clear record evidence that existing Duquesne programs do not benefit and are not eligible for use by non-low income renters.

The RD improperly relies upon the unsupported and unsupportable claims that low income tenants will lose valuable consumer protections under NEP's proposal because they will no longer be direct customers of Duquesne. However, NEP's Tariff Rule 41.2 proposal does not target the low income customers driving this speculative fear. Further, where NEP and others have been implementing its master meter and smart sub-metering program (i.e., PECO's service territory, Ohio

and New York), there has been no issue of the loss of low-income tenant protections raised by NEP's opponents.¹

Finally, the RD's concerns about whether tenants served by a property owner doing master metering and smart submetering can enforce alleged violations of proposed Tariff Rule 41.2 are misplaced. Not only is prevailing Pennsylvania case law clear that tenants in multifamily properties have the right to file complaints at the Commission against the property owner for alleged violations under Public Utility Code ("Code") Section 1313 for excessive or inappropriate pricing, a clearly defined tariff will provide tenants a path to ask Duquesne, as the utility bound by proposed Tariff Rule 41.2, to address alleged non-price violations of the tariff by property owners of multifamily buildings. As the record evidence demonstrates (including years of experience in PECO's service territory with master metered buildings deploying smart submeters), there is little basis for concern in this case that such complaints will be necessary.

For the reasons specified above and in greater detail in the Exceptions below, NEP requests that the Commission reverse the RD and approve NEP's proposed Tariff Rule 41.2 for implementation in Duquesne's service territory.

III. NEP'S BUSINESS MODEL

For context, to best evaluate NEP's proposed business, and to ultimately understand why the RD erred in rejecting NEP's master meter and smart submeter proposal for Property Owners, it is important to understand what NEP does, the services it provides and to whom.

NEP provides design, construction, installation, sub-metering, billing, collections, electrification, demand controls and energy efficiency services to the tenants, owners and developers of multifamily properties ("Property Owner"). The extensive services provided by NEP are detailed

¹ NEP Reply Brief at 1.

in the Direct Testimony of NEP witness Teresa Ringenbach.² 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.³ NEP delivers services via its Smart Property Platform.⁴ 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.⁵

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)."⁶ NEP provides a service provided to multifamily Property Owners or developers who construct or renovate such properties. NEP establishes a direct contractual relationship with the 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.

NEP often finances the energy infrastructure equipment installed at the multifamily building and recovers its costs through a "capped billing model."⁷ 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.⁸

² NEP St. No. 1, at 2:1-3 and 8-9.

³ NEP St. No. 1, at 2:16-18.

⁴ NEP St. No. 1, at 2:18-19.

⁵ NEP St. No. 1, at 3:4-5.

⁶ NEP St. No. 1, at 4:5-9.

⁷ NEP St. No. 1, at 9:8-9.

⁸ NEP St. No. 1, at 9:9-13.

NEP's program starts with the installation of a utility master meter at the curb for the entire multifamily property occupied by residential tenants. NEP then builds out behind the curb or on the private property the infrastructure at the multifamily property, including transformers and conduit privatized on the property similar to commercial master metered customers. This infrastructure includes an Advanced Metering Infrastructure 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.⁹

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."¹⁰

IV. EXCEPTIONS

Exception No. 1: The RD fails to give proper weight to the fact that NEP's proposed master meter and smart submeter program has been successfully deployed for over 10 years in PECO's service territory without material complaints by any stakeholders, while bestowing benefits to the key stakeholders.

The RD has no answer to the undeniable fact that NEP's master meter and smart submeter program is already operating successfully outside of Duquesne's service territory, including in PECO Energy's service territory,¹¹ and providing Property Owners and tenants in multifamily buildings a choice in how they are metered, while obtaining the benefits of a different form of service.

The record evidence shows that NEP has 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*

⁹ NEP St. No. 1, at 9:19-2, 20:4-7.

¹⁰ NEP St. No. 1, at 10:8-10. 66 Pa.C.S. § 1313.

¹¹ 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.

service territory.¹² NEP has been successfully providing master meter and smart sub-meter service in PECO Energy’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.¹³ No demonstrated adverse consequences have occurred with master metering and sub-meter services in PECO’s service territory, a territory with a large number of low income residents, and where nine companies *besides NEP* provide master meter and sub-meter services.¹⁴ For example, CAUSE-PA’s Witness Geller had no specific knowledge of complaints, lawsuits or other disputed filed or asserted against NEP for service in Pennsylvania.¹⁵ 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.¹⁶ He could not identify any specific instances where a NEP sub-metered bill resulted in material harm and costs to tenants.¹⁷ And he could not identify any instance in which anyone has charged or claimed NEP 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.¹⁸ Despite NEP documenting this complete lack of adverse consequences arising from actual master metering and smart submetering service in PECO’s service territory, the RD incorrectly describes this issue as “a purported lack of adverse consequences.”¹⁹

Further, 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

¹² NEP Main Brief at 1; ¹² NEP St. No. 1, at 2:16-18.

¹³ NEP St. No. 2, at 10:14-16 and 12:5-10.

¹⁴ NEP St. No. 2, at 18:16-24, 19:1-5; NEP Exhibit TR-21.

¹⁵ NEP Cross Exhibit 1.

¹⁶ NEP Cross Exhibit 6.

¹⁷ NEP Cross Exhibit 9.

¹⁸ NEP Cross Exhibit 10.

¹⁹ RD at 83.

(i.e., PECO's service territory) have ever been found inadequate by the Commission or the Pennsylvania General Assembly.²⁰

In the face of the overwhelming success of NEP's master meter and submetering program in PECO Energy's service territory, the RD erroneously downplays the import of that success by merely indicating that the RD does not find that the "lack of adverse consequences demonstrate that the touted affirmative benefits of NEP's proposal will materialize so as to render Duquesne's prohibition on master metering unjust and unreasonable, or prove that NEP's proposal is just and reasonable."²¹ This conclusion is erroneous. First, NEP's proposed tariff mandates specific benefits to tenants – something not included in Rule 18 and not left up to the discretion of the Property Owner. Second, NEP's experience in PECO's service territory was not cited to support the benefits or reasonableness of the program, but to show that the consumer protection, landlord and tenant and other harms alleged by Duquesne, CAUSE-PA and others *have not materialized* in the service territory of a Pennsylvania utility where NEP's services have been offered for over 10 years. This is independent of the actual benefits to all stakeholders of NEP's master meter and smart submeter program that were separately addressed in other substantial evidence. Third, as noted above, NEP was *not* demonstrating the unreasonableness of Duquesne's tariff provision with regard to its PECO Energy experience. Rather, that evidence shows that NEP's program has operated successfully without the adverse consequences cited by the opponents, and that it is illogical and not good policy for the Commission to have wildly different approaches to master metering in separate parts of Pennsylvania in the service territories of two PaPUC jurisdictional electric utilities!

PECO Tariff Rule 13.1 explicitly states master metering is permitted if consistent with energy conservation. There is no indication in PECO's Tariff that master metering is allowed under Tariff

²⁰ NEP St. No. 2, at 12:7-9.

²¹ RD at 83.

Rule 13.1 only if a commercial customer Property Owner requesting master metering also provides the equivalent of PECO's Energy Efficiency & Conservation ("EE&C") Programs and payment troubled customer protections to tenants - yet the foundational premise of the parties opposing proposed Tariff Rule 41.2 is the that such programs and protections are necessary before master metering can be permitted.²²

In a footnote on page 83, the RD notes that there was no discussion of the historical context of PECO Energy's allowing of master metering, but the RD never states why such information is relevant or needed here. What is relevant is that this Commission has allowed master metering and smart submetering like that proposed in this proceeding to be effective in Pennsylvania for over 10 years. Instead of accepting this uncontroverted fact, the RD is dismissive of and unreasonably intent on establishing unsupported and unsupportable hurdles to the implementation of NEP's model in Duquesne's service territory.

Exception No. 2: The RD incorrectly placed on NEP the burden to show that Duquesne's existing Tariff Rule 41 prohibiting master metering in its service territory was unreasonable. (RD at 78, 80; Conclusions of Law 19, 28, 35).

The RD incorrectly required NEP to show that Duquesne's existing Tariff Rule 41,²³ prohibiting master metering in its service territory, is unreasonable. For example, the RD concludes

²² Duquesne incorrectly argued that the primary benefits claimed by NEP relating to energy efficiency and conservation are already provided by Duquesne's Commission approved Energy Efficiency and Conservation ("EE&C") Plan. RD at 65. The RD erroneously appears to have accepted this claim: "Duquesne Light provides conservation and energy efficiency programs through its Commission-approved Energy efficiency and Conservation Program, and Duquesne Light's residential customers receive price signals for their accounts by being individually metered." RD at 82. What both Duquesne and the RD ignore is that such EE&C Plan programs do not primarily benefit *non* low-income tenants in multifamily buildings or incorporate demand response which are NEP's Focus. NEP Statement No. 2 at 24-25.

²³ 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.

that "...NEP has failed to carry its burden of proof that either *Duquesne Light's current prohibition on master metering* is unjust or unreasonable, or that NEP's proposed Tariff Rule 41.2 is just and reasonable."²⁴ (Emphasis added). Thus, the RD placed on NEP a burden of proof NEP never assumed and did not need to meet in order to prevail in this proceeding.

In its Main Brief, NEP readily assumed the correct burden of proof upon it in this proceeding:

Under these principles, Nationwide [NEP] 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 41.2.²⁵

Duquesne's treatment of master metering and redistribution of electric energy in the context of multifamily properties that are of interest to NEP are far more nuanced than the RD recognizes or understands. First, master metering of electricity is meaningless to NEP unless it is coupled with the ability of Property Owners to redistribute the energy to tenants in their own multifamily buildings. Duquesne does *not* outright ban both master metering and redistribution of energy – it makes them essentially impossible to do, thereby creating an effective "ban" on master metering. Second, Duquesne's tariff prohibits all master metering (Tariff Rule 41), while allowing the redistribution of energy under the vague standard of "special circumstances." (Tariff Rule 18). The net of effect of these conflicting tariff rules is to severely restrict master metering and the redistribution of energy. NEP properly characterized the situation in its Main Brief:

The heart of NEP's proposal in this proceeding is a master metering option for commercial customers/Property Owners with multifamily buildings that presently exists in Duquesne's service territory in grandfathered form, and is currently available in PECO's service territory, *but for practical purposes is banned from use in Duquesne's service territory.* (Emphasis added).²⁶

²⁴ RD at 78.

²⁵ NEP Main Brief at 8.

²⁶ NEP Main Brief at 16.

The problem is that Duquesne's Tariff Rule 18 requires all electric energy to be consumed by the customer to whom the energy is provided, except upon Duquesne's written consent and a finding of "special circumstances."²⁷ However, 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.²⁸ In fact, one of Duquesne's special circumstances criteria for an exception to tariff Rule 18 has never been applied.²⁹

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 withdrew during the proceeding.³⁰ 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 doing this at a customer's request.³¹

Duquesne's prior conduct and implementation of Tariff Rules 18 and 41 evidence a settled intent and predisposition against master metering and the redistribution of energy, which are both necessary for the implementation of NEP's proposed master and sub-metering program in this proceeding. Duquesne's position does not take into account today's availability of services and controls which are unlocked by smart submeters (allowing full property energy insights, controls and management while providing tenants benefits including data and controls that come with submeters), or the fact that master metering with submetering is permitted in PECO's service territory. There is

²⁷18. 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. Duquesne Light Tariff Rule 18, First Revised Page No. 26.

²⁸ NEP St. No. 2, at 8:10-12.

²⁹ 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.

³⁰ NEP St. No. 2, at 8:14-16; See also NEP Exhibit TR-15.

³¹ NEP St. No. 2, at 8:16-19; See also NEP Exhibit TR-16.

no way to harmonize from a regulatory perspective what is permitted by tariff in PECO's territory with the Duquesne and CAUSE-PA position that the Commission through Duquesne Tariff Rules 18 and 41 has endorsed a complete ban on master metering for multifamily properties.

Against this backdrop, NEP demonstrated the reasonableness of its proposed Tariff Rule 41.2 by showing, among other things, how that rule works *with* – not against – Duquesne's existing tariff provisions. Proposed Tariff Rule 41.2 provides the factual predicate for Duquesne to apply the "special circumstances" provision of Tariff Rule 18 (regarding redistribution of energy) in a manner that insures that both master metering and the redistribution of energy in connection therewith are done in a reasonable manner under well-defined circumstances with significant and specific benefits to all the key stakeholders, starting with tenants and including Property Owners, and Duquesne itself. As was proposed by NEP, Duquesne Tariff Rule 18 must be explicitly amended to permit redistribution of electricity when it complies with proposed Tariff Rule 41.2.

The RD erred in assigning an inappropriate burden of proof on NEP, leading to the RD's failure to analyze NEP's proposed master meter and smart sub-meter program and Tariff Rule 41.2 correctly.

Exception No. 3: The Recommended Decision errs in suggesting that the only benefits of NEP's proposed master meter and smart submeter program are those for the Property Owner. (RD at 79; Finding of Fact 114).

The RD reaches its conclusion that NEP has failed to meet its burden to demonstrate its proposal should be adopted by (i) grossly understating the benefits of the proposal, and then (ii) asserting that the claimed benefits do not prove Duquesne's "prohibition" on master metering was unreasonable.³² An objective review of the record will show that benefits to Property owners, tenants, the utility and the public interest were all documented and the RD did not correctly state NEP's burden of proof. Exception No. 1 explains that the RD erred by setting NEP's burden of proof as proving

³² RD at 83-84.

Tariff Rule 41 to be unjust and unreasonable, when in reality the burden was to show that proposed Tariff Rule 41.2, a conservation based exception to the way Duquesne was applying current Tariff Rules 18 and 41, was just and reasonable.

Regarding the issue of benefits, the RD appears to acknowledge some economic benefit to Property Owners of NEP's proposed master and smart submeter program. However, the RD erroneously reduces the economic benefits of master metering to only the commercial Property Owner and to just the monetary gain of the difference between buying electricity at a commercial rate and selling it to tenants at the utility residential rate.³³ This not only ignores the full scope of master metering benefits provided to commercial customers, but erroneously dismisses the multiple benefits to tenants explained by NEP's testimony by calling them "speculative."³⁴ In short, the RD ignores the host of benefits to all stakeholders NEP described in testimony and briefing.³⁵ NEP described those benefits in detail to each key stakeholder, i.e., Property Owners, Duquesne, Tenants and the Public Interest. The RD ignores essentially all of that testimony about benefits, preferring to inexplicably address only a couple of benefits/issues.

The RD finds the economic benefit to the Property Owner to be insufficient to support a challenge to what is practically a Duquesne master meter prohibition,³⁶ but fails to acknowledge that the record evidence demonstrates substantially more benefits across *all* relevant stakeholders. While the RD faults NEP for not having more substantiation for its claimed energy efficiency and carbon reductions,³⁷ it also fails to appreciate that the ongoing acceptance of and market for NEP's master meter and smart submeter program in a variety of utility markets, including PECO Energy, provides the best real world/market evidence of value to Property Owners, among other stakeholders.

³³ RD at 79.

³⁴ RD at 79-80.

³⁵ *See*, NEP Main Brief at 16-27.

³⁶ RD at 79.

³⁷ RD at 79.

Benefits to Property Owners/Commercial Customers – As noted in NEP’s Main Brief, the benefits of master metering to commercial Property Owners begin with the design of the infrastructure.³⁸ 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) obtain 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.³⁹ Inexplicably, the RD disregards these benefits and makes them disappear by referring to them as “purported” economic advantages compared to the utility.⁴⁰

The aforementioned benefits are only some of the commercial customer/Property Owner benefits ignored and disregarded by the RD.⁴¹

These benefits refute the RD’s contention that the commercial rate/residential rate differential that the commercial customer using master metering allegedly “pockets” is “the” benefit to Property

³⁸ NEP Main Brief pp. 17-18.

³⁹ NEP St. No. 1, at 9:1-23, 10:1-7.

⁴⁰ RD at 79.

⁴¹ 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 LEED⁴¹ 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.

Owners from Rule 4.2-type master metering. A plain reading of proposed Tariff Rule 41.2 shows that a commercial customer eligible for master metering under this Rule must at a minimum expend funds on (i) developing the expertise to make sure the price on resale (Code Section 1313) is not violated, (ii) providing each dwelling unit with a revenue grade smart submeter that meets American National Standards Institute requirements, (iii) providing tenant access to electric vehicle charging on the premises, (iv) providing tenants at least one energy technology for energy efficiency, energy control or demand response, (v) providing a minimum \$2 monthly credit on electric usage to each tenant, and (vi) providing a premium green electricity supply to each tenant while not charging the tenant any more than the cost of utility default service.⁴² These expenditures definitively refute any suggestion that the commercial/residential rate differential is being “pocketed” by eligible Property Owners. As NEP Witness Teresa Ringenbach testified, “[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.”⁴³

Benefits to Tenants - 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.⁴⁴ The sample bill⁴⁵ 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.⁴⁶

⁴² NEP Main Brief Appendix A, NEP Exhibit TR-22.

⁴³ NEP St. No. 1, at 9:15-18.

⁴⁴ NEP St. No. 1, at 21:14-17.

⁴⁵ 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.

⁴⁶ NEP St. No. 1, at 21:18-20.

- 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.⁴⁷
- The tenant’s bill shows usage trends in their building relative to neighbors.⁴⁸
- Notifications when their bill exceeds a particular amount or is estimated to exceed a specified amount by the end of the billing period.⁴⁹
- 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.⁵⁰
- Use of a green shopped electricity supply throughout the term of their lease without the burden of shopping or contract renewal issues.⁵¹
- 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.⁵²
- A minimum credit of \$2.00 per month below what the utility would charge for the same electricity service.⁵³

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. NEP’s

⁴⁷ NEP St. No. 1, at 21:20-22, 22:1-4.

⁴⁸ NEP St. No. 1, at 22:4-6.

⁴⁹ NEP Exhibit TR-10.

⁵⁰ NEP St. No. 1, at 22:14-19.

⁵¹ NEP St. No. 1, at 22:19-21. The RD found that tenant benefits from a green shopped building electricity supply were speculative because there was no evidence tenants seek green electricity, that shopping for a green supply could be done by the Property Owner rather than NEP and that there was no guarantee a property owner would choose a carbon free or renewable energy supply. RD at 80. On this point the RD fails to take into account society’s general movement toward renewable energy and the growing interest of Property Owners and commercial property investors to make “green” buildings available to tenants. On the issue of who shops for the green supply, either the commercial customer/Property Owner must shop or an agent for the Property Owner such as NEP must secure the green electricity supply. Proposed Tariff Rule 41.2 states that tenants must be given “an explanation of emissions and environmental attributes of the chosen supply.” NEP Main Brief Appendix A, NEP Exhibit TR-22. If this does not make it sufficiently clear that a green supply must be obtained by the Property owner or their agent to maintain eligibility for using Tariff Rule 41.2, NEP fully supports making that clarification in the Rule.

⁵² NEP St. No. 1, at 23:10-18.

⁵³ NEP St. No. 1, at 23:19-22, 24:1-2.

proposal includes the conservation/efficiency benefits lacking in Duquesne's withdrawn proposal and it is these benefits that distinguish Rule 41.2 from prior master metering proposals rejected by the Commission.

Benefits to Duquesne – The RD also ignored the record evidence showing that proposed Tariff Rule 41.2 would benefit 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.⁵⁴ 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.⁵⁵ 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.⁵⁶

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.⁵⁷ 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.⁵⁸

Master metering can also reduce Duquesne's capital requirements. Allowing master metering with third-party-installed behind the curb infrastructure and smart meters like that proposed by NEP

⁵⁴ NEP St. No. 1, at 20:18-20.

⁵⁵ NEP St. No. 1, at 20:20-23.

⁵⁶ NEP St. No. 1, at 20:23, 21:1-6.

⁵⁷ NEP St. No. 1, at 21:7-9.

⁵⁸ NEP St. No. 1, at 21:9-11.

in this proceeding allows both the Property Owner and Duquesne to avoid these expenditures.⁵⁹ These benefits have also been ignored by the RD.

Benefits to the Public Interest - The RD fails 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 advantage of incentives offered by investors, loan programs or green certifications, as explained by Witness Ringenbach in her Direct Testimony.⁶⁰

The RD's rejected of NEP's master meter and smart submeter program jeopardizes two of the most important benefits to the public interest as well as Property Owners. That is, being able to establish an environmentally preferred electricity supply 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 stated 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.⁶¹

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.

A second significant benefit to the public interest, as well as the Property Owner, from the master meter option is its support of the current interest by investors and banks in making more climate

⁵⁹ NEP St. No. 2, at 11:3-6.

⁶⁰ NEP St. No. 1, at 16:8-12.

⁶¹ NEP St. No. 1, at 11:11-23, 12:1-6.

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 multifamily buildings taking advantage of our services.” Duquesne claims that elements of its Energy Efficiency and Conservation Act 129 Program available to multifamily building tenants make NEP’s offerings unnecessary, but those programs appear to be focused and marketed toward low income multifamily building tenants.⁶² 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.⁶³ NEP’s witness provided examples of the significant change in both access to capital and in investor decisions over the last few years.⁶⁴ Today, large banks and investors are looking for the businesses they lend to or invest in to provide environmental and climate data.⁶⁵ 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.”⁶⁶

⁶² NEP Cross Exhibit 14, at 21, 42.

⁶³ NEP St. No. 2, at 23:11-17.

⁶⁴ NEP St. No. 2, at 23:22-23, 24:1-5; NEP Exhibit TR-17.

⁶⁵ NEP St. No. 2, at 24:1-2.

⁶⁶ NEP St. No. 2, at 24:2-5.

Examples of this investor and banking movement were addressed by NEP and ignored in the RD.⁶⁷

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.⁶⁸

NEP's proposed Tariff Rue 41.2 implementing a proposed master meter and smart submeter exception to Duquesne's unofficial *de facto* ban on master metering will convey benefits to the Property Owner, tenants, Duquesne and the public interest. The RD erred by declaring some of these benefits speculative and completely ignoring many others. The Commission should recognize these benefits by granting NEP's Exception.

Exception No. 4: The Recommended Decision erroneously holds and evaluates NEP and its proposed master meter and smart submeter program to the requirements applicable to Duquesne as an EDC (RD at 80-82; Findings of Fact 106-113, 115-122, 124; Conclusions of Law 31-32).

The RD notes that Duquesne, CAUSE-PA and OCA set forth in detail protections and benefits not available to tenants if they are not also Duquesne residential customers.⁶⁹ The RD goes on to say that even if the tenant protections offered by Tariff Rule 41.2 were comparable to Duquesne's protections, Duquesne and CAUSE-PA raised valid and complex concerns regarding enforcement of those protections before the PaPUC.⁷⁰ This latter concern will be addressed in NEP Exception No. 7. NEP is not a public utility or an EDC and is proposing a program to commercial customers that is

⁶⁷ NEP Exhibit TR-17, The Citiblog 1/5; NEP Exhibit TR-17, Larry Fink CEO Letter, 1; and NEP Exhibit TR-17, *Turn green or lose 'license to operate', says Deutsche Bank Chief*, May 20, 2021, Climate Capital 1; NEP Exhibit TR-17, *Lack of U.S. Climate Finance Regulation Presents Unique Opportunity For CRE Investors*, May 21, 2021, 1-4; and NEP Exhibit TR-17, *Banks Increasingly See Climate Risk As Top Priority*, June 29, 2021, 1-4.

⁶⁸ NEP St. No. 1, at 16:7-18.

⁶⁹ RD at 81.

⁷⁰ RD at 82.

different from, and should not be judged by, what Duquesne is required by statute and PaPUC regulations to provide. This includes energy efficiency and conservation programs, protections for low income tenants, etc.

Proposed Tariff Rule 41.2 offers a choice to Property Owners and their tenants that is a reasonable alternative to individually metered tenant units in multifamily buildings, which is Duquesne's preferred choice. There are differences in those offerings, and the RD unfairly and improperly evaluates the NEP proposal against what Duquesne is required by law to implement. This criticism seeks to unreasonably impose on NEP, a private entity, certain legal and other standards applicable to Duquesne as a regulated public utility.⁷¹ Far from attempting to "step into the utility's shoes" with respect to sub-metered tenants as Duquesne's Witness incorrectly claimed,⁷² NEP is proposing a new and different service to eligible Property Owners and their tenants, which was not understood by the RD. The RD's attempt to hold NEP and its master metering proposal to a "public utility" standard is unreasonable and to do so:

. . . [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 multifamily 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.⁷³

NEP is not a public utility and its customers should not be deprived of an opportunity to offer infrastructure installations on private property, billing or supply services that are unrelated to

⁷¹ 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.

⁷² Duquesne St. No. 6-R, at 2:18.

⁷³ NEP St. No. 2, at 3:2-9.

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.⁷⁴

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 multifamily buildings, NEP does provide consumer protection services, albeit ones that do not directly match Duquesne’s protections.⁷⁵ The key point ignored by the RD is that there is no reason for these different products and services to provide the same protections to customers/tenants.⁷⁶

None of Duquesne’s claimed consumer protections apply today to any of the 130 master metered properties, the commercial master metered properties operating in Duquesne’s service territory or the commercial properties companies like NEP assist in PECO’s service territory. And, none of the critics of NEP’s master and sub-metering program have alleged or the RD found any systemic problems with tenants in multifamily buildings being served by NEP that justify *identical* consumer protections from both a public utility like Duquesne and a private company like NEP.⁷⁷

The RD fails to acknowledge that 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.”⁷⁸ 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

⁷⁴ NEP St. No. 2, at 3:9-15.

⁷⁵ NEP St. No. 2, at 3:23 and 4:1-4.

⁷⁶ NEP St. No. 2, at 4:4-5.

⁷⁷ NEP St. No. 2, at 4:5-11; RD at 80-82.

⁷⁸ NEP St. No. 2, at 4:21-23.

Commission or the General Assembly.⁷⁹ 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 similar to Philadelphia, there has been no outcry for further consumer protections for master metered tenants in Pittsburgh.”⁸⁰

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 multifamily buildings be required to implement such things as Chapter 56 service termination rules, customer assistance programs (“CAP”), Chapter 14 and more.⁸¹ A key consumer protection available to tenants in multifamily buildings served by NEP is already in place under Code Section 1313, 66 Pa.C.S. § 1313.⁸² 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.”⁸³ 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 and the costs of following this Code mandate when it individually meters tenants.

⁷⁹ NEP St. No. 2, at 12:7-9.

⁸⁰ NEP St. No. 2, at 12:10-16.

⁸¹ NEP St. No. 2, at 18:1-4.

⁸² § 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.”

⁸³ NEP St. No. 1, at 10:8-10.

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.⁸⁴ Those tariff modifications and consumer protections are addressed in NEP's Main Brief,⁸⁵ 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:⁸⁶

- 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.

⁸⁴ NEP St. No. 2, at 13:13-16; NEP Exhibit TR-22.

⁸⁵ NEP Main Brief pp. 11-14.

⁸⁶ NEP Exhibit TR-22.

- 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 are just and reasonable, and address many of the issues raised about NEP's proposal from a consumer protection perspective. In addition, proposed Tariff Rule 41.2 can offer tenants of dwelling units participation in demand response programs which Duquesne cannot provide to residential customers.

It is incorrect for the RD to find that NEP's proposed tariff modifications are an inadequate substitute for the customer benefits and protections Duquesne provides to its customers.⁸⁷ This is an example of NEP being held to the wrong legal standard, which doomed its position to failure. NEP never purported to be a substitute for Duquesne; rather, it is a different service with different attributes that should be given an opportunity to develop in Duquesne's service territory as it has in PECO's service territory for years.

Exception No. 5: The RD errs in implicitly or explicitly concluding that it was necessary to find that Duquesne's "prohibition" on master metering and NEP's proposed master meter and smart submeter Tariff Rule 41.2 cannot both be reasonable; nor did the RD recognize NEP's suggestion that its proposed master meter program be limited in Duquesne's service territory similar to a trial-type pilot program. (RD at 80).

As NEP explains in Exception No. 1, the RD erroneously placed on NEP the legal burden to show Duquesne Tariff Rules 18 and 41 were completely unreasonable and that such a finding was necessary to allow proposed Tariff Rule 41.2 to become effective. In fact, proposed Tariff Rule 41.2

⁸⁷ RD at 81.

would, legitimize the “special circumstances” exception already in Tariff Rule 18 and provide a reasonable alternative to the utility residential meters for tenants provided for in Tariff Rule 41.⁸⁸

NEP’s proposed tariff to implement its proposed master meter and smart submeter program effectively provides more guidance and direction to Duquesne on when to allow master metering in its service territory, instead of the vague standard that exists today, which Duquesne has successfully deployed to prevent any new master metered projects in its service territory. That clearer standard benefits ALL stakeholders.

Proposed Tariff Rule 41.2 can co-exist with amended Tariff Rule 18 and would not displace Tariff Rule 41. In addition, the limitations NEP has voluntarily placed on application of proposed Tariff Rule 41.2 allows the Commission to view the proposed master meter and smart sub-meter program as having the same context as a utility-sponsored “pilot” program, similar to the EV Charging pilot proposed by Duquesne in this proceeding. Despite the existence of master metering with sub-metering in multiple service territories, including PECO, some Parties expressed a desire to obtain more information on the impact of additional master metering in Duquesne’s service territory (plus the currently grandfathered 130 master metered buildings in Duquesne’s territory) between now and the Company’s next rate case. Given NEP’s willingness to limit applications of Tariff Rule 41.2 to 130 new building or conversion installations and to assess the program’s cost, revenue and other impacts in Duquesne’s next base rate proceeding, proposed Tariff Rule 41.2 has many of the elements of a new pilot program.

In the recent Philadelphia Gas Works (“PGW”) gas cost recovery proceeding, the Commissioners identified the characteristics of pilot programs that fit the circumstances of NEP’s

⁸⁸ NEP indicated on the record that the new proposed Rule 41.1 for low income customers could co-exist with NEP’s proposed tariff as well.

master metering with smart submeters proposal in this case.⁸⁹ In *PGW*, the ALJ recommended approval of a pilot program utilizing renewable natural gas. While the Commission found issues with the statutory support for the initiative, Chairman Dutrieuille noted the pilot would allow PGW to gain “knowledge and experience” with a new source of gas. Vice Chairman Sweet added that “[i]n general, pilots are an avenue to examine new ideas and practices to determine impacts and costs in a manner that includes guardrails to help limit the potential for negative impacts on customers. It is appropriate for PGW to utilize pilots to help it develop business practices that align with an ever-changing utility environment.”

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

The Commission should grant NEP’s Exception and make it clear Tariff Rules 18, 41 and 41.2 can lawfully be harmonized and co-exist, with a review of how the initiative is working for all stakeholders conducted in the next Duquesne rate case.

⁸⁹ *Pennsylvania Public Utility Commission v. Philadelphia Gas Works*, Docket No. R-2021-3023970 (Order Entered August 26, 2021) (“*PGW*”).

Exception No. 6: The Recommended Decision erroneously claims not to comprehend the “public” when evaluating NEP’s proposed master meter and smart submeter program (RD at 80).

The RD erroneously asserts “NEP’s other contention that the ‘public generally’ is being denied a choice is similarly unconvincing, not least because NEP does not make clear exactly who constitutes the public generally and what is their interest in this choice.”⁹⁰ As explained in NEP Exceptions Nos. 1, 3 and 5, commercial Property Owners owning or contemplating developing multifamily communities, tenants seeking green climate conscious buildings, commercial building investors and banks are all members of the “public generally” who would receive benefits from having proposed Tariff Rule 41.2 as an option, in addition to having tenants individually metered by the utility as an option under Tariff Rule 41.

In addition the broader public interested in more conservation/efficiency and climate improvements being implemented are part of that “public.” All of those constituencies are being denied benefits by leaving Tariff Rule 41’s practical master metering ban in place along with a hollow Tariff Rule 18 “special circumstances” exception.

NEP could not have been clearer in both testimony and briefing who the key public stakeholders are with respect to this proposal, casting serious doubt on the RD’s claim that NEP failed to define the “public.” The Commission should clarify the broad elements of the public that will benefit from proposed Tariff Rule 41.2 in its Final Order approving NEP’s proposal.

Exception No. 7: The RD’s concerns about tenant enforceability of violations of proposed NEP Tariff Rule 41. 2 are unfounded (RD at 81-82; Conclusion of Law 33).

The RD raises concerns about enforcement of proposed Tariff Rule 41.2’s tenant protections as well as a residential tenant’s ability to bring issues unrelated to Code Section 1313’s rate protections

⁹⁰ RD at 80.

to the Commission for resolution.⁹¹ Duquesne raised the same concerns regarding future enforcement of issues related to NEP's proposed tariff Rule 41.2. CAUSE-PA asserted it is unclear whether a tenant could file a complaint against a landlord or third party for a violation of the tariff rule.⁹² It also posits that it will be difficult for the Commission and Duquesne to monitor an "unknown" number of landlords for purposes of adhering to Rule 41.2.⁹³ Duquesne also worried that a tenant could file a complaint against the Company for not enforcing its tariff.⁹⁴

Proposed tariff Rule 41.2 does not burden Duquesne with any type of enforcement obligation that is fundamentally different from the many tariff rules it already applies and enforces. Under its existing tariff, Duquesne must enforce against customers all the terms and conditions it establishes in Contracts and Special Contracts with customers.⁹⁵ Duquesne must establish whether developers meet Duquesne's specifications for excavating and backfilling for underground service in new developments which, if improperly done, Duquesne must evaluate and require to be corrected or redone.⁹⁶ Similar to a commercial customer establishing that it has met the requirements of Rule 41.2, Duquesne must be given proof of compliance with insulation standards in residential buildings.⁹⁷ Under Duquesne's tariff, customers must use electric service only at their premises and any change in connected load, demand or other condition of use requires Company notification.⁹⁸ Presumably the Company takes action if such notice is not provided. Duquesne's current tariff requires that residential

⁹¹ RD at 81-82. While not making an explicit factual finding, the RD suggests that residential tenants submetered under proposed Tariff Rule 41.2 would pay more than allowed under Code Section 1313 because of Property Owner fees, charges or ineligibility for Duquesne's Standard Offer shopping program. RD at 81. Proposed Tariff Rule 41.2 commits to not charging tenants fees or charges in excess of what Duquesne would charge by tariff. In addition, Code Section 1313 has to be read as setting the price on resale standard as a comparison to the utility's default service product, not special programs such as the Standard Offer. Otherwise, the task of complying with Code Section 1313 would become impractical for Property Owners using master meters with smart submeters.

⁹² CAUSE-PA Main Brief at 17.

⁹³ CAUSE-PA Main Brief at 35.

⁹⁴ Duquesne Main Brief at 15, FN 6.

⁹⁵ The Commission can take notice of this and other Duquesne tariff provisions. Duquesne Tariff Electric-PA.P.U.C. NO. 25, Original Page No. 9.

⁹⁶ Duquesne Tariff Electric-PA.P.U.C. NO. 25, Original Page Nos. 20-24.

⁹⁷ Duquesne Tariff Electric-PA.P.U.C. NO. 25, Original Page No. 24.

⁹⁸ Duquesne Tariff Electric-PA.P.U.C. NO. 25, Original Page No. 25, Rule 16 Use of Service By Customer.

service be used for lighting, appliance operation and general household purposes and less than 25% of total monthly usage can be for “commercial or professional activity.”⁹⁹ Duquesne is presumably able to monitor and enforce this requirement applicable to hundreds of thousands of residential customers, yet CAUSE-PA doubts that proposed Rule 41.2, which would be applicable to no more than 130 potential commercial customer master meter applications, could be properly enforced. In some respects, the more detailed provisions and requirements of proposed tariff Rule 41.2 impose *fewer* obligations on Duquesne from an enforcement and monitoring perspective than does the discretionary and open-ended approach to obtaining relief from the master meter ban in its current tariff.

The RD’s concern that the Commission could not take action on non-Code Section 1313 violations of proposed Tariff Rule 41.2 is not well-founded because any tenant suspecting a departure from the Rule could bring that to the attention of Duquesne. Just as Duquesne enforces many other elements of its tariff against customers, upon good faith information that a commercial Property Owner is acting inconsistent with Proposed Tariff Rule 41.2, Duquesne can withdraw its master metering approval and impose an individual residential metering requirement under Tariff Rule 41, just as it did in the proposed and now withdrawn Tariff Rule 41.1.

The RD seems to accept that the *Coggins* case adequately supports Commission jurisdiction over excess price on resale claims brought by non-utility customers under Code Section 1313.¹⁰⁰

In *Coggins v. PPL Electric Utilities Corporation*,¹⁰¹ a campground resident alleged in his Complaint that the Echo Valley Campground, PPL’s customer, overcharged him for electric service. The Commission determined that PPL was properly dismissed from the Complaint, but that the

⁹⁹ Supplement No. 23 to Electric-PA.P.U.C. NO. 25, Original Page No. 25, First Revised Page No. 26.

¹⁰⁰ RD at 82.

¹⁰¹ *Coggins v. PPL Electric Utilities Corporation*, Docket No. C-2012-2312785 (Order Entered July 18, 2013) (“*Coggins*”). See Appendix C.

Complainant may have standing to file a Complaint under Code Section 1313, which addresses the resale of utility service by non-utilities, against the Campground. The Commission confirmed that “[u]nder Section 1313, a non-public utility entity cannot resell electricity it purchases from a public utility to any residential consumer for an amount greater than what the utility would charge its own residential customers for the same quantity of service.”¹⁰² The Commission went on to say that “[u]nder Sections 501(c) and 1313 of the Code, 66 Pa.C.S. §§ 501(c) and 1313, *it appears clear that the Commission has jurisdiction to award refunds if deemed appropriate for these violations.* Further, a Code Section 1313 violation may also involve the imposition of civil fines under Section 3301(a), 66 Pa.C.S. § 3301(a). In either case, the Commission has clear jurisdiction over resale price cap complaints.”¹⁰³ (Emphasis added).

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

Further, applicants seeking to qualify for master metering with smart submeters will be submitting directly to PaPUC jurisdiction over all aspects to Duquesne’s tariff, including proposed Rule 41.2.

¹⁰² *Coggins* at 5.

¹⁰³ *Coggins* at 7, FN 3.

Exception No. 8: The RD erred in finding that Duquesne’s EE&C programs render null any possible basis for allowing master metering with smart submeters and that PURPA and Pennsylvania case law do not support NEP’s proposal (RD at 82-83; Conclusion of Law 26).

The RD found that because Duquesne service to residential tenants through residential utility meters provide price signals to those tenants, no other alternative means of providing those price signals such as NEP’s proposal can be permitted. In addition the RD asserts, without substantiation, that the opposing Parties speculative concerns about evisceration of customer protections trump the Public Utility Regulatory Policies Act of 1978¹⁰⁴ (“PURPA”) and prior Commission and Commonwealth Court case law that suggests master metering with a conservation element can lawfully support master metering.¹⁰⁵ Neither proposition of the RD is correct.

There is no evidence in legislative history, Commission case law or Pennsylvania appellate case law that utility EE&C programs were provided for by statute to make unnecessary and unlawful a master metering option for commercial customer Property Owners. Nor is there any evidence that individual residential tenant utility meters have been used to provide residential customer’s service since the 1980s for purposes of customer protection. PECO’s current Tariff permitting master metering based on conservation stands in contradiction of the RD’s two erroneous propositions.

PURPA was enacted following the energy crisis of the 1970s as part of the National Energy Act.¹⁰⁶ The statute is jointly implemented by the Federal Energy Regulatory Commission (“FERC”) and the states.¹⁰⁷

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

¹⁰⁴ 16 U.S.C. § 2601 *et seq.*

¹⁰⁵ RD at 82-83.

¹⁰⁶ 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.

¹⁰⁷ *See*, <https://www.ferc.gov/qf>

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.¹⁰⁸ 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).

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). Consistent with the PURPA Section 115(d) above, NEP Witness Ringenbach properly opined that she never understood PURPA to *mandate* individual utility meters for each tenant in multifamily buildings.¹⁰⁹

The policy behind PURPA was to incentivize residential customers (including tenants in multifamily 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.¹¹⁰ PURPA created a standard

¹⁰⁸ See, <https://greencoast.org/master-metering/>

¹⁰⁹ NEP St. No. 2 at 9:11-12.

¹¹⁰ NEP St. No. 1, at 4:8-11.

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.¹¹¹ PURPA is rooted in high level policies in favor of conservation and energy efficiency – *not* customer protection.¹¹² Providing protection to consumers (for such things as security deposits, customer assistance programs, electric supply shopping programs, service termination for the building, protection for abuse, etc.), although important, were *not* the drivers behind PURPA’s treatment of master metering and energy conservation.¹¹³

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 multifamily 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 practical prohibition of master metering in Tariff Rule 41 was an over-reaction to PURPA’s policy of limiting/restricting master metering *if* certain specific conditions were met.¹¹⁴

¹¹¹ NEP St. No. 2, at 5:23, t 6:1-2.

¹¹² NEP St. No. 2, at 6:2-4.

¹¹³ NEP St. No. 2, at 10:11-13.

¹¹⁴ NEP St. No. 2, at 6:7-23.

Contrary to the RD, NEP's Main Brief explained how 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.¹¹⁵ These cases fully support NEP's master meter and smart sub-meter program and the proposed new Duquesne Tariff Rule 41.2. However, the RD fails to fully analyze the several Commission and Court cases addressing master metering, leading to an erroneous conclusion about what those cases say and mean for purposes of evaluating NEP's proposal.¹¹⁶

In *Pennsylvania Public Utility Commission v. West Penn Power Company*,¹¹⁷ 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."¹¹⁸ Since NEP's business model expressly incorporates smart sub-meters, along with master metering, which collectively allow tenants in multifamily 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

¹¹⁵ NEP Main Brief pp. 32-35.

¹¹⁶ RD at 82.

¹¹⁷ 1979 Pa. PUC LEXIS 37, 32 PUR 4th 245 (August 27, 1979).

¹¹⁸ 1979 Pa. PUC LEXIS 156-157.

conservation and energy efficient equipment which in turn reduces sub-metered usage when utilized by tenants.

In *Motheral, Inc. v. Duquesne Light Company* (“*Motheral*”),¹¹⁹ the Commission considered Duquesne’s denial of Motheral, Inc.’s request to master meter an apartment building. Motheral, Inc. leased a 28-unit apartment building to a 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 41.¹²⁰ The Commission, relying on *Crown American Corporation v. Pennsylvania Public Utility Commission*,¹²¹ rejected Motheral Inc.’s claim of economic disadvantage because protection of a property owner’s economic interest is not an objective of the Code.¹²² 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.¹²³

Motheral is clearly distinguishable from NEP’s request and the RD erred by not so acknowledging. 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 multifamily building. Rather, NEP seeks to bring a host of economic, conservation and energy efficiency benefits to Property owners, their tenants, Duquesne and the public interest.

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

¹¹⁹ 2001 Pa. PUC LEXIS 4 (March 23, 2001)

¹²⁰ 2001 Pa. PUC LEXIS 4, *3.

¹²¹ 463 A.2d 1257 (Pa. Cmwlth. 1983) (“*Crown American*”)

¹²² 2001 Pa. PUC LEXIS 4, *12.

¹²³ 2001 Pa. PUC LEXIS 4, *12-13.

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."¹²⁴ 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."¹²⁵ 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 multifamily 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 Rule 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.¹²⁶ Relevant to this case is the Commonwealth Court's observation that there was ample record evidence ". . . indicating that tenants of residential multifamily dwellings who are individually metered, and thus are made aware of their true energy costs, substantially reduce their energy consumption to decrease those costs."¹²⁷ 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

¹²⁴ 1998 Pa. PUC LEXIS 206,*6.

¹²⁵ 1998 Pa. PUC LEXIS 206,*13.

¹²⁶ *Crown American*, 463 A.2d 1257, 1258.

¹²⁷ *Crown American*, 463 A.2d 1257, 1260.

reduce their energy consumption to decrease their costs – is reason to recognize the conservation benefit of NEP’s proposal and approve its master meter *and* smart sub-meter program in this proceeding.

Exception No. 9: The RD erred in not addressing why cost/revenue shifting does not need to be resolved now if the Commission rejects the RD and ultimately approves NEP’s proposed Tariff Rule 41.2 (RD at 83).

The RD incorrectly elects not to resolve competing claims by the OCA and OSBA regarding the allocation of any costs to Duquesne customers relating to the implementation of NEP’s proposed Tariff Rule No. 41.2.¹²⁸ While cost and revenue issues potentially exist only if NEP’s proposed Tariff 41.2 is approved, the RD should have addressed and resolved this issue in case NEP’s proposal was ultimately accepted by the Commission.

The OSBA urged that if NEP’s proposed Tariff Rule No. 41.2 is approved, Duquesne is obligated to provide a revenue allocation impact analysis as part of any proposed change to master metering of multifamily housing.¹²⁹ More specifically, OSBA’s witness Knecht focused primarily on cost and rate allocation issues among customer classes resulting from increased master metering in the Duquesne service territory.¹³⁰ In turn, the OCA claimed that the OSBA’s arguments regarding cost allocation were flawed.¹³¹

As noted by NEP in briefing, since it is clear that the impacts of master metering on Duquesne’s revenues and cost allocations are not presently known and therefore speculative (a position confirmed by OCA),¹³² the RD should have approved NEP’s proposed Tariff Rule 41.2 and expressly found cost allocation and rate design issues, if any, from implementing the limited master metering proposed in

¹²⁸ RD at 83: (“... we do not recommend there be a cost allocation design regarding NEP’s proposal ...”)

¹²⁹ RD at 78.

¹³⁰ OSBA St. No. 1-R at 25.

¹³¹ RD at 78.

¹³² OCA Main Brief at 15.


the proceeding should be deferred until the first Duquesne base rate case following the implementation of NEP's proposed tariff Rule 41.2.¹³³

V. CONCLUSION

For the reasons set forth above, the Recommended Decision must be reversed.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

By: 

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

Dated: October 22, 2021

Counsel to Nationwide Energy Partners LLC

¹³³ NEP Reply Brief at 29-30.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

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

Via Email:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

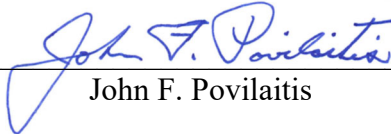
Lauren M. Burge
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
lburge@eckertseamans.com

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

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

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

Date: October 22, 2021



John F. Povilaitis